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

In the Matter of	)	
	)	
Sprint Petition for	)	WCB/Pricing 05-35
Pricing Flexibility for	)	
Special Access and	)	
Dedicated Transport Services	)	

PROTECTIVE ORDER

Adopted: December 15, 2005 **Released: December 15, 2005**

By the Chief, Pricing Policy Division:

1. On December 7, 2005, the Sprint Local Telephone Companies (Sprint) filed a petition[1] seeking pricing flexibility[2] for special access and dedicated transport services located in several designated geographic areas pursuant to sections 1.774 and 69.701 *et seq*. of the Commission's rules.[3] In support of its petition for pricing flexibility, Sprint filed two categories of information for which it seeks confidential treatment:[4] (1) data showing the identity of specific service providers and where they have collocated their facilities in Sprint wire centers,[5] and (2) data on Sprint's special access and dedicated transport service revenues earned in the subject

[1] *See* Sprint Petition for Pricing Flexibility for Special Access and Dedicated Transport Services (filed Dec. 7, 2005) (*Sprint Petition*); *Pleading Cycle Established for Sprint Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, WCB/Pricing 05-35, Public Notice, DA 05-3179 (rel. Dec. 13, 2005).

[2] In the *Pricing Flexibility Order*, the Commission adopted a framework for granting relief from its price cap and tariff rules to price cap local exchange carriers (LECs) that can demonstrate that competitive entry into a particular market is sufficient to warrant relaxation of such rules governing interstate access services. *See Access Charge Reform*, CC Docket No. 96-262, Fifth Report and Order, 14 FCC Rcd 14221 (1999) (*Pricing Flexibility Order*), *aff'd*, WorldCom v. FCC, 238 F.3d 449 (D.C. Cir. 2001). To make such a showing, a price cap LEC may submit information concerning collocation, wire-center revenue data, and wire-center line count information. *See* 47 C.F.R. § 69.701 *et seq*.

[3] 47 C.F.R. §§ 1.774, 69.701 *et seq*.

[4] Letter from Craig T. Smith, General Attorney, Sprint, to Secretary, Federal Communications Commission (filed Dec. 7, 2005) (regarding Petition for Pricing Flexibility for Special Access and Dedicated Transport Services Request for Confidential Treatment of Documents) (*Sprint December 7, 2005 Request)*. Sprint requests confidential treatment of designated portions of the information filed in support of its pricing flexibility petition pursuant to sections 0.457(d) and 0.459 of the Commission's rules. *See* 47 C.F.R. §§ 0.457(d), 0.459, and 1.774(b).

[5] *See Sprint December 7, 2005 Request* at 1.

MSAs and demand levels for specific wire centers in those MSAs.[6] Today, we authorize examination of the revenue data listed in the second category for which confidential treatment has been sought, subject to compliance with this Protective Order. For the reasons discussed below, however, this Order does not authorize public inspection of certain collocation data listed in the first category.

2. *Collocation Data*. Sprint argues that information concerning the identity of specific service providers that have collocated their facilities in Sprint wire centers represents confidential carrier information that would not ordinarily be disclosed to parties outside of the company.[7] In the *Pricing Flexibility Order*, the Commission required a price cap LEC: (1) to provide to each party upon which the price cap LEC relies in its pricing flexibility petition any information contained in the petition about that party's collocation arrangements, even if the price cap LEC has sought confidential treatment of that information; (2) to certify in its petition that it has done so; and (3) to provide to the Commission a copy of the information it provides to those parties.[8] Sprint has certified that it has provided the required information to each collocating party identified in its Petition.[9] Because the individual collocators upon which Sprint relies can verify or dispute the accuracy of the collocation information by virtue of these safeguards, we do not provide for public inspection of the collocation data pursuant to this Protective Order.

3. *Revenue Data*. Sprint argues that disclosure of revenue data included in its petition would provide Sprint's competitors valuable market information that would enable competitors to identify Sprint's most lucrative markets within its serving area and to target their business planning efforts accordingly.[10] Therefore, Sprint seeks confidential treatment of its revenue data.

