

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

In the matter of)	
)	
Investigation of Alascom, Inc. Interstate)	
Transport and Switching Services)	CC Docket No. 95-182
Tariff FCC No. 11)	
)	

PROTECTIVE ORDER

Adopted: September 21, 2004

Released: September 22, 2004

By the Deputy Chief, Pricing Policy Division:

1. On July 30, 2004, the Pricing Policy Division of the Commission's Wireline Competition Bureau (Bureau) issued a designation order in a pending investigation of Alascom's Tariff FCC No. 11, CC Docket No. 95-182.¹ Alascom's Tariff FCC No. 11 provides rates, terms, and conditions for the origination and termination of interstate traffic to Alaska. In response to this designation order and a subsequent order amending the pleading cycle in the investigation,² Alascom filed various materials that it claims contain "highly confidential business proprietary information protected from disclosure under Exemption 4 to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4), and the Trade Secrets Act, 18 U.S.C. § 1905."³ Alascom requests confidential treatment of this information pursuant to sections 0.457 and 0.459 of the Commission's rules.⁴ In response to Alascom's request, we adopt this Protective Order to facilitate and expedite the review of documents alleged to contain trade secrets and commercial or financial information.⁵ This Protective Order also applies to material designated as confidential in any

¹ *Investigation of Alascom, Inc. Interstate Transport and Switching Services, Tariff FCC No. 11*, CC Docket No. 95-182, Order Designating Issues for Investigation, DA 04-1249 (WCB rel. July 30, 2004) (*Designation Order*). See also *Alascom, Inc., Tariff FCC No. 11, Transmittal No. 790*, CC Docket No. 95-182, Order, 11 FCC Rcd 3703 (Com. Car. Bur. 1995).

² *Investigation of Alascom, Inc. Interstate Transport and Switching Services, Tariff FCC No. 11*, CC Docket No. 95-182, Order Amending Pleading Cycle, DA 04-2679 (WCB rel. Aug. 25, 2004).

³ *Investigation of Alascom, Inc. Interstate Transport and Switching Services, Tariff FCC No. 11*, CC Docket No. 95-182, Letter from Charles R. Naftalin, Holland & Knight LLP, Counsel for Alascom, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission at 1 (filed Aug. 30, 2004); Letter from Charles R. Naftalin, Holland & Knight LLP, Counsel for Alascom, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission at 1 (filed Sept. 17, 2003).

⁴ *Id.* See also 47 C.F.R. §§ 0.457, 0.459.

⁵ In the *Designation Order* we adopted a Protective Order used in separate proceedings involving Alascom and information for which it also requested confidential treatment. See *Designation Order* at 13, para. 39. See also *General Communication, Inc. On Request for Inspection of Records*, FOIA Control No. 2003-208, *Alascom Petition for Waiver from the Commission Rule and Order Requiring an Annual Tariff Filing*, WC Docket No. 03-18; Protective Order, 18 FCC Rcd 14447 (Com. Car. Bur 2003). That Protective Order is still in effect for this proceeding. We adopt this new Protective Order, which contains the same protections against disclosure as the Protective Order adopted earlier, to permit review of the information for which Alascom requests confidential treatment by additional parties desiring to participate in this proceeding.

subsequent filings in this proceeding, and reflects the manner in which "Confidential Information," as that term is defined herein, is to be treated.

2. *Definitions.*

a. *Authorized Representative.* "Authorized Representative" shall have the meaning set forth in paragraph 8 of this Protective Order.

b. *Commission.* "Commission" means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.

c. *Confidential Information.* "Confidential Information" means (i) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and that the Submitting Party has determined in good faith constitutes trade secrets or commercial or financial information that is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4) (FOIA); (ii) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and that the Submitting Party has determined in good faith falls within the terms of Commission orders designating the items for treatment as Confidential Information; and (iii) information that the Commission has allowed to be examined off-site and that the Submitting Party has determined in good faith constitutes trade secrets or commercial or financial information that is privileged or confidential within the meaning of Exemption 4 of the FOIA or that the Submitting Party has determined in good faith falls within the terms of Commission orders designating the items for treatment as Confidential Information. Confidential Information includes additional copies of and information derived from Confidential Information. The Commission may, *sua sponte* or upon petition, pursuant to 47 C.F.R. §§ 0.459 and 0.461, determine that all or part of the information claimed as Confidential Information is not entitled to such treatment.

d. *Declaration.* "Declaration" means Attachment A to this Protective Order.

e. *Reviewing Party.* "Reviewing Party" means a person or entity participating in this proceeding or considering in good faith filing a document in this proceeding.

f. *Submitting Party.* "Submitting Party" means a person or entity that seeks confidential treatment of Confidential Information pursuant to this Protective Order.

3. *Procedures for Claiming Information is Confidential.* The Submitting Party may designate information as "Confidential Information" consistent with the definition of that term in paragraph 2 of this Protective Order. Confidential Information submitted to the Commission shall be filed under seal and shall bear on the front page in bold print, "CONTAINS CONFIDENTIAL INFORMATION - DO NOT RELEASE." Confidential Information shall be segregated by the Submitting Party from all non-confidential information submitted to the Commission. To the extent a document contains both Confidential Information and non-confidential information, the Submitting Party shall designate the specific portions of the document claimed to contain Confidential Information and shall, where feasible, also submit a redacted version not containing Confidential Information.

4. *Use of Confidential Information.* Persons obtaining access to Confidential Information under this Protective Order shall use the information solely for preparation and conduct of this proceeding and any subsequent judicial proceeding arising directly from this proceeding, and shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory, or judicial proceedings. This provision 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.

