



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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WIRELINE COMPETITION BUREAU SEEKS COMMENT ON PROTECTIVE ORDER FOR SPECIAL ACCESS DATA COLLECTION

WC Docket No. 05-25
RM-10593

Comment Date: July 29, 2013

On December 18, 2012, the Federal Communications Commission (Commission) issued a Report and Order and Further Notice of Proposed Rulemaking initiating a comprehensive data collection (collection) and seeking comment on, among other things, a proposal to use the data to evaluate competition in the market for special access services.¹ The Wireline Competition Bureau (Bureau) is working to implement the collection and is in the process of seeking Paperwork Reduction Act approval.² As part of these implementation efforts, we seek comment on the procedures for designating, handling, submitting and accessing the confidential and highly confidential data and information sought in the collection.³

The collection calls for providers and purchasers of special access and other services to file data and information on their facilities, served locations, prices, revenues, and expenditures.⁴ Much of these data and information are competitively sensitive and not publicly available. Recognizing the commercial sensitivity of this information, we have drafted and seek comment on the attached Protective Order outlining the procedures for handling and treating the information. The Protective Order, once finalized, will govern access to confidential and highly confidential data and information gathered in response to the collection.⁵

¹ *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012) (*Special Access Data Collection Order*).

² See 78 Fed. Reg. 9911 (Feb. 12, 2013).

³ See *Special Access Data Collection Order*, 27 FCC Rcd at 16340, para. 52 (delegating authority to the Bureau to implement the collection).

⁴ *Id.* at 16327-37, paras. 20-46.

⁵ Currently, parties may make submissions of confidential and highly confidential information in the special access rulemaking proceeding pursuant to the procedures set forth in the *Modified Protective Order* and the *Second Protective Order* in WC Docket No. 05-25. See *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, RM-10593, Modified Protective Order, 25 FCC Rcd 15168 (WCB 2010) (*Modified Protective Order*); see also *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, RM-10593, Second

The Protective Order divides the submitted data and information into three categories: (1) data and information that is presumptively highly confidential; (2) information designated by the filing parties as confidential; and (3) information that is not confidential and will be made available to the general public. Appendix A to the Protective Order identifies those types of data and information that we propose to treat as highly confidential.⁶ We seek comment on these designations.

Submission of Data and Information. We propose having parties electronically submit confidential and highly confidential data and information through a secure web portal. In addition to using a web portal, we are considering using an SSH File Transfer Protocol (SFTP) for the electronic submission of larger files to the Commission (up to eleven gigabytes in size) and allowing for the manual submission of even larger files on storage devices.⁷ Parties will submit information considered public, including redacted versions of confidential and highly confidential documents, through the Commission's Electronic Comment Filing System (ECFS). This is consistent with past practice in merger transactions.⁸

Access to Data and Information. Only parties signing the Acknowledgement of Confidentiality (Acknowledgement) attached to the Protective Order will have access to confidential information. We plan to further limit access to highly confidential data and information to outside counsel and consultants that are not involved in the decision-making activities of a competitor to the submitting party or a person with whom the submitting party does business. As described in the Protective Order, submitting parties will have the opportunity to object to persons or entities seeking to review confidential information and highly confidential data and information.

We recognize there is a heightened sensitivity over the handling of highly confidential data.⁹ We also understand that parties need an opportunity to review and analyze the data, subject to restrictions, to effectively participate in the underlying rulemaking proceeding. Therefore, we seek comment on various methods of allowing restricted access to highly confidential data in a secure data environment, *e.g.*, either through a secure data enclave in a specific, physical location or by accessing a virtual private network

Protective Order, 25 FCC Rcd 17725 (WCB 2010) (*Second Protective Order*); *Special Access for Price Cap Local Exchange Carriers*, Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, to Paul Margie, Wiltshire & Grannis LLP, 26 FCC Rcd 6571 (WCB 2011) (supplementing the *Second Protective Order*); *Special Access for Price Cap Local Exchange Carriers*, Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, to Donna Epps, Vice President, Federal Regulatory Affairs, Verizon, 27 FCC Rcd 1545 (WCB 2012) (supplementing the *Second Protective Order*). These orders continue to govern the submission, review, and use of all other confidential information and documents submitted in this proceeding.

⁶ Appendix A to the Protective Order further separates the highly confidential information into two subcategories: (1) highly confidential information that is highly confidential data and subject to additional access restrictions and (2) other highly confidential information.

