

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

In the Matter of)
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)

PROTECTIVE ORDER

Adopted: November 20, 2000 Released: November 22, 2000

By the Chief, Accounting Policy Division, Common Carrier Bureau:

This Protective Order is intended to facilitate and expedite the review of certain records not routinely available for public inspection pursuant to section 0.457(d)(1)(iii) of the Commission's rules, and/or for which certain parties have requested that the information be withheld from public inspection pursuant to section 0.459 of the Commission's rules.¹ It reflects the manner in which "Confidential Information," as that term is defined herein, is to be treated.

1. Definitions.

- a. Authorized Representative. "Authorized Representative" shall have the meaning set forth in Paragraph 3 below.
- b. Commission. "Commission" means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.
- c. Confidential Information. Confidential Information available for review pursuant to this Protective Order will include certain materials already existing and in custody of the Commission's staff, which are on file pursuant to sections 0.457(d)(1)(iii) of the Commission's rules, and/or for which certain parties have requested confidential treatment pursuant to section 0.459 of the Commission's rules:
 - (i) Cost data for member companies of the National Exchange Carrier Association (NECA), for the years 1995-1998, filed by NECA in response to December 9, 1999 and March 10, 2000 letters from the Common Carrier Bureau (Bureau), requesting submission of such data for purposes of evaluating the impact of separations reform proposals on small, non-ARMIS reporting companies in CC

¹ See 47 C.F.R. §§ 0.457(d)(1)(iii), 0.459.

Docket No. 80-286² and subject to the protective order adopted therein.³ At the Bureau's request, NECA resubmitted such data in this docket⁴ for purposes of evaluating the Rural Task Force's recommendation to the Federal-State Joint Board on Universal Service regarding reform of the high-cost universal service support mechanism for rural carriers.⁵ This data was submitted to the Commission by NECA in "masked" format, with member companies assigned numbers and not identified by name. The Commission staff maintains custody of this data in electronic format and in hard-copy printouts.

- (ii) Access line-count data for member companies of NECA, for the years 1995-1998, also filed by NECA in response to the December 9, 1999 and March 10, 2000 letters from the Bureau⁶ in CC Docket No. 80-286 and subject to the protective order adopted therein.⁷ NECA resubmitted such data for use in this docket in response to the Bureau's request.⁸ This data was also submitted to the Commission by NECA in "masked" format, with member companies assigned numbers and not identified by name. The Commission staff maintains custody of this data in electronic format and in hard-copy printouts.⁹

² See Letter from Yog Varma, Deputy Chief, Common Carrier Bureau, to Jim Frame, Vice President, NECA, dated December 9, 1999. See also Letter from Carol Matthey, Deputy Chief, Common Carrier Bureau, to Jim Frame, Vice President, NECA, dated March 10, 2000.

³ See *Federal-State Joint Board on Universal Service*, CC Docket No. 80-286, Protective Order, DA00-1638 (rel. July 21, 2000).

⁴ See Letter from Regina McNeil, NECA to Carol E. Matthey, Deputy Chief, Common Carrier Bureau, dated November 15, 2000.

⁵ See Letter from William R. Gillis, Chair, Rural Task Force, to Magalie Roman Salas, FCC, dated September 29, 2000 (*Rural Task Force Final Recommendation To The Federal-State Joint Board On Universal Service*). See also *Federal-State Joint Board on Universal Service Seeks Comment on Rural Task Force Recommendation*, CC Docket No. 96-45, Public Notice, FCC-00J-3 (rel. October 4, 2000).

⁶ See Letter from Yog Varma, Deputy Chief, Common Carrier Bureau, to Jim Frame, Vice President, NECA, dated December 9, 1999. See also Letter from Carol Matthey, Deputy Chief, Common Carrier Bureau, to Jim Frame, Vice President, NECA, dated March 10, 2000.

⁷ See *Federal-State Joint Board on Universal Service*, CC Docket No. 80-286, Protective Order, DA00-1638 (rel. July 21, 2000).

⁸ See Letter from Regina McNeil, NECA to Carol E. Matthey, Deputy Chief, Common Carrier Bureau, dated November 15, 2000.

⁹ While the access line-count data provided by NECA is included within the scope of this Protective Order for this proceeding, this treatment is not dispositive of how this data may be treated for confidentiality purposes in

