

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

In the Matter of	)	
	)	
Investigation of Certain Price Cap Local Exchange	)	WC Docket No. 15-247
Carrier Business Data Services Tariff Pricing Plans;	)	
	)	
Special Access for Price Cap Local Exchange	)	WC Docket No. 05-25
Carriers;	)	
	)	
AT&T Corporation Petition for Rulemaking to	)	RM-10593
Reform Regulation of Incumbent Local Exchange	)	
Carrier Rates for Interstate Special Access Services	)	

**ORDER AND PROTECTIVE ORDERS**

**Adopted: December 4, 2015**

**Released: December 4, 2015**

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) grants to the extent described below a motion by AT&T, Verizon, CenturyLink, and Frontier to permit parties in the investigation of certain tariff pricing plans for business data (or special access) services to use the confidential and highly confidential information submitted in the business data services rulemaking proceeding. As part of this order, we issue two protective orders to ensure appropriate access to these data by participants in the tariff investigation. One will protect the confidential and highly confidential data and information that was submitted in response to the Commission’s one-time, mandatory data collection in the rulemaking proceeding. The other protective order will protect the balance of the confidential and highly confidential information submitted in the rulemaking proceeding and will also protect any confidential and highly confidential information that parties and commenters submit in the tariff investigation. In addition, the Bureau on its own motion permits the confidential and highly confidential information to be submitted in the tariff investigation to be used by participants in the rulemaking proceeding. That information will be protected by the protective orders previously issued in the rulemaking proceeding.

2. The Commission is conducting a business data services rulemaking proceeding (rulemaking proceeding) in WC Docket No. 05-25, RM-10593 to evaluate the business data services market and consider changes to its rules.<sup>1</sup> As part of the record of that proceeding, parties have submitted, and continue to submit, information about that market, including confidential and highly confidential information. Over the course of the proceeding, the Commission has issued protective orders to ensure

---

<sup>1</sup> See generally *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593.

the appropriate treatment of such information, which restrict access to, and use of, the data to the rulemaking proceeding.<sup>2</sup>

3. For instance, on December 11, 2012, the Commission adopted the *Data Collection Order* initiating a comprehensive one-time, mandatory data collection to assist the Commission in analyzing competition for business data services in the rulemaking proceeding.<sup>3</sup> The final deadline for responding to the data collection was February 27, 2015.<sup>4</sup> Much of the data collected is competitively sensitive and not publically available. To protect the confidentiality of the data, on October 1, 2014 the Bureau adopted the *Data Collection Protective Order* governing the process for designating, submitting, and accessing these data, and also established that the data would be stored and made available through a Secure Data Enclave (SDE) hosted by the National Organization for Research at the University of Chicago (NORC).<sup>5</sup> The *Data Collection Protective Order* limits use of those data to participation in the rulemaking proceeding.

4. On October 16, 2015, the Bureau opened a separate docket, WC Docket No. 15-247, and released an Order Initiating Investigation and Designating Issues for Investigation into the terms and conditions of certain tariff pricing plans for business data services (tariff investigation) offered by AT&T, CenturyLink, Frontier, and Verizon (incumbent local exchange carriers, or incumbent LECs).<sup>6</sup> The *Designation Order* directed these four carriers to submit targeted data and information to enable the Commission to assess the reasonableness of the pricing plan terms and conditions under investigation.<sup>7</sup>

---

<sup>2</sup> See *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Modified Protective Order, 25 FCC Rcd 15168 (Wireline Com. Bur. 2010) (*Modified Protective Order*); *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, RM-10593, Second Protective Order, 25 FCC Rcd 17725 (Wireline Com. Bur. 2010) (*Second Protective Order*); *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Data Collection Protective Order, 29 FCC Rcd 11657 (Wireline Comp. Bur. 2014) (*Data Collection Protective Order*).

<sup>3</sup> *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012) (*Data Collection Order*). Providers and purchasers of special access and certain entities providing “best efforts” broadband Internet access service in areas where the incumbent LEC is subject to price cap regulation were required to submit data regarding locations with connections, prices charged to customers at the circuit-level, maps showing fiber routes and points of interconnection, details on the terms and conditions associated with specific service offerings, revenues and expenditures; see also *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order on Reconsideration, 29 FCC Rcd 10899 (Wireline Comp. Bur. 2014) (*Reconsideration Order*).

<sup>4</sup> *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order, 29 FCC Rcd 14346, 14348, para. 4 (Wireline Comp. Bur. 2014).

<sup>5</sup> *Data Collection Protective Order*, 29 FCC Rcd 11657.

<sup>6</sup> See generally *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, WC Docket No. 15-247, Order Initiating Investigation and Designating Issues for Investigation, DA 15-1194 (Wireline Comp. Bur. rel. Oct. 16, 2015) (*Designation Order*).