⁷ The SFTP protocol provides secure file transfer functionality over any reliable data stream. See Internet Engineering Task Force website, <http://tools.ietf.org/html/rfc913> (last visited June 24, 2013).

⁸ See *Applications of Comcast Corp., General Elec. Co., and NBC Universal, Inc. for Consent to Assign or Transfer Control of Licenses or Authorizations*, Protective Order, 26 FCC Red 2045 (MB 2011); *Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, Second Protective Order (Revised), 26 FCC Rcd. 8801 (WTB 2011), *modified*, 26 FCC Rcd. 10288 (WTB 2011).

⁹ The highly confidential data identified in Appendix A to the Protective Order, which is presumptively highly confidential, includes data on locations served, network maps, revenues and billing.

using thin clients to provide virtual desktops.¹⁰ Under either scenario, we would not allow parties to store or print data or analyses on a local device.

We are exploring how software programs such as SAS[®] and Stata[®] could be made available (or installed) for parties to analyze highly confidential data.¹¹ We are also examining measures to protect a submitting party's highly confidential data by restricting the removal of research results from the secure environment. Specifically, we seek comment on whether to require that data research results conform to one or more standard rules for identifying disclosure risk before permitting those results to leave the secure environment.¹² If so, what parameter values would be appropriate? We also seek comment on whether aggregation rules are sufficient to protect commercially sensitive data or should other rules apply. For example, should the Commission adjust the raw data that is viewed in the secure data enclave by techniques such as the addition of random noise to the numbers or other masking techniques while still allowing the code to run on the unadjusted raw data?

Separately, in authorizing persons to access confidential information, should we continue to require support staff to sign and have filed separate Acknowledgements, or is this requirement overly burdensome or unnecessary? If we eliminated this requirement, we would not include in the definition of support staff paralegals, analysts, and other employees who substantively examine confidential information, and would continue to require such people to sign and file the Acknowledgment. In this respect, we question whether we may rely on the obligations that the Protective Order imposes on the counsel or consultants for whom the support staff work to comply with the Protective Order, to ensure that there is no unauthorized disclosure of confidential information by either themselves or any who work for them, and to ensure that there are adequate procedures in place at their firm or workplace to prevent any such unauthorized disclosure.

We seek comment on these issues, as well as generally on whether the procedures in the draft Protective Order adequately protect the commercial sensitivity of the collected information.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

¹⁰ A thin client is a computer, without a hard drive, which accesses applications and data from a central server. The thin client essentially functions as a dummy terminal. All data processing and file storage are performed at the central server.

¹¹ See SAS website, <http://www.sas.com/software/> (providing information on SAS, which is an integrated system of software products that enables persons to conduct statistical analysis, econometrics, and data mining) (last visited June 24, 2013); STATA website, <http://www.stata.com/why-use-stata/> ("Stata statistical software is a complete, integrated statistical software package that provides everything you need for data analysis, data management, and graphics.") (last visited June 24, 2013).

¹² For example, any cell released must be made up of at least "x" number of unique observations and /or a cell can be released only if any "x" number of unique observations contributes no more than "y" percent of the value of the cell.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹³ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information regarding this proceeding, contact William Layton, Pricing Policy Division, Wireline Competition Bureau, 202-418-0868 or William.Layton@fcc.gov.

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¹³ 47 C.F.R. §§ 1.1200 *et seq.*

ATTACHMENT

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Special Access for Price Cap Local Exchange Carriers;)	WC Docket No. 05-25
)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services)	RM-10593
)	

DATA COLLECTION PROTECTIVE ORDER

1. *Definitions.* As used herein, capitalized terms not otherwise defined in this Data Collection Protective Order shall have the following meanings:

“Acknowledgment” means the Acknowledgment of Confidentiality attached as Appendix B.

“Competitive Decision-Making” means a person’s activities, association, or relationship with any of his clients involving advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party.

“Confidential Information” means information that is not otherwise available from publicly available sources and that is subject to protection under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Commission’s implementing rules.

“Counsel” means In-House Counsel and Outside Counsel of Record.

“Data Collection” or “Special Access Data Collection” means the data collection established in *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012), including the submission of Stamped Confidential and Highly Confidential Documents and Confidential and Highly Confidential Information.

