

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

In the Matter of)	
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
Connect America Fund)	WC Docket No. 10-90
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51

SUPPLEMENTAL PROTECTIVE ORDER

Adopted: September 9, 2011

Released: September 9, 2011

By the Chief, Wireline Competition Bureau:

1. On July 29, 2011, a coalition of parties filed a proposal in the above-captioned dockets regarding how the Commission might reform universal service and intercarrier compensation (Industry Plan).¹ In developing their proposal, the coalition members relied on the use of a cost model owned by CostQuest Associates, Inc. (CostQuest) that is not regularly available to the public.² To enable the public and the Commission to evaluate their proposal, coalition members have arranged for the public and the Commission to have access to the cost model to the extent described below for purposes of this proceeding.

2. To ensure that the proprietary features of the cost model are afforded adequate protection in these dockets, the Wireline Competition Bureau (Bureau), on its own motion, adopts this Supplemental Protective Order to govern the terms and conditions of access to the cost model.³ We adhere, to the extent practical, to the standard terms used in other Commission protective orders, making modifications as appropriate to reflect that the material being made available is access to and the output of proprietary software accessible via the Internet. We do not intend to make any change to the treatment of documents and other materials already submitted or that may be submitted under the first Protective Order in this

¹ Letter from Robert W. Quinn, Jr., Senior Vice President – Federal Regulatory & Chief Privacy Officer, AT&T et al. to Marlene H. Dortch, Secretary, FCC (July 29, 2011).

² Industry Plan, Attach. 1 at 4.

³ This Supplemental Protective Order does not constitute a determination whether access to or outputs from the cost model would be released publicly by the Commission upon a proper request under the Freedom of Information Act or otherwise.

proceeding.⁴ Nor do parties who previously followed procedures to review materials under the original Protective Order need to take any additional steps except with regard to accessing and reviewing the cost model.

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

“Acknowledgement” means the Acknowledgement of Confidentiality attached as Appendix A hereto.

“CQBAT” means the CostQuest Associates Broadband Analysis Tool, a proprietary software application owned by CostQuest.

“Licensed Materials” means compiled, running copies of CQBAT available over an Internet connection, any output or databases generated by CQBAT, and any sample CQBAT database provided by CostQuest.

“Licensing Agreement” means the Limited License attached as Appendix B hereto.

“Reviewing Party” means a person who has obtained access to Licensed Materials pursuant to paragraphs 4 and 7 of this Supplemental Protective Order.

“Submitting Party” means CostQuest.

4. *Procedure for Obtaining Access to Licensed Materials.* Any person participating in this proceeding or assisting a person participating in this proceeding—other than a person whose activities, association, or relationship with any of its clients involve advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or a business relationship with the Submitting Party—may seek access to Licensed Materials. Any person seeking access shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of the Protective Order, and sign and date the Licensing Agreement agreeing to be bound by the terms and conditions of the Licensing Agreement, and file both with the Bureau, on behalf of the Commission. Such person shall also serve a copy of the Acknowledgment and a copy of the Licensing Agreement to the Submitting Party through its Counsel of Record so that they are received at least five business days prior to such person’s reviewing or having access to the Submitting Party’s Licensed Materials, except that, where the person seeking access is one described in either clause 1 or clause 2 of paragraph 7, the Acknowledgment and Licensing Agreement shall be delivered promptly prior to the person’s obtaining access. The Submitting Party shall have an opportunity to object to granting access to Licensed Materials to any such person. The Submitting Party must file any such objection at the Commission and serve it on counsel representing, retaining or employing such person within three business days after receiving copies of that person’s Acknowledgment and Licensing Agreement (or where the person seeking access is one described in clause 1 or 2 of paragraph 7, file and serve such objection as promptly as practicable after receipt of the relevant Acknowledgment and Licensing Agreement). Until any such 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

⁴ *Developing a Unified Inter-carrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers; Connect America Fund; High-Cost Universal Service Support; A National Broadband Plan for Our Future*, DA 10-1749, CC Docket No. 01-92, WC Docket Nos. 17-135, 10-90, 05-337, GN Docket No. 09-51, Protective Order, 25 FCC Rcd 13160 (Wireline Comp. Bur. rel. Sept. 16, 2010).