<sup>7</sup> *Id.*

5. On October 23, 2015, the incumbent LECs filed a motion to modify the protective orders in the rulemaking proceeding to permit parties in the tariff investigation to use the confidential and highly confidential data submitted in the rulemaking.<sup>8</sup> The carriers assert that the data and information submitted in the rulemaking proceeding subject to the *Data Collection Protective Order* and prior protective orders, while perhaps not sufficient to resolve the issues raised in the tariff investigation, “are clearly *relevant* to the substantive issues raised” in the tariff investigation and “are therefore necessary to the ILECs’ defense.”<sup>9</sup> Specifically, the incumbent LECs contend that “[t]he data are likely to include relevant information about the state of competition in the marketplace, the impact of specific contract terms on such competition, the extent to which competitive providers use contract terms similar to ILECs, as well as potentially other matters.”<sup>10</sup> The incumbent LECs note, however, that the data are subject to protective order restrictions that permit the data only to be used for purposes of the rulemaking proceeding, and therefore request that the protective orders be modified to allow the data to be used in this proceeding.<sup>11</sup>

6. On November 4, 2015, Level 3 filed an opposition to the incumbent LECs’ motion.<sup>12</sup> Level 3 requests that the Bureau deny the motion, asserting that granting it would increase the costs and burdens on parties participating in the tariff investigation and on the Commission, and would risk delaying the resolution of the tariff investigation.<sup>13</sup> Level 3 also argues that the tariff investigation and the rulemaking proceedings address different issues, the tariff investigation is more narrowly focused, and the additional information from the rulemaking proceeding is not necessary to resolve the investigation.<sup>14</sup> On November 12, 2015, the incumbent LECs filed reply comments in support of their motion and in response to Level 3’s opposition.<sup>15</sup>

7. As an initial matter, we note that no party to the rulemaking proceeding and likely to participate in the tariff investigation other than Level 3 objected or otherwise raised any concerns that data in the rulemaking proceeding be permitted to be used by parties in the tariff investigation, as the incumbent LECs request in their motion. We further note that Level 3’s opposition was not timely filed in accordance with our rules. Section 1.45(b) of the Commission’s rules requires that oppositions to a motion be filed within 10 days after the motion is filed.<sup>16</sup> Level 3 acknowledges that it failed to meet the ten day deadline and requests a waiver of the rule, arguing that it filed its opposition within 10 days from the date that the motion appeared on the Electronic Comment Filing System.<sup>17</sup> This argument does not

---

<sup>8</sup> Motion of AT&T Inc., Verizon, CenturyLink, and Frontier to Modify Protective Orders, WC Docket No. 15-247, 05-25 (filed Oct. 23, 2015) (Motion), <http://apps.fcc.gov/ecfs/comment/view?id=60001304911>. The incumbent LECs cite three protective orders in the rulemaking – the *Data Collection Protective Order*, *Second Protective Order*, and *Modified Protective Order*. *Id.* at 2 n.1; *see supra* n.2.

<sup>9</sup> *Id.* at 3 (emphasis in original).

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.* at 2 (arguing the terms of the *Modified Protective Order* limit use of the data to the rulemaking proceeding).

<sup>12</sup> Opposition of Level 3 to Motion to Modify Protective Orders, WC Docket No. 15-247, WC Docket No. 05-25, RM-10593 (filed Nov. 4, 2015).

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Id.* at 2, 5.

<sup>15</sup> Reply of AT&T Inc., Verizon, CenturyLink, and Frontier in Support of Motion to Modify Protective Orders, WC Docket No. 15-247, WC Docket No. 05-25 (filed Nov. 12, 2015) (Reply).

<sup>16</sup> 47 C.F.R. § 1.45(b).

<sup>17</sup> Letter from Thomas Jones, Counsel for Level 3, to Marlene H. Dortch, FCC, WC Docket Nos. 15-247 and 05-25, RM-10593, at 1 (filed Nov. 4, 2015).

constitute special circumstances that would cause us to find good cause for waiver of our rules.<sup>18</sup> It is the policy of the Commission that extensions of time shall not be routinely granted.<sup>19</sup> Accordingly, we deny Level 3's waiver request.

8. Nevertheless, we are not persuaded by Level 3's reasoning, and thus, as a separate and alternative basis for rejecting Level 3's opposition, we reject its arguments on the merits. First, we are not persuaded that incorporating the rulemaking data into the tariff investigation would unduly increase the costs and burden on parties or delay the tariff investigation proceeding. The incumbent LECs being investigated in the tariff investigation are all parties to the rulemaking proceeding and have already incurred any costs and burdens involved in accessing the mandatory collection data.<sup>20</sup> So has Level 3, which is also a party to the rulemaking proceeding. Indeed, as the incumbent LECs note, they are not requesting a new data collection that would bring additional costs and burdens; they are just seeking that the data already collected be made available to parties in the tariff investigation.<sup>21</sup> As we also noted above, other competitive LECs that are parties to the rulemaking and likely to participate in the tariff investigation did not raise these concerns or otherwise object to the incumbent LECs' motion. We therefore find that granting this motion will not unnecessarily harm or delay the investigation.