“Document” means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. For the sake of clarity, the term “document” includes responses created and submitted to the Commission electronically.

“Highly Confidential Data” means information that meets the definition of Highly Confidential Information and is described as Highly Confidential Data in Appendix A to this Data Collection Protective Order, as the same may be amended from time to time.

“Highly Confidential Information” means information that is not otherwise available from publicly available sources; that the Submitting Party has kept strictly confidential; that is subject to protection under FOIA and the Commission’s implementing rules; that the Submitting Party claims constitutes some of its most sensitive business data which, if released to competitors or those with whom

the Submitting Party does business, would allow those persons to gain a significant advantage in the marketplace or in negotiations; and that is described in Appendix A to this Data Collection Protective Order, as the same may be amended from time to time.

“In-House Counsel” means an attorney employed by a Participant in this proceeding or employed by an affiliated entity and who is actively engaged in the conduct of this proceeding, provided that such attorney is not involved in Competitive Decision-Making. (In this regard, an In-House Counsel’s employer is considered his or her client.)

“Outside Counsel of Record” or “Outside Counsel” means the attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, retained by a Participant in this proceeding, provided that such attorneys are not involved in Competitive Decision-Making. The term “Outside Counsel of Record” includes any attorney representing a non-commercial Participant in this proceeding, provided that such attorney is not involved in Competitive Decision-Making.

“Outside Consultant” means a consultant or expert retained for the purpose of assisting Outside Counsel or a Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making. The term “Outside Consultant” includes any consultant or expert employed by a non-commercial Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making.

“Outside Firm” means a firm, whether organized as a partnership, limited partnership, limited liability partnership, limited liability company, corporation or otherwise, of Outside Counsel or Outside Consultants.

“Participant” means a person or entity that has filed, or has a good faith intention to file, material comments in this proceeding.

“Redacted Confidential Document” means a copy of a Stamped Confidential Document where the Confidential Information has been redacted.

“Redacted Highly Confidential Document” means a copy of a Stamped Highly Confidential Document where the Highly Confidential Information has been redacted.

“Reviewing Party” means a person or entity who has obtained access to Confidential or Highly Confidential Information (including Stamped Confidential Documents and Stamped Highly Confidential Documents) pursuant to paragraphs 5 or 9 of this Data Collection Protective Order.

“Secure Data Enclave” means a secure environment, as established by the Commission, where Reviewing Parties may view Highly Confidential Data.

“Stamped Confidential Document” means any document, or any part thereof, that contains Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) “CONFIDENTIAL INFORMATION – SUBJECT TO DATA COLLECTION PROTECTIVE ORDER IN WC DOCKET NO. 05-25 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION,” unless the Commission determines, *sua sponte* or by request pursuant to sections 0.459 or 0.461 of its rules, that any such document is not entitled to highly confidential or confidential treatment. By designating a document a “Stamped Confidential Document,” a Submitting Party signifies and represents that it contains Confidential Information.

“Stamped Highly Confidential Document” means any document, or any part thereof, that contains Highly Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) “HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO DATA COLLECTION PROTECTIVE ORDER IN WC DOCKET NO. 05-25 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION,” unless

the Commission determines, *sua sponte* or by request pursuant to sections 0.459 or 0.461 of its rules, that any such document is not entitled to highly confidential or confidential treatment. By designating a document a “Stamped Highly Confidential Document,” a Submitting Party signifies and represents that it contains Highly Confidential Information.

“Submitting Party” means a person or entity who submits Confidential or Highly Confidential Information.

2. *Effect of Designation.* By designating documents and information as Confidential or Highly Confidential under this Data Collection Protective Order, a Submitting Party will be deemed to have submitted a request that the material not be made routinely available for public inspection under the Commission’s rules.¹⁴ Any person wishing to challenge the designation of a document, portion of a document or information as Confidential or Highly Confidential must file such a challenge at the Commission and serve it on the Submitting Party. The Submitting Party must file any reply within five business days, and include a justification for treating the information as confidential.¹⁵ The documents and information challenged will continue to be accorded confidential treatment until the Commission acts on the request and all subsequent appeal and stay proceedings have been exhausted.¹⁶ Any decision on whether the materials should be accorded confidential treatment does not constitute a resolution of the merits concerning whether such information would be released publicly by the Commission upon a proper request under our rules implementing FOIA.¹⁷