person subject to an objection from a Submitting Party shall not have access to Licensed Materials. Unless the Submitting Party has filed an objection to granting access to Licensed Materials to a person seeking such access, and that objection remains pending at the Commission, the Submitting Party shall execute the Licensing Agreement on or before the fourth business day after receiving the Licensing Agreement (or where the person seeking access is one described in clause 1 or 2 of paragraph 7, as promptly as practicable after receipt of the relevant Acknowledgment and Licensing Agreement) and return a copy of the Licensing Agreement to the Reviewing Party.

5. *Access to Licensed Materials.* The Submitting Party shall provide each Reviewing Party a login and a password that will enable access to the Licensed Materials over the Internet, using Internet Explorer version 8 or version 9. The Submitting Party shall grant sufficient access to the Licensed Materials to enable the Reviewing Party to be able to generate reports based on the same database of results that produced model outputs contained in the Industry Plan or any other outputs generated using CQBAT and submitted by the coalition members into the record of this proceeding. (Input data used to create the Industry Plan have been filed in this docket.⁵) The Submitting Party shall grant the Reviewing Party the capability to test the sensitivities of various parameters, including, at a minimum: Total Max Funding, Target Benchmark, Alternative Technology Cost Cutoff, FCC Portion, Monthly Support Funding Cap, Mark with Provider, and Cable Unserved. The Submitting Party shall also grant the Reviewing Party the capability to generate reports at the following levels of geography: Census Designated Place, Census Block Group, Census Tract, service area, Company, County, OCN-Operating Company, and SAC-Study Area Code. No Reviewing Party will be charged any fee by the Submitting Party for access in the manner noted in this Order to the above-described Licensed Materials.

6. *Use of Licensed Materials.* A Reviewing Party shall use the Licensed Materials 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 Licensed Materials for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. A Reviewing Party also may not disassemble, decompile, reverse engineer, or otherwise recreate the Licensed Materials, or allow any other person to do so. Should the Commission rely upon or otherwise make reference to the Licensed Materials in its decision in this proceeding, it will do so by redacting any proprietary 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 Licensed Materials under this Supplemental Protective Order.

7. *Permissible Disclosure.* A Reviewing Party may discuss and share the Licensed Materials with another Reviewing Party and with the Commission and its staff. A Submitting Party's Licensed Materials may also be disclosed to employees and counsel of the Submitting Party. Subject to the requirements of paragraph 4, a Reviewing Party may disclose Licensed Materials 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 materials connected with this proceeding.

8. *Filings with the Commission.* A Reviewing Party or a Submitting Party may in any document that it files in this proceeding reference or disclose the outputs of Licensed Materials only if

⁵ Letter from Mike Lieberman, Executive Director, Public Policy, *et al.*, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.* (Aug. 12, 2011).

they comply with the following procedure. The party shall submit to the Secretary's Office one copy of the filing containing Licensed Materials (the "Confidential Filing"), two copies of the filing in redacted form, *i.e.*, containing no Licensed Materials (the "Redacted Confidential Filing"), and an accompanying cover letter. The cover or first page of the filing, and each page of the filing that contains or discloses Licensed Materials subject to this order must be clearly marked: "CONFIDENTIAL INFORMATION – SUBJECT TO SUPPLEMENTAL PROTECTIVE ORDER IN CC DOCKET NO. 01-92, WC DOCKET NOS. 05-337, 07-135, 10-90 AND GN DOCKET NO. 09-51 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The cover letter shall also contain this legend. The Confidential Filing shall be made under seal, and will not be placed in the Commission's public file. The two copies of 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 both Licensed Materials and non-licensed materials, only the Licensed Materials may be redacted and the page of the unredacted Confidential Filing shall clearly distinguish the Licensed Materials from the non-licensed materials. Two copies of each Confidential Filing and the accompanying cover letter must be delivered in person to Katie King, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, and one copy must be served on the Submitting Party. Parties should not provide courtesy copies of pleadings containing Licensed Materials to Commission staff unless the Bureau so requests, and any courtesy copies shall be submitted under seal.

