

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

In the Matter of)	
)	WC Docket No. 12-233
Investigation of Certain 2012 Annual)	
Access Tariffs)	WCB/Pricing No. 12-09
)	
)	

PROTECTIVE ORDER

Adopted: September 21, 2012

Released: September 21, 2012

By the Chief, Wireline Competition Bureau:

1. In this Protective Order, the Wireline Competition Bureau (“Bureau”) adopts procedures for filing proprietary or confidential information and to provide limited access to such information filed in these proceedings. While the Bureau is mindful of the sensitive nature of such filings, it is also mindful of the right of the public to participate in these proceedings in a meaningful way. The Bureau therefore will make proprietary or confidential information filed in these proceedings available to participants in these proceedings, but only pursuant to a protective order. The Bureau concludes that the procedures adopted in this Protective Order give appropriate access to the public while protecting proprietary and confidential information from improper disclosure, and that the procedures thereby serve the public interest. This Protective Order does not constitute a resolution of the merits concerning whether any information submitted under this Protective Order would be released publicly by the Commission upon a proper request under the Freedom of Information Act (FOIA) or otherwise.

2. Carriers and other interested parties that seek access to proprietary or confidential information filed in this proceeding must follow the procedures adopted in this Protective Order. The Bureau’s Pricing Policy Division previously directed parties requesting access to confidential data filed in the 2012 annual access charge tariff filing to follow the procedures set forth in a protective order provided with a Public Notice released on June 5, 2012.¹ The Commission recently modified its standard protective order language to address various issues encountered protecting proprietary and confidential information and adopts this Protective Order to take account of those changes.² For purposes of these

¹ See *Announcing Procedures for Filing and Obtaining Confidential Information for Annual Access Charge Tariff Filing and Corrections to TRP Intrastate Eligible Recovery Worksheet for Rate-of-Return Carriers and Long Form TRP for Price Cap Carriers*, WCB/Pricing File No. 12-08, Public Notice, 27 FCC Rcd 6066, 6066 (Wireline Comp. Bur. 2012) (*2012 Access Tariff Public Notice*); *id.* at 6068-72, Attach. A (protective order).

² For example, current protective orders explicitly provide that outside counsel of record can only obtain access to confidential information if they are not involved in competitive decision-making. See, e.g., *Developing a Unified Intercarrier 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*, CC Docket No. 01-92, WC Docket Nos. 07-135, 10-90, 05-337, GN Docket 09-51, Protective Order, 25 FCC Rcd 13160, 13160-61, para. 3 (2010) (defining “Outside Counsel of Record”); *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, MB Docket 10-56, Protective Order, 25 FCC Rcd 2133, 2134, para. 4 (2010) (defining “Outside Counsel of Record”).

proceedings,³ this Protective Order supersedes the protective order carriers were directed by the Commission to use in the *2012 Access Tariff Public Notice*,⁴ but does not change the proprietary or confidential treatment of documents and other materials already submitted under that order.

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

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

“Competitive Decision-Making” means that a person’s 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.

“Confidential Information” means information that is not otherwise available from publicly available sources and that is subject to protection under FOIA and the Commission’s implementing rules.

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

“In-House Counsel” means an attorney employed by a party to 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.

“Outside Counsel of Record” or “Outside Counsel” means the attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, representing a party 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 party 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 Counsel or a party 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 party in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making.

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

“Reviewing Party” means a person who has obtained access to Confidential Information (including Stamped Confidential Documents) pursuant to paragraphs 6 or 9 of this Protective Order.

“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 PROTECTIVE ORDER IN WC DOCKET NO. 12-233, WCB/PRICING NO. 12-09 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 confidential treatment. The term “document” means any written,

³ See *Investigation of Certain 2012 Annual Access Tariffs*, WC Docket No. 12-233, WCB/Pricing No. 12-09, Order Designating Issues for Investigation, DA 12-1430 (Wireline Comp. Bur., rel. Aug. 31, 2012) (*2012 Access Tariff Designation Order*).

⁴ *2012 Access Tariff Public Notice*, 27 FCC Red at 6068-72, Attach. A.

recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. By designating a document a “Stamped Confidential Document,” a Submitting Party signifies and represents that it contains Confidential Information.