3. *Submission of Confidential and Highly Confidential Information.* The procedures for submitting responses to the Special Access Data Collection, including the submission of Confidential and Highly Confidential Information, will be announced in a separate public notice. In addition, except with regard to Highly Confidential Data, with respect to each Stamped Confidential Document or Stamped Highly Confidential Document submitted, each Submitting Party shall also file through the Commission’s Electronic Comment Filing System (“ECFS”) a copy of the respective Redacted Confidential or Redacted Highly Confidential Document and an accompanying cover letter. Each Redacted Confidential or Redacted Highly Confidential Document shall have the same pagination as the Stamped Confidential or Highly Confidential Document from which it is derived. Each page of the Redacted Confidential Document or Redacted Highly Confidential Document and the accompanying cover letter shall be stamped “REDACTED – FOR PUBLIC INSPECTION.” To the extent that any page of the filing contains both Confidential or Highly Confidential Information and non-confidential information, only the Confidential Information and Highly Confidential Information may be redacted and the page of the unredacted filing shall clearly distinguish among the Confidential Information, the Highly Confidential Information, and the non-confidential information.

4. *Copying Sensitive Documents.* If, in the reasonable judgment of the Submitting Party, a document contains information so sensitive that copying of it should be restricted, the Submitting Party may mark the document with the legend “Additional Copying Restricted.” Each Outside Firm shall receive only one copy of the document and no more than two additional copies, in any form, shall be made. Application for relief from this restriction against further copying may be made to the Commission, with notice to Counsel of Record for the Submitting Party, which will be granted only for cause.

5. *Procedure for Obtaining Access to Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information.* Access to Stamped Highly Confidential Documents and Highly Confidential Information is limited to Outside

¹⁴ See 47 C.F.R. §§ 0.459(a), 0.459(a)(3).

¹⁵ See 47 C.F.R. § 0.459(b).

¹⁶ See 47 C.F.R. § 0.459(g).

¹⁷ See 47 C.F.R. §§ 0.459(h), 0.461.

Counsel of Record, Outside Consultants, and those employees of Outside Counsel and Outside Consultants described in paragraph 9. Any person seeking access to Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information subject to this Data Collection Protective Order shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this Data Collection Protective Order; file the Acknowledgment with the Bureau, on behalf of the Commission; and send a copy to SpecialAccess@fcc.gov. The Acknowledgment does not need to be served on the Submitting Parties. The Bureau periodically will issue a Public Notice identifying all people who have filed Acknowledgments (the “Acknowledgment Public Notice”) as the Acknowledgments are received. Each Submitting Party shall have an opportunity to object to the disclosure of its Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information to any person filing an Acknowledgment. A Submitting Party must file any such objection at the Commission and serve it on Counsel representing, retaining, or employing such person within the time period specified in the Acknowledgment Public Notice, generally five business days. Except for persons described in paragraph 9, persons filing Acknowledgments shall not have access to Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information before the period for filing objections has passed; persons described in paragraph 9 shall have access to Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information upon the filing of their Acknowledgment, except that such access shall be prohibited if an objection is filed. If a Submitting Party files additional Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information, it must file any objection to the disclosure of those additional documents and information to any Reviewing Party before or contemporaneous with filing the additional documents or information. Until any objection is resolved by the Commission and, if appropriate, by any court of competent jurisdiction, and unless such objection is resolved in favor of the person seeking access, a person subject to an objection from a Submitting Party shall not have access to relevant Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information.

6. *Review of Highly Confidential Data.* A Reviewing Party may inspect the Highly Confidential Data only at the Secure Data Enclave [or through a virtual private network] and will be provided with computer space to temporarily store the results of any analyses. Reviewing Parties may not print out, copy, or otherwise remove from the Secure Data Enclave the original underlying Highly Confidential Data, or any information from which the Highly Confidential Data of any individual Submitting Party could be derived. Reviewing Parties may print out and remove aggregated results of their analyses.

7. *Review of Stamped Confidential Documents and Stamped Highly Confidential Documents.* A Reviewing Party may inspect Stamped Confidential Documents and Stamped Highly Confidential Documents at the Secure Data Enclave. A Reviewing Party may also request a complete set of Stamped Confidential Documents and Stamped Highly Confidential Documents (other than Highly Confidential Data) in electronic form by contacting the Wireline Competition Bureau. All copies of documents received must be returned or destroyed in accordance with the terms of paragraph 18.