5. *Storage of Confidential Information at the Commission.* The Secretary of the Commission or other Commission staff to whom Confidential Information is submitted shall place the Confidential Information in a non-public file. Confidential Information shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of 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.

6. *Access to Confidential Information.* Confidential Information shall only be made available to Commission staff, Commission consultants, and to counsel to the Reviewing Parties, or, if a Reviewing Party has no counsel, to a person designated by the Reviewing Party. Before counsel to a Reviewing Party or such other designated person may obtain access to Confidential Information, counsel or such other designated person must execute the attached Declaration. Consultants under contract to the Commission may obtain access to Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement or if they execute the attached Declaration.

7. *Permissible Disclosure.* Counsel to a Reviewing Party or such other person designated by the Reviewing Party pursuant to paragraph 6 may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of paragraph 8 of this Protective Order only after advising such Authorized Representatives of the terms and obligations of this Protective Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the attached Declaration.

8. Authorized Representatives shall be limited to:

a. Counsel for the Reviewing Parties to these proceedings, including in-house counsel actively engaged in the conduct of this proceeding, and their associated attorneys, paralegals, clerical staff, and other employees, to the extent reasonably necessary to render professional services in these proceedings, provided that such persons do not participate directly in any business decisions in their current positions for the Reviewing Parties;

b. Specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding, provided that such persons do not participate directly in any business decisions in their current positions for the Reviewing Parties. For purposes of this Protective Order, "business decisions" include: (1) approving pricing for a Reviewing Party's wholesale and retail long distance telecommunications services, (2) determining to deploy long distance telecommunications infrastructure by construction or lease of facilities and their capacities, or by resale of service, and (3) conducting location specific or customer specific marketing efforts for long distance services.

9. *Inspection of Confidential Information.* Confidential Information relied upon by the Submitting Party shall be maintained by the Submitting Party for inspection at two or more locations, one of which shall be in Washington, D.C. and another of which shall be at the Submitting Party's headquarters in Alaska. Confidential Information maintained by the Submitting Party may be inspected by contacting the following Submitting Party representative:

Charles R. Naftalin
Counsel for Alascom, Inc.
Holland & Knight

2099 Pennsylvania Ave., NW, Suite 100
Washington, DC 20006
(202) 457-7040

Inspection shall be carried out by Authorized Representatives upon reasonable notice (generally not to exceed one business day) during normal business hours.

10. *Copies of Confidential Information.* The Commission or the Submitting Party shall provide a copy of the Confidential Information to Authorized Representatives upon request and may charge a reasonable copying fee not to exceed twenty-five cents per page. Upon request, copies of Confidential Information in electronic format shall be provided on diskette or CD, as applicable, and at the cost of one dollar per diskette or CD. The Submitting Party shall provide copies of Confidential Information within three business days after receipt of a written request. Authorized Representatives may make additional copies of Confidential Information but only to the extent required and solely for preparation and use in this proceeding. Authorized Representatives must maintain a written record of any additional copies made and provide this record to the Submitting Party upon reasonable request. The original copy and all other copies of the Confidential Information shall remain in the care and control of Authorized Representatives at all times. Authorized Representatives having custody of any Confidential Information shall keep the documents properly secured at all times.

11. *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 prescribed by the Commission.

12. *Pleadings Using Confidential Information.* Submitting Parties and Reviewing Parties may, in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings and filed under seal;

b. The portions 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 in the Matter of Investigation of Alascom, Inc. Interstate Transport and Switching Services, Tariff FCC No. 11, CC Docket No. 95-182."

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 files 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 pleading 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.

13. *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.

14. *Termination of Proceeding.* Unless otherwise ordered by the Commission or a court of competent jurisdiction, within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall destroy or return to the Submitting Party all Confidential Information as well as all copies and derivative materials made. 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. Such certification shall be delivered not more than three weeks after conclusion of this proceeding. Any Confidential Information contained in any copies of pleadings 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 of competent jurisdiction.

15. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein shall 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 material derived from any Confidential Information to seek disclosure in any proceeding other than this proceeding; and (c) agree that accidental disclosure of Confidential Information shall not be deemed a waiver of any privilege.

16. *Subpoena by Courts, Departments or Agencies.* If a court, or a federal or state department or agency issues a subpoena or orders production of Confidential Information that a party has obtained under terms of this Protective Order, such party shall promptly notify the 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 Confidential Information.

17. *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 challenge the Submitting Party's claims of confidentiality or request further or renewed disclosure of Confidential Information.

18. *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.

19. *Authority.* This Protective Order is issued pursuant to sections 4(i) and 4(j) of the Communications Act, as amended,⁶ section 0.457(d) of the Commission's rules,⁷ and through the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules.⁸

FEDERAL COMMUNICATIONS COMMISSION

Deena M. Shetler
Deputy Chief, Pricing Policy Division
Wireline Competition Bureau

⁶ 47 U.S.C. §§ 154(i) and (j).

⁷ 47 C.F.R. § 0.457(d).

⁸ 47 C.F.R. §§ 0.91 and 0.291.

Attachment A to Protective Order

DECLARATION

In the Matter of)	
)	
Investigation of Alascom, Inc.)	CC Docket No. 95-182
Interstate Transport and Switching Services)	
Tariff FCC No. 11)	
)	

I, _____, hereby declare under penalty of perjury that I have read the Protective Order (DA 04-3033), released September 22, 2004) 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. 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 this proceeding. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that the Protective Order is also a binding agreement with the Submitting Party, and in instances of release of Confidential Information by the Federal Communications Commission pursuant to FOIA, the Submitting Party is the party that originally provided the information to the Commission.

(signed) _____

(name) _____

(representing) _____

(title) _____

(description of employment duties) _____

(employer) _____

(address) _____

(phone) _____

(date) _____