“Submitting Party” means a person who submits a Stamped Confidential Document.

4. *Effect of Designation of Information as Confidential.* By designating documents and information as Confidential under this 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.⁵ Any person wishing to challenge the designation of a document or portion of a document as 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.⁶ 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.⁷ 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 the Freedom of Information Act (FOIA).⁸

5. *Submission of Stamped Confidential Documents.* A Submitting Party shall submit to the Secretary’s Office one copy of each Stamped Confidential Document it wishes to file with an accompanying cover letter and two copies of the Redacted Confidential Document with an accompanying cover letter. Further, each Redacted Confidential Document and accompanying cover letter must be filed electronically in WC Docket No. 12-233 using the Commission’s Electronic Comment Filing System (ECFS).⁹ Each page of the Stamped Confidential Document shall be stamped “CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 12-233, WCB/PRICING NO. 12-09 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION.” The accompanying cover letter also shall contain this legend. Each Redacted Confidential Document shall have the same pagination as the Stamped Confidential Document from which it is derived. Each page of the Redacted Confidential Document and the accompanying cover letter shall be stamped “REDACTED – FOR PUBLIC INSPECTION.” To the extent that any page of a filing contains both Confidential Information and non-confidential information, only the Confidential Information may be redacted and the page of the unredacted filing shall clearly distinguish the Confidential Information from the non-confidential information. In addition, an electronic version of each Stamped Confidential Document and the accompanying cover letter must be delivered to Robin Cohn, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission. Please contact Robin Cohn at (202) 418-1520 (voice) or *via* email at Robin.Cohn@fcc.gov if additional information is needed. Electronic versions of tables, Tariff Review Plan (TRP) forms and other spreadsheets containing Confidential Information must be provided to Commission staff in Microsoft® Excel compatible electronic spreadsheet format and must include any mathematical formulas that are used.

⁵ See 47 C.F.R. §§ 0.459(a), 0.459(a)(3).

⁶ See 47 C.F.R. § 0.459(b).

⁷ See 47 C.F.R. § 0.459(g).

⁸ See 47 C.F.R. §§ 0.459(h), 0.461.

⁹ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998) (*ECFS R&O*).

6. *Procedure for Obtaining Access to Confidential Information.* Any person seeking access to Stamped Confidential Documents and Confidential Information subject to this Protective Order shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of the Protective Order and file the Acknowledgment with the Bureau, on behalf of the Commission. Such person shall also serve a copy of the Acknowledgment upon the relevant Submitting Party through its Counsel of Record so that it is received at least five business days prior to such person's reviewing or having access to the Submitting Party's Stamped Confidential Documents or Confidential Information, except that, where the person seeking access is one described in either clause 1 or 2 of paragraph 9, the Acknowledgment shall be delivered promptly prior to the person's obtaining access. Each Submitting Party shall have an opportunity to object to the disclosure of its Stamped Confidential Documents or Confidential Information to any such person. A 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 a copy of that person's Acknowledgment (or where the person seeking access is one described in clause 1 or 2 of paragraph 9, file and serve such objection as promptly as practicable after receipt of the Acknowledgment). Further, if a Submitting Party files additional Confidential Documents, it must file any objection to the disclosure of those additional Confidential Documents to any Reviewing Party before or contemporaneous with filing those documents. 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 the relevant Stamped Confidential Documents or Confidential Information.

7. *Review of Stamped Confidential Documents.* A Submitting Party shall make available for review the Stamped Confidential Documents of such party at the offices of the party's Outside Counsel of Record or, if the Submitting Party does not have Outside Counsel of Record, at the offices of such party's In-House Counsel. A Reviewing Party shall be provided the following alternatives: (1) a Reviewing Party shall be provided adequate opportunity to inspect the documents on site; (2) a Reviewing Party may inspect the documents on site with the ability to request copies, at cost, of some or all of the documents; or (3) a Reviewing Party may request a complete set of the documents at cost, allowing two business days after the request is made for receipt of the copies. If a Reviewing Party plans on requesting a complete set of documents, it is encouraged to make such a request at the time it submits the Acknowledgment to allow it the opportunity to begin reviewing the documents at the end of the five-day period referred to in paragraph 6. All copies of documents that are removed from the Submitting Party's office must be returned or destroyed in accordance with the terms of paragraph 18.