- (iii) Cross-reference lists that reference the six-digit study area codes used for FCC Monitoring Report purposes to the three-digit codes assigned to study areas for the cost data provided by NECA to the Commission.
 - d. Declaration. "Declaration" means Attachment A to this Protective Order.
 - e. Reviewing Party. "Reviewing Party" means a person or entity participating, or that seeks to participate, as a party in this proceeding.
 - f. Submitting Party. "Submitting Party" means a person or entity that has sought confidential treatment of Confidential Information pursuant to this Protective Order.
 - g. Proceeding. "Proceeding" means CC Docket No. 96-45.
2. Disclosure to Authorized Representatives. Counsel to a Reviewing Party or such other person designated pursuant to Paragraph 3 may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of Paragraph 3 of this Protective Order only after advising such Authorized Representatives of the terms and obligations of the Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the attached Declaration.
3. Authorized Representatives shall be limited to:
- a. Counsel for the Reviewing Parties to this proceeding, including in-house counsel actively engaged in the conduct of this proceeding, and their associated attorneys, paralegals, clerical staff and other employees of counsel, to the extent reasonably necessary to render professional services in this proceeding; or
 - b. Other specified persons requested by counsel for the reviewing parties to furnish technical or other expert advice or service, or otherwise engaged to prepare material, for the express purpose of preparing comments in this proceeding.
4. Inspection of Confidential Information. Inspection shall be carried out by Authorized Representatives upon reasonable notice to and arrangement with the Commission's Accounting Policy Division, during normal business hours, at the Commission's offices.

other proceedings or contexts. For example, study area line counts filed pursuant to section 36.611 of the Commission's rules, 47 U.S.C. § 36.611, are made publicly available in NECA's annual filing and the quarterly reports of the Universal Service Administrative Company (USAC).

5. Copies of Confidential Information. Authorized Representatives may take manual notes of the Confidential Information, and may obtain electronic or hard copies of the Confidential Information, but only to the extent required and solely for the purpose of preparing comments in this proceeding. Such manual notes and electronic or hard copies shall be subject to the provisions of Paragraph 10 below regarding destruction.
6. Filing of Declaration. Counsel for Reviewing Parties shall provide to the Submitting Party and the Commission a copy of the attached Declaration for each Authorized Representative within five (5) business days after the attached Declaration is executed, or by any other deadline that may be established by the Commission.
7. Use of Confidential Information. Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than for the preparation of comments in this proceeding unless otherwise ordered by the Commission or a court of competent jurisdiction, shall not be used for competitive business purposes, and shall not be used or disclosed except in accordance with this Protective Order. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents.
8. Pleadings Using Confidential Information. Submitting Parties and Reviewing Parties may, in any comments that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:
 - a. Any portions of the comments that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings and filed under seal;
 - b. The portions filed under seal containing or disclosing Confidential Information must be covered by a separate letter referencing this Protective Order;
 - c. Each page of any Party's filing that contains or discloses Confidential Information subject to this Protective Order must be clearly marked: "Confidential Information included pursuant to Protective Order, CC Docket No. 96-45;" and
 - d. The confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission, the Submitting Party, and those Reviewing Parties that have signed the attached Declaration. Such confidential portions shall be served under seal. They shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party and an opportunity to comment on such proposed disclosure). A Submitting Party or a Reviewing Party filing

a comment containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. A Submitting Party or a Reviewing Party may provide courtesy copies of pleadings containing Confidential Information to Commission staff so long as the notation required by subsection "c" of this paragraph is not removed.

9. Violations of Protective Order. Should a Reviewing Party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, it shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure or use of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The Violating Party shall also immediately notify the Commission and the Submitting Party, in writing, of the identity of each party known or reasonably suspected to have obtained the Confidential Information through any such disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or equity against any party using Confidential Information in a manner not authorized by this Protective Order.
10. Termination of Proceeding. Unless otherwise ordered by the Commission or a court of competent jurisdiction, within two weeks after final resolution of this proceeding,¹⁰ Authorized Representatives of Reviewing Parties shall destroy or return to the Submitting Party any and all Confidential Information as well as any derivative materials made, i.e., any manual notes made as provided in paragraph 5 above. Authorized Representatives shall certify in a writing served on the Commission and the Submitting Party that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel to a Reviewing Party may retain two copies of pleadings submitted on behalf of the Reviewing Party and other attorney work product. Any Confidential Information contained in any copies of comments retained by counsel to a Reviewing Party or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with this Protective Order unless such Confidential Information is released from the restrictions of this Protective Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

11. No Waiver of Confidentiality. Disclosure of Confidential Information as provided herein shall

¹⁰ "Final resolution of this proceeding" refers to action of the Commission establishing final rules in this proceeding and the final resolution of any court of appeals regarding such rules, and does not refer to intermediary actions such as the recommended decision of a Federal-State Joint Board.

not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any Confidential Information to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information shall not be deemed a waiver of any privilege.

12. Additional Rights Preserved. The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Information.
13. Effect of Protective Order. This Protective Order constitutes an Order of the Commission and an agreement between the Reviewing Party, executing the attached Declaration, and the Submitting Party.
14. Authority. This Protective Order is issued pursuant to 47 U.S.C. §§ 154(i), (j), and 47 C.F.R. § 0.457(d).

FEDERAL COMMUNICATIONS COMMISSION

Katherine L. Schroder
Chief, Accounting Policy Division
Common Carrier Bureau

APPENDIX A

DECLARATION

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

I, _____, hereby declare under penalty of perjury that I have read the Protective Order in this proceeding, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding as defined in the Protective Order. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceeding in this matter. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement with the Submitting Party.

(signed) _____

(printed name) _____

(representing) _____

(title) _____

(employer) _____

(address) _____

(phone) _____