8. *Use of Confidential and Highly Confidential Information.* Persons obtaining access to Confidential and Highly Confidential Information (including Stamped Confidential Documents, Stamped Highly Confidential Documents, and Highly Confidential Data) under this Data Collection Protective Order shall use the information solely for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in any other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to any Confidential or Highly Confidential Information in its decision in this proceeding, it will do so by redacting any

Confidential or Highly Confidential Information from the public version of the decision and by making the unredacted version of the decision available only to a court and to those persons entitled to access to Confidential or Highly Confidential Information under this Data Collection Protective Order, as appropriate.

9. *Permissible Disclosure.* A Reviewing Party may discuss and share the contents of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information with another Reviewing Party, as appropriate, and with the Commission and its staff. A Submitting Party's Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information may also be disclosed to employees and Counsel of the Submitting Party. Subject to the requirements of paragraph 5, a Reviewing Party may disclose Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information to: (1) paralegals or other employees of such Reviewing Party assisting them in this proceeding; and (2) employees of third-party contractors involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding.

10. *Filings with the Commission.* A Reviewing Party or a Submitting Party may disclose Confidential or Highly Confidential Information in any document that it files in this proceeding (e.g., comments) only if it complies with the following procedure. The party shall submit to the Secretary's Office one copy of the filing containing the Confidential or Highly Confidential Information (the "Confidential Filing") and an accompanying cover letter. The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses Highly Confidential Information shall be clearly marked "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDERS IN WC DOCKET NO. 05-25 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses only Confidential Information shall be clearly marked "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDERS IN WC DOCKET NO. 05-25 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The accompanying cover letter shall also contain the appropriate legend. The Confidential Filing shall be made under seal, and will not be placed in the Commission's public file. The party shall submit a copy of the filing in redacted form, i.e., containing no Confidential or Highly Confidential Information (the "Redacted Confidential Filing") to the Commission via ECFS.¹⁸ The Redacted Confidential Filing and the accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential Filing shall state that the party is filing a redacted version of the filing. Each Redacted Confidential Filing shall have the same pagination as the Confidential Filing from which it is derived. To the extent that any page of the Confidential Filing contains any type of Confidential Information, only the Confidential Information (of whatever type) may be redacted and the page of the unredacted Confidential Filing shall clearly distinguish among the various types of Confidential Information and the non-confidential information. Two copies of each Confidential Filing and the accompanying cover letter must be delivered, as directed by Commission staff, to Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Parties should not provide courtesy copies of pleadings containing Highly Confidential Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

11. *Non-Disclosure of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information.* Except with the prior written consent of the Submitting Party or as provided under this Data Collection Protective Order,

¹⁸ If a party is not able to submit a copy of the Redacted Confidential Filing via ECFS, it must submit two copies of the Redacted Confidential Filing to the Secretary's Office along with the appropriately stamped cover letter, as described in this paragraph.

Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information may not be disclosed further.

12. *Protection of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information.* A Reviewing Party shall have the obligation to ensure that access to Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information is strictly limited as prescribed in this Data Collection Protective Order. A Reviewing Party shall further have the obligation to ensure that Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information are used only as provided in this Data Collection Protective Order.

13. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential or Highly Confidential Information outside the terms of this Data Collection Protective Order, such a request will be treated in accordance with sections 0.442 and 0.461 of the Commission's rules.

14. *Client Consultation.* Nothing in this Data Collection Protective Order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client, Counsel shall not disclose Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information.

15. *No Waiver of Confidentiality.* Disclosure of Confidential or Highly Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential or Highly Confidential Information. Reviewing Parties, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Confidential or Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential or Highly Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

16. *Subpoena by Courts, Departments, or Agencies.* If a court, or a federal or state department or agency issues a subpoena for or orders the production of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information that a party has obtained under terms of this Data Collection Protective Order, such party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document, Stamped Highly Confidential Document, Confidential Information, or Highly Confidential Information.

17. *Violations of the Data Collection Protective Order.* Should a Reviewing Party violate any of the terms of this Data Collection Protective Order, such Reviewing Party shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Confidential or Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Data Collection Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding. Nothing in this Data Collection Protective Order shall limit any other rights and remedies available to the Submitting Party at law or in equity against any person

Federal Communications Commission

using Confidential or Highly Confidential Information in a manner not authorized by this Data Collection Protective Order.

