

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

|   |   |                      |
|---|---|----------------------|
| In the Matter of  | ) |                      |
|   | ) |                      |
| Connect America Fund  | ) | WC Docket No. 10-90  |
|   | ) |                      |
| A National Broadband Plan for Our Future                              | ) | GN Docket No. 09-51  |
|   | ) |                      |
| Establishing Just and Reasonable Rates for Local<br>Exchange Carriers | ) | WC Docket No. 07-135 |
|   | ) |                      |
| High-Cost Universal Service Support                                   | ) | WC Docket No. 05-337 |
|   | ) |                      |
| Developing a Unified Intercarrier Compensation<br>Regime              | ) | CC Docket No. 01-92  |
|   | ) |                      |
| Federal-State Joint Board on Universal Service                        | ) | CC Docket No. 96-45  |
|   | ) |                      |
| Lifeline and Link-Up  | ) | WC Docket No. 03-109 |
|   | ) |                      |
| Universal Service Reform – Mobility Fund                              | ) | WT Docket No. 10-208 |

**PROTECTIVE ORDER**

**Adopted: November 16, 2012**

**Released: November 16, 2012**

By the Chief, Wireline Competition Bureau:

1. In this Protective Order, we adopt procedures to provide limited access to certain information filed pursuant to section 54.313(f)(2) of the Commission's regulations, 47 C.F.R. § 54.313(f)(2). As discussed in the Fifth Order on Reconsideration in the above-referenced proceedings,<sup>1</sup> we have found that in certain circumstances, this information is especially competitively sensitive and, if released to competitors or those with whom a Submitting Party does business, might allow those persons to gain a significant advantage in the marketplace or in negotiations. While we are mindful of the sensitive nature of such information, we are also mindful of the right of the public to participate in This Proceeding and in related proceedings in a meaningful way. Therefore, for the reasons discussed in the Fifth Order on Reconsideration,<sup>2</sup> we will make such information available to participants in This Proceeding and related proceedings, but limit such access as follows: (1) in the case of commercial entities having a competitive or business relationship with the company whose confidential information it seeks, to In-House Counsel not involved in competitive decision-making, and to their Outside Counsel of Record, their Outside Consultants and experts whom they retain to assist them in This Proceeding and related proceedings, and employees of such Outside Counsel and Outside Consultants; (2) to employees and representatives of

<sup>1</sup> *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Fifth Order on Reconsideration, FCC 12-137 (rel. Nov. 16, 2012) (Fifth Order on Reconsideration).

<sup>2</sup> *Id.* at paras. 15-17.

commercial entities having no competitive or business relationship with the company whose confidential information it seeks; and (3) to employees and representatives of non-commercial entities having no competitive or business relationship with the company whose confidential information it seeks. We conclude that the procedures we adopt in this Protective Order give appropriate access to the public while protecting especially competitively sensitive information from improper disclosure, and that the procedures thereby serve the public interest.

2. *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 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 in a business relationship with the Submitting Party.

“Confidential Financial Information” means information that is required to be filed pursuant to section 54.313(f)(2) of the Commission’s regulations, 47 C.F.R. § 54.313(f)(2); that is not otherwise available from publicly available sources; that the Submitting Party has kept strictly confidential; that is subject to protection under FOIA and the Commission’s implementing rules; and that the Submitting Party claims constitutes some of its most sensitive business data which, if released to competitors or those with whom the Submitting Party does business, would allow those persons to gain a significant advantage in the marketplace or in negotiations.

“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, retained by a participant in This Proceeding, provided that such attorneys are not involved in Competitive Decision-Making. The term “Outside Counsel of Record” includes an attorney representing or employed by a non-commercial participant 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 Outside Counsel or a participant 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 participant in This Proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making.

“Outside Firm” means a firm, whether organized as a partnership, limited partnership, limited liability partnership, limited liability company, corporation or otherwise, of Outside Counsel or Outside Consultants. The term “Outside Firm” includes a non-commercial participant in This Proceeding, provided that participant is not in competition with or in a business relationship with the Submitting Party.

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

“Reviewing Party” means a person who has obtained access to Confidential Financial Information (including Stamped Confidential Documents) pursuant to paragraphs 5 or 9 of this Protective Order.