9. In considering the incumbent LECs' motion, we find that there are data submitted in the rulemaking proceeding that are relevant to the question of the reasonableness of the incumbent LEC pricing plan terms and conditions in the tariff investigation. For example, both incumbent LECs and competitive LECs submitted data related to the terms and conditions of their tariffs or sales agreements for business data services.<sup>22</sup> Although the investigation was initiated as a separate proceeding and included requests for targeted data needed to evaluate certain pricing plan terms and conditions, the Bureau noted in the *Designation Order* that the "investigation is based on the record generated in the Commission's special access [rulemaking] proceeding . . . and concerns a set of issues that have been and continue to be a principal focus of that proceeding."<sup>23</sup> The investigation of these issues related to terms and conditions in the tariff pricing plans is therefore an outgrowth of the rulemaking proceeding.

10. Although we concur with the incumbent LECs to the extent described above, we conclude that the most appropriate remedial action is not to modify the protective orders in the rulemaking, as the incumbent LECs request. Rather, we believe that making the data and information from the rulemaking proceeding available more broadly to parties in the tariff investigation would best serve the public interest. Furthermore, based on the relevance of the tariff investigation to the rulemaking proceeding, we believe that that parties in the rulemaking may also benefit from certain data to be submitted in the tariff investigation. Therefore, the Bureau takes the following steps:

- Incorporates the data submitted in response to the Commission's one-time, mandatory data collection in the rulemaking proceeding, WC Docket No. 05-25, RM-10593, including confidential and highly confidential data, into the record of the tariff

---

<sup>18</sup> 47 C.F.R. § 1.3; see *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>19</sup> 47 C.F.R. § 1.46(a).

<sup>20</sup> The Commission's website lists the parties that have completed the process for receiving authorization to access the confidential and highly confidential data in the Commission's one-time, mandatory data collection. <https://www.fcc.gov/encyclopedia/acknowledgement-confidential-special-access-data-collection>.

<sup>21</sup> Reply at 5.

<sup>22</sup> See, e.g., *Reconsideration Order*, 29 FCC Rcd at 10916 (Questions II.A.17-19); *id.* at 10919-21 (Questions II.B.10-13). See also Motion at 7; Reply at 5.

<sup>23</sup> *Designation Order* at 2 n.2.

investigation, WC Docket No. 15-247, subject to the *Business Data Services Data Collection Protective Order* attached as Appendix A to this Order.<sup>24</sup>

- Incorporates the balance of the present record of the rulemaking, WC Docket No. 05-25, RM-10593, and information that becomes part of the record in this docket in the future, including all other confidential and highly confidential data, into the record of the tariff investigation, WC Docket No. 15-247, subject to the *Tariff Investigation Protective Order* attached as Appendix B to this Order.<sup>25</sup>
- Incorporates the record on a continuing basis that the Bureau develops in the tariff investigation, WC Docket No. 15-247, including confidential and highly confidential data, into the record of the rulemaking proceeding, WC Docket No. 05-25, RM-10593, subject to the *Modified Protective Order* and the *Second Protective Order* in the rulemaking proceeding.<sup>26</sup>

11. As noted above, we adopt two new protective orders in the tariff investigation that will allow interested parties participating in the investigation to access and use the various confidential and highly confidential data and information submitted in the tariff investigation and business data services rulemaking proceeding. Specifically, we adopt as Appendix A to this Order, the *Business Data Services Data Collection Protective Order* in the tariff investigation, which contains procedures to enable parties in the tariff investigation to access the one-time, mandatory business data services data collection hosted in the SDE by NORC and subject to the *Data Collection Protective Order* in the rulemaking docket.<sup>27</sup>

12. In addition, we adopt as Appendix B to this Order, the *Tariff Investigation Protective Order*.<sup>28</sup> This will enable parties in the tariff investigation docket to have access to and make use of the confidential and highly confidential data and information submitted in the rulemaking proceeding. It will also enable parties participating in the tariff investigation to use confidential and highly confidential information to be submitted in the tariff investigation proceeding. Meanwhile, the protective orders in place in the rulemaking will enable parties in that proceeding to access the confidential and highly confidential data that is incorporated from the tariff investigation docket into the rulemaking.