18. *Termination of Proceeding.* The provisions of this Data Collection Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, Reviewing Parties shall destroy or return to the Submitting Party Stamped Confidential Documents and Stamped Highly Confidential Documents and all copies of the same. No material whatsoever containing or derived from Confidential and Highly Confidential Information may be retained by any person having access thereto, except Outside Counsel may retain, under the continuing strictures of this Data Collection Protective Order, two copies of pleadings (one of which may be in electronic format) prepared in whole or in part by that party that contain Confidential or Highly Confidential Information, and one copy of orders issued by the Commission or Bureau that contain Confidential or Highly Confidential Information. All Counsel shall certify compliance with these terms and shall deliver such certification to Counsel for the Submitting Party not more than three weeks after conclusion of this proceeding. The provisions of this paragraph regarding retention of Stamped Confidential Documents and Stamped Highly Confidential Documents and copies of the same and Confidential and Highly Confidential Information shall not be construed to apply to the Commission or its staff.

19. *Authority.* This Order is issued pursuant to sections 4(i), 201-205, 211, 215, 218, 219, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201-205, 211, 215, 218, 219, 303(r), and 332, Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under section 0.331 of the Commission's rules, 47 C.F.R. § 0.291, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief, Wireline Competition Bureau

APPENDIX A

Highly Confidential Information

WC Docket No. 05-25
RM-10593

As specified in paragraph 1 of the Data Collection Protective Order, only information set forth in this Appendix and that otherwise meets the definition of Highly Confidential Information may be designated as Highly Confidential. This Appendix will be updated as necessary.¹⁹

Highly Confidential Information that is Highly Confidential Data

1. The *Locations* that *Providers* serve with last-mile facilities and the nature of those facilities. (Questions II.A.3-4, II.B.2-3)
2. The location of companies' fiber network routes, including the locations of all *Nodes* used to interconnect with third party networks and the year that each *Node* went live. (Question II.A.5)
3. The date that a party first provided a *Connection* to a *Location*, including whether the party originally supplied the *Location* over an *Unbundled Network Element* ("UNE") and, if so, when the party switched to using a *Connection* that it owned or leased under an *Indefeasible Right of Use* ("IRU") agreement. (Question II.A.6)
4. The location of a company's collocations. (Question II.A.7)
5. Information about Requests for Proposals ("RFPs"), including descriptions of RFPs for which a party was selected as the winning bidder, descriptions of RFPs for which a party submitted unsuccessful competitive bids, and the business rules companies take into consideration to determine whether to submit a bid in response to an RFP. (Question II.A.11)
6. The rates or charges associated with channel terminations or transport facilities, including adjustments, rebates, and true-ups, and information from which, whether alone or in combination with other confidential or non-confidential information, such rates or charges could be inferred. (Questions II.A.12-14, II.B.4-6)
7. Information on *Revenues* from the sale of *Dedicated Service*. (Questions II.A.15-17, II.B.8-10, II.B.12(n)-(p))
8. The number of customers purchasing *Dedicated Services* pursuant to *One Month Term Only Rates*, in total and disaggregated by customer category and service type. (Question II.B.11)
9. The number of customers associated with a *Tariff Plan* or *Contract-Based Tariff*, in total and disaggregated by customer category and service type, including the number of new subscribers to a *Tariff Plan* or *Contract-Based Tariff*. (Question II.B.12(r))
10. Information relating to data submitted by an entity in connection with the State Broadband Initiative Grant Program that would reveal the areas where an entity offers *Best Efforts Business*

¹⁹ For ease of reference, each category is followed by a parenthetical identifying the data collection question(s) that request the type of information described by that category. Capitalized and italicized terms refer to the definitions in the data collection. *Special Access Data Collection Order*, 27 FCC Rcd at 16318, App. A.