9. *Non-Disclosure of Licensed Materials.* Except with the prior written consent of the Submitting Party, or as provided under this Supplemental Protective Order, no Licensed Materials may be disclosed further.

10. *Protection of Licensed Materials.* A Reviewing Party shall have the obligation to ensure that access to Licensed Materials is strictly limited as prescribed in this Supplemental Protective Order. A Reviewing Party shall further have the obligation to ensure that Licensed Materials are used only as provided in this Supplemental Protective Order.

11. *Requests for Additional Disclosure.* If any person requests disclosure of Licensed Materials outside the terms of this Supplemental Protective Order, requests will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

12. *Client Consultation.* Nothing in this Supplemental Protective Order shall prevent or otherwise restrict Reviewing Parties 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 Licensed Materials; provided, however, that in rendering such advice and otherwise communicating with such client, Reviewing Parties shall not disclose Licensed Materials to anyone who is not a Reviewing Party.

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

14. *Subpoena by Courts, Departments, or Agencies.* If a court or a federal or state department or agency issues a subpoena for or orders production of Licensed Materials that a party has obtained under terms of this Supplemental 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 Licensed Materials.

15. *Violations of Supplemental Protective Order.* Should a Reviewing Party violate any of the terms of this Supplemental 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 access to or disclosure of Licensed Materials, the violating person shall take all necessary steps to remedy the improper access or disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Supplemental Protective Order, including but not limited to suspension or disbarment of counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Licensed Materials in this or any other Commission proceeding. Nothing in this Supplemental Protective Order shall limit any other rights and remedies available to the Submitting Party at law or in equity against any person using Licensed Materials in a manner not authorized by this Supplemental Protective Order.

16. *Termination of Proceeding.* The provisions of this Supplemental 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 Licensed Materials and all copies of the same. No material whatsoever derived from Licensed Materials may be retained by any person having access thereto, except counsel may retain, under the continuing strictures of this Supplemental 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 Licensed Materials, and one copy of orders issued by the Commission or Bureau that contain Licensed Materials. All Reviewing Parties shall certify compliance with these terms and shall deliver the same to counsel for the Submitting Party not more than three weeks after conclusion of this proceeding. The provisions of this paragraph regarding retention of Licensed Materials and copies of same shall not be construed to apply to the Commission or its staff.

17. *Authority.* This Order is issued pursuant to sections 4(i), 4(j), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 403, Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief, Wireline Competition Bureau

APPENDIX A

Acknowledgment of Confidentiality

CC Docket No. 01-92, WC Docket Nos. 05-337, 07-135, 10-90, GN Docket No. 09-51

I hereby acknowledge that I have received and read a copy of the foregoing Supplemental Protective Order in the above-captioned proceedings and the following CostQuest Associates, Inc. Restricted CQBAT License (the "Limited License"), and I understand both.

I agree that I am bound by the Supplemental Protective Order and by the Limited License and that I shall not disclose or use Licensed Materials except as allowed by the Supplemental Protective Order and the Limited License.

I acknowledge that a violation of the Supplemental Protective Order is a violation of an order of the Federal Communications Commission.

I acknowledge specifically that my access to any information obtained as a result of the Supplemental Protective Order and the Limited License is due solely to my capacity as a party or representative of a party to this proceeding or as a person described in paragraph 7 of the foregoing Supplemental 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 Licensed Materials are not accessed or used except as specifically permitted by the terms of the Supplemental Protective Order and the Limited License.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized access to or disclosure of Licensed Materials.

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

Executed this ___ day of _____, ____.