13. Having separate protective orders governing the access and handling of confidential and highly confidential information for each docket will ensure appropriate access to and protections for the information in both proceedings. This approach differs procedurally from the relief requested by the incumbent LECs, which sought a modification of the protective orders in the rulemaking proceedings, but it accomplishes the substance sought by the incumbent LECs. Furthermore, this action is consistent with

---

<sup>24</sup> See *infra* Appendix A (*Business Data Services Data Collection Protective Order*). Documents and information designated as confidential or highly confidential and submitted in WC Docket No. 05-25, RM-10593 retain those designations when incorporated into WC Docket No. 15-247.

<sup>25</sup> See *infra* Appendix B (*Tariff Investigation Protective Order*). Documents and information designated as confidential or highly confidential and submitted in WC Docket No. 05-25, RM-10593 retain those designations when incorporated into WC Docket No. 15-247.

<sup>26</sup> See *Modified Protective Order*, 25 FCC Rcd 15168; *Second Protective Order*, 25 FCC Rcd 17725. Documents and information designated as confidential or highly confidential and submitted in WC Docket No. 15-247 retain those designations when incorporated into WC Docket No. 05-25, RM-10593.

<sup>27</sup> See *infra* Appendix A.

<sup>28</sup> See *infra* Appendix B.



the Commission's practice with regard to the use of other data collections.<sup>29</sup> Thus, on this basis, we grant the incumbent LECs' motion to that extent.

14. Because of the number of parties who have a confidentiality interest in the information collected pursuant to the *Data Collection Order* in the rulemaking proceeding, the *Business Data Services Data Collection Protective Order* adopted today generally follows the procedures set forth in the rulemaking's *Data Collection Protective Order*. All individuals in the tariff investigation requesting access to confidential and highly confidential information that is subject to the *Data Collection Protective Order* in the rulemaking must execute the Acknowledgment of Confidentiality under the *Business Data Services Data Collection Protective Order* and file their Acknowledgments through the Commission Electronic Comment Filing System, or by hand delivery to the Commission, and send a copy to [TariffInvestigation@fcc.gov](mailto:TariffInvestigation@fcc.gov). These Acknowledgments do not need to be served on the submitting parties. Staff will post all Acknowledgments once they are received through [TariffInvestigation@fcc.gov](mailto:TariffInvestigation@fcc.gov) on the following web page: <https://www.fcc.gov/encyclopedia/tariff-investigation-special-access-tariff-discount-plans>. Parties whose confidential and highly confidential information will be made available will then have the opportunity to object to their information being made available to any potential reviewing party. The time for filing such an objection will run only from the date the information is posted on the Commission's web page, not from the date the Acknowledgment may have been filed. Absent the filing of an objection, the requesting party will have access to the confidential and highly confidential information available through the NORC Data Enclave.

15. Individuals in the tariff investigation who wish to have access to and review other confidential and highly confidential information, including confidential and highly confidential information filed in the tariff investigation that is not subject to the *Data Collection Protective Order*, must file their Acknowledgments from the *Tariff Investigation Protective Order* with the Commission and deliver them to counsel for the relevant submitting party and any known third-party interest holders. Submitting parties and third-party interest holders will then have an opportunity to object to disclosure of their data and information to any potential reviewing party pursuant to the standard procedures of the protective order. Absent the filing of an objection, the requesting party will have access to the relevant confidential and highly confidential information.<sup>30</sup>

16. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 201-205, 211, 215, 218, 219, 220, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201-205, 211, 215, 218, 219, 220, 303(r), and 332, 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, that the *Business Data Services Data Collection Protective Order* and *Tariff Investigation Protective Order* are hereby issued, the motion by AT&T, Verizon, CenturyLink, and Frontier IS GRANTED to the extent described herein, and the Opposition to the Motion by Level 3 IS DENIED.

---

<sup>29</sup> For example, it is standard Commission practice that when confidential information regarding the number of telephone numbers that have been assigned to each mobile wireless carrier is relevant to a license transfer proceeding (in order to determine market shares), the Commission places that information into the record of the license transfer proceeding and adopts an appropriate protective order; it does not modify the protective order in the proceeding where that information was originally collected to allow it to be used elsewhere. *See, e.g.*, Applications of AT&T Mobility Spectrum LLC, Tampnet Inc., Tampnet Licensee LLC, Broadpoint License Co., LLC, and Broadpoint Wireless License Co., LLC for Consent to Assign Licenses and Approval of Long-Term *De Facto* Transfer Spectrum Leasing Arrangements, Numbering Resource Utilization and Forecast Reports and Local Number Portability Reports To Be Placed into the Record, Subject to Protective Order, WT Docket No. 15-255, CC Docket No. 99-200, Public Notice, DA 15-1214 (rel. Oct. 23, 2015).

<sup>30</sup> *Data Collection Protective Order*, 29 FCC Rcd at 11665, para. 23, 11673, Appx. A at para. 5, 11680, Appx. C.

17. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero  
Chief, Wireline Competition Bureau

## APPENDIX A

**Business Data Services Data Collection Protective Order  
WC Docket No. 15-247**

1. *Definitions.* As used herein, capitalized terms not otherwise defined in this Business Data Services Data Collection Protective Order shall have the following meanings:

“Acknowledgment” means the attached Acknowledgment of Confidentiality.

“Competitive Decision-Making” means a person’s activities, association, or relationship with any of his or her clients involving 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 or with a Third-Party Interest Holder.

“Confidential Information” means information that is not otherwise available from publicly available sources, that is subject to protection under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Commission’s implementing rules, that has been designated as Confidential pursuant to the *Special Access Data Collection Protective Order, Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Data Collection Protective Order, 29 FCC Rcd 11657 (Wireline Comp. Bur. 2014) (*Special Access Data Collection Protective Order*) and that has been submitted in the *Special Access Rulemaking Proceeding, Special Access Data Collection Protective Order, Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593 (*Special Access Rulemaking Proceeding*).

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

“Data Collection” or “Special Access Data Collection” means the data collection established in *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012) (*Data Collection Order*), including the submission of Stamped Confidential and Highly Confidential Documents, Confidential and Highly Confidential Information, and Highly Confidential Data.

“Document” means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. For the sake of clarity, the term “document” includes responses created and submitted to the Commission electronically.

“Highly Confidential Data” means information that meets the definition of Highly Confidential Data in the *Special Access Data Collection Protective Order*, that has been designated as Highly Confidential Data pursuant to that Order, and that has been submitted in the *Special Access Rulemaking Proceeding*.

“Highly Confidential Information” means information 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; 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; that meets the definition of Highly Confidential Data in the *Business Data*



*Services Data Collection Protective Order*; that has been designated as Highly Confidential Data pursuant to that Order; and that has been submitted in the *Special Access Rulemaking Proceeding*.

“In-House Counsel” means an attorney employed by a Participant in 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. (In this regard, an In-House Counsel’s employer is considered his or her client.)

“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 any attorney 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.

“Participant” means a person or entity that has filed, or has a good faith intention to file, a direct case, an opposition, or material comments in this proceeding.

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

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

“Reviewing Party” means a person or entity who has obtained access to Confidential or Highly Confidential Information (including Stamped Confidential Documents and Stamped Highly Confidential Documents) pursuant to paragraphs 2 or 7 of this Business Data Services Data Collection Protective Order.

“Secure Data Enclave” or “SDE” means a secure environment where Reviewing Parties may view Highly Confidential Data, as established by the Commission in *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Data Collection Protective Order, 29 FCC Rcd 11657.

“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 ORDERS IN WC DOCKET NO. 05-25 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION,” and that has been submitted in the *Special Access Rulemaking Proceeding*, unless the Commission determines, *sua sponte* or by request pursuant to sections 0.459 or 0.461 of its rules,<sup>1</sup> that any such document is not entitled to confidential treatment.

---

<sup>1</sup> 47 C.F.R. §§ 0.459, 0.461.

“Stamped Highly Confidential Document” means any document, or any part thereof, that contains Highly 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) “HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDERS IN WC DOCKET NO. 05-25 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION,” and that has been submitted in the *Special Access Rulemaking Proceeding*, 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 highly confidential treatment.

“Submitting Party” means a person or entity who submitted Confidential Information, Highly Confidential Information or Highly Confidential Data in the *Special Access Rulemaking Proceeding*.

“Support Personnel” means employees of a Reviewing Party’s Outside Firm and third-party contractors and employees of third-party contractors who are assisting in this proceeding, provided such persons are involved solely in performing clerical or ministerial functions with regard to documents and information connected with this proceeding, including performing 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.

“Third-Party Interest Holder” means a person who is not a Submitting Party who has a confidentiality interest in Confidential Information or Highly Confidential Information that was submitted in the *Special Access Rulemaking Proceeding*.

2. *Procedure for Obtaining Access to Confidential Information and Highly Confidential Information.* Access to Highly Confidential Information (including Stamped Highly Confidential Documents) is limited to Outside Counsel of Record, Outside Consultants, their employees and employees of their Outside Firms, and Support Personnel. Any person other than Support Personnel seeking access to Confidential Information or Highly Confidential Information subject to this Business Data Services Data Collection Protective Order shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this Business Data Services Data Collection Protective Order; file the Acknowledgment with the Commission; and send a copy to [TariffInvestigation@fcc.gov](mailto:TariffInvestigation@fcc.gov). The Acknowledgment does not need to be served on the Submitting Parties. The Wireline Competition Bureau (Bureau) will list the people who have filed Acknowledgments on the web page at <https://www.fcc.gov/encyclopedia/tariff-investigation-special-access-tariff-discount-plans>.