Federal Communications Commission

Broadband Internet Access Service and the prices offered for *Best Efforts Business Broadband Internet Access Services*. (Question II.C.2(c), C.2(c)(i)-(ii), C.2(d), C.2(d)(i)-(ii))

11. Information on the number and location of a company's cell sites and the backhaul facilities used to connect the cell sites to a carrier's network. (Questions II.E.1-2)

Other Highly Confidential Information

1. Non-specific information on whether a party or an *Affiliated Company* owns a *Connection*, leases a *Connection* from an entity under an *IRU* agreement, or obtains a *Connection* as a *UNE* to provide a *Dedicated Service*, including whether any of the *Connections* are to a *Location* within an area subject to price cap regulation or within an area where the Commission has granted pricing flexibility. (Questions II.A.2, II.A.9(d)).
2. The business rules and other factors companies take into consideration when deciding whether to self-deploy channel termination and local transport facilities or lease such facilities from a third party, including the geographic areas where a party has built the most *Connections* to *End Users* and whether and how business density is incorporated into the party's business rule. (Question II.A.8).
3. Data, maps, information, marketing materials, and/or documents identifying those geographic areas where a party or an *Affiliated Company* planned to advertise or market *Dedicated Services* within twenty-four months of the time periods specified in the data collection. (Question II.A.10)
4. The number of customers who fail to meet any *Volume Commitment* or *Term Commitment* required to retain a discount or *Non-Rate Benefit*. (Question II.B.12(s))
5. Details about the terms of non-tariffed agreements with an *End User* or *Competitive Provider* for the purchase of *Dedicated Services* (e.g., parties to the agreement, effective date of the agreement, services purchased). (Questions II.B.13(a), II.F.14)
6. Information relating to a *Provider*'s short term and long-range promotional and advertising strategies and objectives for winning new customers for *Dedicated Services* or retaining new customers for *Dedicated Services*. (Question II.D.1)
7. Expenditures on *Dedicated Services* and expenditures under certain rate structures and discount plans, including purchases made pursuant to *Tariff Plans*, *Contract-Based Tariffs*, and non-tariffed agreements. (Questions II.F.2-F.7)
8. Detailed information about the steps a *Purchaser* undertakes to change *Transport Providers* while keeping its *End User Channel Terminations* with its existing *Provider*; specifically, the number of circuits moved (or requested to be moved) and information about the rates for the *End User Channel Terminations* purchased from the existing *Provider* or rates paid for *Transport Service* while the change in service was pending. (Question II.F.9(a), F.9(d), F.9(e))
9. Detailed information about the purchase of circuits pursuant to a *Tariff* solely for the purpose of meeting a *Volume Commitment* required for a discount or to obtain a *Non-Rate Benefit* from a *Provider*; specifically, the geographic area where the circuits were bought, the number of unnecessary or unused circuits purchased, and expenditures for unnecessary or unused circuits. (Question II.F.10(a), F.10(e))

Federal Communications Commission

10. Information about changing service *Providers* that would reveal the services purchased by a customer or the geographic area where services were purchased. (Question II.F.11)
11. A company's business rule for purchasing circuits at a *One Month Term Only Rate* and the business rationale for that rule. (Question II.F.12)
12. The geographic areas in which a *Purchaser* buys *Dedicated Services* to avoid penalties or obtain plan benefits under a *Tariff Plan* or *Contract-Based Tariff*, and the geographic areas where the *Purchaser* would have bought *Dedicated Services* from a different *Provider* if not for the plan requirements. (Question II.F.13(i), (k)(i)-(ii), F.13(l)(i); F.13(m)(i)-(ii); F.13(n)(i)-(ii); F.13(o)(i)-(ii))

APPENDIX B

Acknowledgment of Confidentiality

WC Docket No. 05-25

RM-10593

I hereby acknowledge that I have received and read a copy of the foregoing Data Collection Protective Order in the above-captioned proceeding, and I understand it.

I agree that I am bound by the Data Collection Protective Order and that I shall not disclose or use Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information except as allowed by the Data Collection Protective Order.

I acknowledge that a violation of the Data Collection Protective Order is a violation of an order of the Federal Communications Commission (Commission). I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of this Data Collection Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Data Collection Protective Order limits any other rights and remedies available to a Submitting Party at law or in equity against me if I use Confidential or Highly Confidential Information in a manner not authorized by this Data Collection Protective Order.

I certify that I am not involved in Competitive Decision-Making.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Data Collection Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as a person described in paragraph 9 of the Data Collection Protective Order and agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Stamped Confidential Documents and Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Data Collection Protective Order and to ensure that there is no disclosure of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information in my possession or in the possession of those who work for me, except as provided in the Data Collection Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Data Collection Protective Order.

Executed this ___ day of _____, 20__.

[Name]
[Position]
[Firm]
[Telephone]