[Name]
[Position]
[Address]
[Telephone]

APPENDIX B

CostQuest Associates, Inc. Restricted CQBAT License Limited To Use Solely for Review and Evaluation for Purposes of the FCC Proceeding in CC Docket No. 01-92, WC Docket Nos. 05-337, 07-135, 10-90, GN Docket No. 09-51

THIS LIMITED LICENSE (“Agreement”) is accepted and made effective as of the ___ day of _____, 2011 (“Effective Date”), between CostQuest Associates, Inc. (“Licensor”) and _____ (“Licensee”) with respect to (i) Licensor’s proprietary CQBAT software application (“CQBAT”), (ii) the output of CQBAT (“CQBAT Output”) and, if applicable, (iii) a sample CQBAT database (“Sample Database”), which supports and may be used in CQBAT and therefore indirectly accessed by Licensee.

Licensor hereby grants to Licensee, and Licensee hereby accepts, a non-exclusive, non-transferable, limited license to use the Licensed Materials, without fees, charges, or costs to the Licensee of any kind, under the following terms and restrictions:

1. License Grants and Restrictions

- 1.1. Licensee will utilize the Licensed Materials only for official purposes pertaining to providing comments and other filings to the Federal Communication Commission (FCC) for use in the proceeding identified above, and in subsequent judicial proceedings (the “Project”).
- 1.2. Licensee will not transfer, sell, rent, disclose, make available or otherwise communicate, resell, sublicense or use the Licensed Materials for any other purpose or in any other manner.
- 1.3. Upon conclusion of the Project, Licensee shall at the option of Licensor, either return to Licensor or destroy all copies of Licensed Materials and cease all further use of Licensed Materials for any purpose.
- 1.4. Licensee shall only make copies of the licensed CQBAT Output as required for the Project as described in the Supplemental Protective Order. On any copy of the CQBAT Output that Licensee is permitted to make or distribute, Licensee shall reproduce all copyright notices and any other proprietary legends of Licensor as they appear.
- 1.5. Licensee shall not make any copies, distribute, sublicense, transfer, sell, rent, disclose, or make available any Sample Database provided under this Agreement except consistent with the Supplemental Protective Order.
- 1.6. Licensee shall at all times maintain the confidentiality of the Licensed Materials, handling the Licensed Materials in compliance with the Supplemental Protective Order. In the event that any portion of the Licensed Materials should come into the possession of unauthorized third parties as a result of a breach by Licensee of this Agreement, Licensee will, at its expense and without limiting any other rights available to Licensor, immediately notify Licensor and use all commercially reasonable efforts to retrieve such materials and will reimburse Licensor for all reasonable expenses incurred by Licensor in attempting to retrieve such materials.

- 1.7. If Licensee sells, makes available to a third party, or otherwise disposes of Licensee-owned media on which the Licensed Materials are or were resident, that media must be erased and scrubbed before such sale or disposal.
 - 1.8. Licensee will not, and will not permit any third party to, disassemble, decompile, reverse engineer, or otherwise recreate the Licensed Materials.
 - 1.9. In accessing or using the Licensed Materials, Licensee will not, by any action or inaction, violate laws or regulations promulgated by any governmental or quasi-governmental authorities that are binding upon it and will take all reasonable steps to assist Licensor or any other participant in the Project, or their affiliates, to avoid any violations of any such laws or regulations that are binding upon them.
 - 1.10. Upon reasonable notice to Licensee, and at Licensor's sole expense, Licensor's auditors shall have the right to inspect Licensee's records relating to the Project as necessary for Licensor to verify Licensee's compliance with the terms of this Agreement. Audits shall be conducted at Licensee's premises during normal business hours and in a manner that does not unreasonably interfere with Licensee's operations.
2. Disclaimer of Warranties
 - 2.1. LICENSEE ACKNOWLEDGES AND AGREES THAT (A) LICENSOR HAS NOT MADE ANY EXPRESS OR IMPLIED WARRANTIES TO LICENSEE REGARDING THE LICENSED MATERIALS AND (B) THE LICENSED MATERIALS ARE BEING PROVIDED TO LICENSEE "AS IS," WITHOUT WARRANTIES OF ANY KIND. LICENSOR DOES NOT WARRANT THAT THE LICENSED MATERIALS ARE FREE FROM DEFECTS. LICENSOR EXPRESSLY EXCLUDES AND DISCLAIMS ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.
3. Term and Termination
 - 3.1. This Agreement shall terminate automatically upon the termination of the above-captioned proceeding and any administrative or judicial review.
 - 3.2. Notwithstanding section 3.1, if Licensee agrees that Licensee does not continue to require Licensed Materials, Licensor may terminate this Agreement.
 - 3.3. If Licensor believes that Licensee is in violation of the Supplemental Protective Order or this Licensing Agreement, Licensor shall so notify the Commission. If the Commission determines that Licensee is in violation of this Supplemental Protective Order or this Licensing Agreement, Licensor may terminate this Agreement.
4. Limitation of Liability
 - 4.1. IN NO EVENT SHALL LICENSOR HAVE ANY LIABILITY FOR DAMAGES SUSTAINED BY LICENSEE IN CONNECTION WITH THIS AGREEMENT, THE PROJECT OR THE POSSESSION OR USE OF LICENSED MATERIALS, INCLUDING, WITHOUT LIMITATION, ANY LOST REVENUES OR PROFITS, OR ANY INDIRECT,

CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5. Ownership of Intellectual Property

- 5.1. Licensee acknowledges that the Licensed Materials, including without limitation all output and derivatives of, as well as all modifications and customizations to the Licensed Materials, are proprietary to Licensor and that Licensor retains exclusive ownership of all such Licensed Materials and all proprietary rights associated therewith. Licensee shall, at the direction of Licensor, take all commercially reasonable measures to protect Licensor's rights in the Licensed Materials.
- 5.2. Except as expressly provided herein, Licensee is not granted any other rights or license to patents, copyrights, trade secrets, data or trademarks with respect to Licensed Materials. Licensee shall promptly notify Licensor in writing upon its discovery of any unauthorized use or infringement of the Licensed Materials.

6. Additional Terms

- 6.1. Compliance with FCC Requirements and Other Laws. This Licensing Agreement is expressly made subject to any United States government laws, regulations, orders or other restrictions regarding the Project or use of software, data, output or products thereof. Notwithstanding anything to the contrary in this Licensing Agreement, Licensee will not directly or indirectly export, or permit the transfer of, any software, data, output or products (a) to any country or destination for which the United States government or a United States governmental agency requires an export license or other approval for export without first having obtained such license or other approval; or (b) otherwise contrary to United States law, including, without limitation, FCC rules, policies and regulations.
- 6.2. No Waivers. No delay or omission by either party to exercise any right or power accruing upon any noncompliance or default by the other party with respect to any of the terms of this Agreement will impair any such right or power or be construed to be a waiver thereof. A waiver by either party of any breach of the covenants, conditions or agreements to be performed or honored by the other party will not be construed to be a waiver of any later breach thereof or of any other covenant, condition or agreement herein contained.
- 6.3. Assignments. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns. Licensee shall not assign this Agreement or transfer any rights granted hereunder, in whole or in part, without obtaining the prior written consent of Licensor, and any attempted assignment or transfer in violation of this provision is void.
- 6.4. Severability and Survival of Obligations. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected thereby, and each remaining provision of this Agreement will be valid and enforceable to the extent permitted by law. Sections 1.1 – 1.10, 2, 4, 5, and 6 shall survive any expiration or termination of this Agreement.
- 6.5. Governing Law. This Agreement will be governed by and construed in accordance with Federal law.

6.6. Entire Agreement. This Agreement and the Supplemental Protective Order constitute the parties' entire understanding with regard to the matters herein, and there are no other understandings, either written or unwritten, with regard to such matters. The Agreement may not be modified, amended, canceled or waived, in whole or in part, except by a written instrument signed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives effective as of the date first set forth above.

LICENSOR:

CostQuest Associates, Inc.

By: _____
Jim Stegeman, President

LICENSEE:

[name]

[position]

Outside Counsel of Record:

Margaret Avril Lawson
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202-3957
(513) 381-2838 (tel)
(513) 381-0205 (fax)
Lawson@taftlaw.com

[company]

[address]

[telephone]

[email address]