3. *Procedure for Objecting to the Disclosure of Confidential Information and Highly Confidential Information to a Potential Reviewing Party.*<sup>2</sup> Each Submitting Party and Third-Party Interest Holder shall have an opportunity to object to the disclosure of its Confidential Information, Highly Confidential Information or Highly Confidential Data to a person seeking to review that information pursuant to this Business Data Services Data Collection Protective Order. A Submitting Party or Third-Party Interest Holder must file any such objection at the Commission and serve it on counsel for the person seeking access within five business days after the potential Reviewing Party’s information has been posted on the web page at <https://www.fcc.gov/encyclopedia/tariff-investigation-special-access-tariff-discount-plans>. Persons filing Acknowledgments shall not have access to Confidential Information, Highly Confidential Information or Highly Confidential Data before the

---

<sup>2</sup> This paragraph describes the procedure for objecting to a specific individual being permitted to review Confidential and Highly Confidential Information pursuant to this *Business Data Services Data Collection Protective Order*. As stated in the *Order* above, other than Level 3, no entity that filed information pursuant to the *Data Collection Order* in the business services data rulemaking proceeding (special access rulemaking proceeding) objected to the incumbent LECs’ request that that information be able to be used here in the tariff investigation proceeding.

period for filing objections has passed. If a Submitting Party files additional documents containing Confidential Information, Highly Confidential Information or Highly Confidential Data, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in the information before filing the additional documents. The Submitting Party shall file any objection to the disclosure of that additional Confidential Information, Highly Confidential Information or Highly Confidential Data to any Reviewing Party before or contemporaneous with the filing, and any Third-Party Interest Holder shall file such any objection as promptly as practicable. Until any timely objection is resolved by the Commission in favor of the person seeking access and, if a motion for a judicial stay is timely filed, until such a motion is acted upon, a person subject to an objection shall not have access to the relevant Confidential Information, Highly Confidential Information or Highly Confidential Data.<sup>3</sup> If an objection is not timely filed with the Commission, the Commission will nonetheless consider the objection and retains its discretion to prohibit further access to Confidential Information or Highly Confidential Information by the Reviewing Party until the objection is resolved.

4. *Review of Highly Confidential Data.* A Reviewing Party may inspect and analyze Highly Confidential Data only at the SDE, either at its physical location in the Washington, D.C. metropolitan area or by accessing the SDE remotely through a Virtual Private Network (VPN). A Reviewing Party may not download, print out or otherwise remove any Highly Confidential Data from the SDE (however accessed). A Reviewing Party may store its analyses in a virtual locker located in the SDE and accessible only to that party. A Reviewing Party may obtain physical or electronic copies of its analyses from the SDE administrator upon request, and at cost; the SDE administrator will ensure that the copies contain only the analyses and not any underlying raw data except as permitted by NORC under the Bureau's output disclosure guidelines.

5. *Review of Stamped Confidential Documents and Stamped Highly Confidential Documents.* A Reviewing Party may request, as appropriate, a complete set of Stamped Confidential Documents and a complete set of Stamped Highly Confidential Documents (other than Highly Confidential Data) in electronic form by contacting the Bureau. All copies of documents received must be returned or destroyed in accordance with the terms of paragraph 16. A Reviewing Party may inspect Stamped Confidential Documents, Stamped Highly Confidential Documents and Highly Confidential Data at the Secure Data Enclave.

6. *Use of Confidential and Highly Confidential Information.* Persons obtaining access to Confidential and Highly Confidential Information (including Stamped Confidential Documents, Stamped Highly Confidential Documents, and Highly Confidential Data) under this Business Data Services Data Collection Protective Order shall use the information 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 documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in any other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to any Confidential or Highly Confidential Information in its decision in this proceeding, it will do so by redacting any Confidential or Highly 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

---

<sup>3</sup> An objection ordinarily will first be ruled upon by the Bureau. If the Bureau rejects the objection, the objecting party will be provided 10 business days to file an Application for Review with the Commission; if an Application for Review is not filed within that time, the Confidential or Highly Confidential Information shall be made available to the Reviewing Party. If an Application for Review is timely filed and is denied by the Commission, the objecting party will be provided 10 business days to seek a judicial stay of the Commission's Order; if a motion for stay is not filed within that time, the Confidential or Highly Confidential Information shall be made available to the Reviewing Party.

persons entitled to access to Confidential or Highly Confidential Information under this Business Data Services Data Collection Protective Order, as appropriate.

7. *Permissible Disclosure.* A Reviewing Party may discuss and share the contents of Confidential Information, and Highly Confidential Information with another Reviewing Party, with Support Personnel, as appropriate, and with the Commission and its staff. A Submitting Party's Confidential Information and Highly Confidential Information may be disclosed to employees and Counsel of the Submitting Party, and a Third-Party Interest Holder's Confidential Information and Highly Confidential Information may be disclosed to employees and Counsel of the Third-Party Interest Holder.