4. Pending a final determination on the issue of confidentiality, this revenue information will be made available for inspection subject to this Protective Order. This Protective Order should facilitate the orderly exchange of relevant information. We, therefore, adopt this Protective Order to ensure that the documents considered confidential or proprietary by Sprint are accorded the necessary protection.[11]

5. Subject to compliance with this Protective Order, Authorized Representatives may inspect the data specified above for which Sprint has requested confidential treatment in this proceeding by contacting the following Sprint representative:

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[6] *See id*.

[7] *See id*.

[8] *Pricing Flexibility Order*, 14 FCC Rcd at 14311, para. 177; 47 C.F.R. § 1.774(e)(1)(ii). The price cap LEC may provide data to the party in redacted form, revealing only that information that relates to that party. *See* 47 C.F.R. § 1.774(e)(1)(ii)(B).

[9] *See Sprint Petition*, Attachment F.

[10] *See Sprint December 7, 2005 Request* at 1.

[11] This Protective Order applies to the material designated as confidential in the *Sprint December 7, 2005 Request*, as well as material designated as confidential in any subsequent filings in this matter.

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6. This Protective Order is intended to facilitate and expedite the review of documents containing trade secrets and commercial or financial information obtained from a person and which is privileged or confidential. It reflects the manner in which "Confidential Information," as that term is defined herein, is to be treated. This Protective Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 C.F.R. § 0.442.

7. Definitions.

a. Authorized Representative. "Authorized Representative" shall have the meaning set forth in paragraph 13.

b. Commission. "Commission" means the Federal Communications Commission or any arm of the Commission acting by 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 which the Submitting Party has determined in good faith constitutes trade secrets or commercial or financial information which is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4); (ii) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which 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 otherwise complies with the requirements of this paragraph. Confidential Information includes additional copies of and information derived from Confidential Information.

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.

8. Claim of Confidentiality. The Submitting Party may designate information as "Confidential Information" consistent with the definition of that term in paragraph 7 of this Protective Order. 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.

9. Procedures for Claiming Information is Confidential. Confidential Information submitted to the Commission shall be filed under seal and shall bear on the front page in bold print "CONTAINS PRIVILEGED AND 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.

10. 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 Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

11. 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.

12. Counsel to a Reviewing Party or such other person designated pursuant to paragraph 11 may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of paragraph 13 of this Protective Order only after advising such Authorized Representatives of the terms and obligations of the Protective Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the attached Declaration.

13. 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, to the extent reasonably necessary to render professional services in this proceeding;

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; or

c. Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper.

14. Inspection of Confidential Information. Confidential Information shall be maintained by a Submitting Party for inspection at two or more locations, at least one of which shall be in Washington, D.C. Inspection shall be carried out by Authorized Representatives upon reasonable notice (generally not to exceed one business day) during normal business hours.

15. Copies of Confidential Information. The Submitting Party shall provide a copy of the Confidential Material to Authorized Representatives upon request and may charge a reasonable copying fee not to exceed twenty-five cents per page. 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 Representative at all times. Authorized Representatives having custody of any Confidential Information shall keep the documents properly secured at all times.

16. 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.

17. 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 use in this proceeding (including any subsequent administrative or judicial review) 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 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.

18. 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 Sprint Petition for Pricing Flexibility for Special Access and Dedicated Transport Services, WCB/Pricing 05-35."

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 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.

19. 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.

20. 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. 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.

21. 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 other proceeding; and (c) agree that accidental disclosure of Confidential Information shall not be deemed a waiver of any privilege.

22. Additional Rights Reserved. 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.

23. 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.

24. Authority. This Protective Order is issued pursuant to sections 4(i) and 4(j) of the Communications Act, as amended,[12] section 0.457(d) of the Commission's rules,[13] and through the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules.[14]

FEDERAL COMMUNICATIONS COMMISSION

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[12] 47 U.S.C. §§ 154(i) and (j).

[13] 47 C.F.R. § 0.457(d).

[14] 47 C.F.R. §§ 0.91 and 0.291.