“Stamped Confidential Document” means any document, or any part thereof, that contains Confidential Financial 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 FINANCIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NOS. 10-90, 07-135, 05-337, 03-109, CC DOCKET NOS. 01-92, 96-45, GN DOCKET NO. 09-51, WT DOCKET NO. 10-208, 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, 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 Financial Information.

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

“This Proceeding” means *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Order, 27 FCC Rcd 605 (2012).

3. *Effect of Designation.* By designating documents and information as Confidential Financial Information 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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).<sup>6</sup>

4. *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, two copies of the Redacted Confidential Document in redacted form and an accompanying cover letter. Each page of the Stamped Confidential Document shall be stamped “CONFIDENTIAL FINANCIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NOS. 10-90, 07-135, 05-337, 03-109, CC DOCKET NOS. 01-92, 96-45, GN DOCKET NO. 09-51, WT DOCKET NO. 10-208, BEFORE THE FEDERAL COMMUNICATIONS COMMISSION.” The 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. The two copies of the Redacted Confidential Document and the accompanying cover letter shall be stamped “REDACTED – FOR PUBLIC INSPECTION.” In addition, two copies of each Stamped Confidential Document and the accompanying cover letter must be delivered,

<sup>3</sup> See 47 C.F.R. § 0.459(a), 0.459(a)(3).

<sup>4</sup> See 47 C.F.R. § 0.459(b).

<sup>5</sup> See 47 C.F.R. § 0.459(g).

<sup>6</sup> See 47 C.F.R. §§ 0.459(h), 0.461.

as directed by Commission staff, to Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 5-A452, Washington, D.C. 20554.

5. *Procedure for Obtaining Access to Confidential Financial Information.* Access to Stamped Confidential Documents and Confidential Financial Information is limited as follows: (1) in the case of commercial entities having a competitive or business relationship with the company whose confidential information it seeks, to In-House Counsel not involved in competitive decision-making, and to their Outside Counsel of Record, their Outside Consultants and experts whom they retain to assist them in This Proceeding and related proceedings, and employees of such Outside Counsel and Outside Consultants described in paragraph 9; (2) to employees and representatives of commercial entities having no competitive or business relationship with the company whose confidential information it seeks; and (3) to employees and representatives of non-commercial entities having no competitive or business relationship with the company whose confidential information it seeks. Any person seeking access to Stamped Confidential Documents and Confidential Financial Information subject to this Protective Order shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this Protective Order; and file the Acknowledgment with the Bureau, on behalf of the Commission. Where the person seeking access is In-House Counsel not involved in competitive decision-making, Outside Counsel or an Outside Consultant, in the case of a commercial entity having a competitive or business relationship with the Submitting Party, or an employee or representative of a non-commercial entity having no competitive or business relationship with the Submitting Party, a copy of the Acknowledgment shall be served 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 Financial Information; where the person seeking access is one described in either clause 1 or 2 of paragraph 9, the Acknowledgment shall be served upon the Submitting Party promptly prior to the person's obtaining access. Where there are multiple Submitting Parties, a copy of the Acknowledgment must be served on each Submitting Party within the time periods stated above. Each Submitting Party shall have an opportunity to object to the disclosure of its Stamped Confidential Documents or Confidential Financial 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 relevant Stamped Confidential Documents or Confidential Financial Information.

6. *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. 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 5. 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.

7. *Review of Confidential Financial Information in Electronic Format.* A Submitting Party shall make available to a Reviewing Party one copy of Confidential Financial Information contained, recorded, or electronically stored on a CD-ROM, DVD, flash drive, portable hard drive or similar electronic storage device, which shall be considered a Stamped Confidential Document. The disk or other medium containing the information in electronic format should be physically sent to the Reviewing Party; a Reviewing Party may not require that it be transmitted electronically. A Reviewing Party may temporarily load onto a computer the information in electronic format. Once loaded onto a computer, any files containing Confidential Financial Information shall be password protected immediately. The Confidential Financial Information may not be stored on a computer after being analyzed. After the analysis is complete, the results of such analysis may be stored by saving the results (but not the original underlying Confidential Financial Information) to a mobile data storage medium, which, if it contains Confidential Financial Information, shall be treated as a Stamped Confidential Document and so marked. All files containing Confidential Financial Information shall be deleted from the computer as soon as practicable. The original disk or other storage medium shall be stored securely and a record kept of any persons given access to it.