8. *Filings with the Commission.* A party filing comments or other filings in the tariff investigation proceeding, WC Docket No. 15-247, that contain Confidential Information or Highly Confidential Information derived from the data submitted in response to the Data Collection shall submit to the Secretary's Office one copy of the filing containing the Confidential or Highly Confidential Information (the "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 only Confidential Information shall be clearly marked "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDERS IN WC DOCKET NO. 15-247 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses Highly Confidential Information shall be clearly marked "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDERS IN WC DOCKET NO. 15-247 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The accompanying cover letter shall also contain the appropriate legend. The Confidential Filing shall be made under seal, and will not be placed in the Commission's public file. The party shall submit a copy of the filing in redacted form, *i.e.*, containing no Confidential or Highly Confidential Information (the "Redacted Confidential Filing") to the Commission via ECFS in WC Docket No. 15-247.<sup>4</sup> 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 and shall reference WC Docket No. 15-247. 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 Marvin F. Sacks, [Marvin.Sacks@fcc.gov](mailto:Marvin.Sacks@fcc.gov), (202) 418-2017, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Parties should not provide additional courtesy copies of pleadings containing Highly Confidential Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

9. *Non-Disclosure of Confidential Information and Highly Confidential Information.* Except with the prior written consent of the Submitting Party or as provided under this Business Data Services Data Collection Protective Order, Confidential Information and Highly Confidential Information may not be disclosed further.

10. *Protection of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information.* A Reviewing Party shall have the obligation to ensure that access to Confidential Information and Highly Confidential Information (including Stamped Confidential Documents and Stamped Highly Confidential Documents) is strictly

---

<sup>4</sup> If a party is not able to submit a copy of the Redacted Confidential Filing via ECFS, it must submit two copies of the Redacted Confidential Filing to the Secretary's Office along with the appropriately stamped cover letter, as described in this paragraph.

limited as prescribed in this Business Data Services Data Collection Protective Order. A Reviewing Party shall have the further obligation to ensure that Confidential Information and Highly Confidential Information are used only as provided in this Business Data Services Data Collection Protective Order.

11. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential or Highly Confidential Information outside the terms of this Business Data Services Data Collection Protective Order, such a request will be treated in accordance with sections 0.442 and 0.461 of the Commission's rules.

12. *Client Consultation.* Nothing in this Business Data Services Data Collection Protective Order shall prevent or otherwise restrict 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 Confidential Information or Highly Confidential Information to which they have access under this Business Data Services Data Collection Protective Order; *provided, however,* that in rendering such advice and otherwise communicating with such clients, Counsel shall not disclose Confidential Information or Highly Confidential Information.

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

14. *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, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information that a party has obtained under terms of this Business Data Services Data Collection Protective Order, such party shall promptly notify the Commission and, if feasible, 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, Stamped Highly Confidential Document, Confidential Information, or Highly Confidential Information.

15. *Violations of the Business Data Services Data Collection Protective Order.* Should a Reviewing Party violate any of the terms of this Business Data Services Data Collection 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 or Highly 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 Business Data Services Data Collection Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding. Nothing in this Business Data Services Data Collection Protective Order shall limit any other rights and remedies available to the Submitting Party at law or in equity against any person using Confidential or Highly Confidential Information in a manner not authorized by this *Business Data Services Data Collection Protective Order*.

16. *Termination of Proceeding.* The provisions of this *Business Data Services Data Collection 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 Stamped Confidential Documents and Stamped Highly Confidential Documents and all copies of the same. No material whatsoever containing or derived from Confidential and Highly Confidential



Information may be retained by any person having access thereto, except Outside Counsel and Outside Consultants may retain, under the continuing strictures of this Business Data Services Data Collection 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 or Highly Confidential Information, and one copy of orders issued by the Commission or Bureau that contain Confidential or Highly Confidential Information. All Counsel shall certify compliance with these terms and shall file such certification with the Commission not more than three weeks after conclusion of this proceeding. Such certification shall be made pursuant to 28 U.S.C. section 1746 and is subject to 18 U.S.C. section 1001. The provisions of this paragraph regarding retention of Stamped Confidential Documents and Stamped Highly Confidential Documents and copies of the same and Confidential and Highly Confidential Information shall not be construed to apply to the Commission or its staff.

17. *Questions.* Questions concerning this Business Data Services Data Collection Protective Order should be addressed to [Christopher.Koves@fcc.gov](mailto:Christopher.Koves@fcc.gov), (202) 418-8209, Pricing Policy Division, Wireline Competition Bureau, or Joel Rabinovitz, [Joel.Rabinovitz@fcc.gov](mailto:Joel.Rabinovitz@fcc.gov), (202) 418-0689, Office of General Counsel. The offices of both are located at the Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

18. *Authority.* This Business Data Services Data Collection Protective Order is issued pursuant to sections 4(i), 201-205, 211, 215, 218, 219, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201-205, 211, 215, 218, 219, 220, 303(r), and 332, 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.