8. *Use of Confidential Information.* Persons obtaining access to Confidential Information (including Stamped Confidential Documents) under this Protective Order shall use the information solely for the preparation and conduct of these proceedings before the Commission and any subsequent judicial proceeding arising directly from these proceedings 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 other administrative, regulatory or judicial proceedings. Should any Bureau or the Commission rely upon or otherwise make reference to the contents of any of the Stamped Confidential Documents or Confidential Information in its decisions in these proceedings, it will do so by redacting any 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 Information under this Protective Order.

9. *Permissible Disclosure.* A Reviewing Party may discuss and share the contents of the Stamped Confidential Documents and Confidential Information with another Reviewing Party and with the Commission and its staff. A Submitting Party's Stamped Confidential Documents and Confidential Information may also be disclosed to employees and Counsel of the Submitting Party. Subject to the requirements of paragraph 6, a Reviewing Party may disclose Stamped Confidential Documents and

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 in any document that it files in this proceeding disclose Confidential Information only if it complies with the following procedure. The party shall submit to the Secretary's Office one copy of the filing containing Confidential Information (the "Confidential Filing") with an accompanying cover letter and two copies of the filing in redacted form, *i.e.*, containing no Confidential Information (the "Redacted Confidential Filing") with an accompanying cover letter. Further, each Redacted Confidential Filing and accompanying cover letter must be filed electronically in WC Docket No. 12-233 using the Commission's Electronic Comment Filing System (ECFS).¹⁰ The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses Confidential Information must be clearly marked "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 12-233, WCB/PRICING NO. 12-09 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. Each page 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 Submitting 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 Confidential Information and non-confidential information, only the Confidential Information may be redacted and the page of the unredacted Confidential Filing shall clearly distinguish the Confidential Information from the non-confidential information. In addition, an electronic version of each Confidential Filing and the accompanying cover letter must be delivered to Robin Cohn, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission. Please contact Robin Cohn at (202) 418-1520 (voice) or *via* email at Robin.Cohn@fcc.gov if additional information is needed. Electronic versions of tables, Tariff Review Plan (TRP) forms and other spreadsheets containing Confidential Information must be provided to Commission staff in Microsoft® Excel compatible electronic spreadsheet format and must include any mathematical formulas that are used.

11. *Non-Disclosure of Stamped Confidential Documents.* Except with the prior written consent of the Submitting Party, or as provided under this Protective Order, neither a Stamped Confidential Document nor any Confidential Information may be disclosed further.

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

13. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential Information outside the terms of this 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 Protective Order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any

¹⁰ See ECFS R&O, 13 FCC Rcd 11322.

subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Confidential Documents or Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client, Counsel shall not disclose Stamped Confidential Documents or Confidential Information.

15. *No Waiver of Confidentiality.* Disclosure of 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 Information. Reviewing Parties, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of 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 or Confidential Information that a party has obtained under terms of this 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 or Confidential Information.

17. *Violations of Protective Order.* Should a Reviewing Party violate any of the terms of this 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 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 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 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 in equity against any person using Confidential Information in a manner not authorized by this Protective Order.

18. *Termination of Proceeding.* The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of these proceedings and any administrative or judicial review, or as otherwise directed by the Bureau, Reviewing Parties shall destroy or return to the Submitting Party Stamped Confidential Documents and all copies of the same. No material whatsoever derived from Stamped Confidential Documents may be retained by any person having access thereto, except Counsel may retain, under the continuing strictures of this 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 Information, and one copy of orders issued by the Commission or Bureau that contain 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 copies of the same and 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), 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, 0.291,¹¹ and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief, Wireline Competition Bureau

¹¹ 47 U.S.C. § 155(c).

APPENDIX A

Acknowledgment of Confidentiality

WC Docket No. 12-233; WCB/Pricing No. 12-09

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

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

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

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 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 foregoing 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 are not duplicated except as specifically permitted by the terms of the 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 and Confidential Information.

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

Executed this ___ day of _____, 2012.

[Name]

[Position]

[Firm]

[Telephone]