8. *Use of Confidential Financial Information.* Persons obtaining access to Confidential Financial Information (including Stamped Confidential Documents) under this Protective Order shall use the information solely for the preparation and conduct of This Proceeding and related 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 the Commission rely upon or otherwise make reference to the contents of any of the Stamped Confidential Documents or Confidential Financial Information in its decision in This Proceeding, it will do so by redacting any Confidential Financial 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 Financial Information under this Protective Order.

9. *Permissible Disclosure.* A Reviewing Party may discuss and share the contents of the Stamped Confidential Documents and Confidential Financial Information with another Reviewing Party and with the Commission and its staff. A Submitting Party's Stamped Confidential Documents and Confidential Financial Information may also be disclosed to employees and Counsel of the Submitting Party. Subject to the requirements of paragraph 5, a Reviewing Party may disclose Stamped Confidential Documents and Confidential Financial 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 and related proceedings disclose Confidential Financial 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 Financial Information (the "Confidential Filing"), two copies of the filing in redacted form, *i.e.*, containing no Confidential Financial Information (the "Redacted Confidential Filing"), and an accompanying cover letter. The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses Confidential Financial Information must be clearly marked "CONFIDENTIAL FINANCIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NOS. 10-90, 07-135, 05-337, 03-109, CC DOCKET NOS. 01-92, 96-45, GN DOCKET NO. 09-51, WT DOCKET NO. 10-208, 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 any type of Confidential Information, only the Confidential Information (of whatever type) may be redacted and the page of the unredacted Confidential Filing shall clearly distinguish among the various types of Confidential Information and the non-confidential information. Two copies of each Confidential Filing and the accompanying cover letter must be delivered, as directed by Commission staff, to Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 5-A452, Washington, D.C. 20554, and one copy must be served on the relevant Submitting Party. Parties should not provide courtesy copies of pleadings containing Confidential Financial Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

11. *Non-Disclosure of Stamped Confidential Documents and Confidential Financial Information.* 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 Financial Information may be disclosed further.

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

13. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential Financial 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. A Reviewing Party filing with the Commission pursuant to paragraph 10 of this Protective Order seeking to have such filing deemed non-confidential shall comply with the terms of paragraphs 3 and 10 of this Protective Order.

14. *Client Consultation.* Nothing in this Protective Order shall prevent or otherwise restrict Outside Counsel 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 Stamped Confidential Documents or Confidential Financial Information; *provided, however,* that in rendering such advice and otherwise communicating with such client, Outside Counsel shall not disclose Stamped Confidential Documents or Confidential Financial Information.

15. *No Waiver of Confidentiality.* Disclosure of Confidential Financial 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 Financial Information. Reviewing Parties, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Confidential Financial Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential Financial 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 Financial 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 Financial 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 Financial 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 Outside Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Financial 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 Financial 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 or related proceedings. Within two weeks after the conclusion of one calendar year after the Submitting Party files the Confidential Financial Information pursuant to section 54.313(f)(2) of the Commission's regulations, 47 C.F.R. § 54.313(f)(2), the 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 Outside 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 Financial Information, and one copy of orders issued by the Commission or Bureau that contain Confidential Financial Information. All In-House and Outside Counsel or, in the case of a non-commercial entity, a representative authorized to act on behalf of the entity, shall certify compliance with these terms and shall deliver such certification to Counsel for the Submitting Party not more than three weeks after the conclusion of one calendar year after the Submitting Party files the Confidential Financial Information pursuant to section 54.313(s) of the Commission's regulations, 47 C.F.R. § 54.313(f)(2). The provisions of this paragraph regarding retention of Stamped Confidential Documents and copies of the same and Confidential Financial Information shall not be construed to apply to the Commission or its staff.

19. *Authority.* This Order is issued pursuant to sections 1, 2, 4(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 1302, Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, and is effective upon its adoption.

#### FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach  
Chief  
Wireline Competition Bureau

**Acknowledgment of Confidentiality**  
**WC Docket Nos. 10-90, 07-135, 05-337, 03-109,**  
**CC Docket Nos. 01-92, 96-45,**  
**GN Docket No. 09-51,**  
**WT Docket No. 10-208**

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 Financial 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 Outside 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 Financial Information.

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

Executed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
[Name]

[Position]

[Firm]

[Telephone]