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero  
Chief, Wireline Competition Bureau



**APPENDIX A**  
**Attachment 1**

**Business Data Services Data Collection Protective Order**  
**Acknowledgment of Confidentiality**  
**WC Docket No. 15-247**

I am seeking access to [ ] only Confidential Information or [ ] Confidential and Highly Confidential Information.

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

I agree that I am bound by the Business Data Services Data Collection Protective Order and that I shall not disclose or use Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information except as allowed by the Business Data Services Data Collection Protective Order.

I acknowledge that a violation of the Business Data Services Data Collection Protective Order is a violation of an order of the Federal Communications Commission (Commission). I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of this Business Data Services Data Collection Protective Order, including but not limited to suspension or disbarment of Counsel or Outside Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Business Data Services Data Collection Protective Order limits any other rights and remedies available to a Submitting Party at law or in equity against me if I use Confidential or Highly Confidential Information in a manner not authorized by this Business Data Services Data Collection Protective Order.

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 Business Data Services Data Collection Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as a person described in paragraph 6 of the Business Data Services Data Collection 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 and Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Business Data Services Data Collection Protective Order and to ensure that there is no disclosure of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information in my possession or in the possession of those who work for me, except as provided in the Business Data Services Data Collection Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Confidential Information and Highly Confidential Information.

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

Executed this \_\_\_ day of \_\_\_\_\_, 20\_\_.

---

[Name]  
[Position]  
[Firm]  
[Name of Client(s) Representing]  
[Telephone]

## APPENDIX B

**Tariff Investigation Protective Order  
WC Docket No. 15-247**

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

“Acknowledgment” means the Acknowledgment of Confidentiality attached as the Appendix hereto.

“Competitive Decision-Making” means a person’s activities, association, or relationship with any of his clients involving 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 or with a Third-Party Interest Holder.

“Confidential Information” means information that is not otherwise available from publicly available sources and that is subject to protection under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Commission’s implementing rules.

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

“Document” means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person.

“Highly Confidential Information” means information 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; that the Submitting Party claims constitutes some of its most sensitive business information 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; and that is described in Appendix A to this Tariff Investigation Protective Order, as the same may be amended from time to time. Highly Confidential Information also includes all information that has been submitted and properly designated as Highly Confidential in WC Docket No. 05-25, RM-10593 and incorporated into the record of this proceeding by the Commission.

“In-House Counsel” means an attorney employed by a Participant in 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. (In this regard, an In-House Counsel’s employer is considered his or her client.)

“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 any attorney 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.

“Participant” means a person or entity that has filed, or has a good faith intention to file, a direct case, an opposition, or material comments in this proceeding.

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

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

“Reviewing Party” means a person who has obtained access to Confidential Information (including Stamped Confidential Documents) or Highly Confidential Information (including Stamped Highly Confidential Documents) pursuant to paragraphs 2 or 7 of this Tariff Investigation 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. 15-247 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION,” unless the Commission determines, *sua sponte* or by request pursuant to paragraph 3 of this Tariff Investigation Protective Order or sections 0.459 or 0.461 of its rules,<sup>1</sup> that any such document is not entitled to confidential treatment. By designating a document a “Stamped Confidential Document,” a Submitting Party signifies and represents that it contains Confidential Information.

“Stamped Highly Confidential Document” means any document, or any part thereof, that contains Highly 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) “HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 15-247 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION,” unless the Commission determines, *sua sponte* or by request pursuant to paragraph 3 of this Tariff Investigation Protective Order or sections 0.459 or 0.461 of its rules, that any such document is not entitled to highly confidential treatment. By designating a document a “Stamped Highly Confidential Document,” a Submitting Party signifies and represents that it contains Highly Confidential Information.

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

“Support Personnel” means employees of a Reviewing Party’s Outside Firm and third-party contractors and employees of third-party contractors who are assisting in this proceeding, provided such persons are involved solely in performing clerical or ministerial functions with regard to documents and information connected with this proceeding, including performing 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.

---

<sup>1</sup> 47 C.F.R. §§ 0.459, 0.461.

“Third-Party Interest Holder” means a person who is not a Submitting Party who has a confidentiality interest in Confidential Information or Highly Confidential Information that is submitted under this Tariff Investigation Protective Order.

2. *Designation of Information as Highly Confidential.* A Submitting Party may designate as Highly Confidential only those types of information described in Appendix A. If a Submitting Party believes that the descriptions contained in Appendix A should be revised, the Submitting Party shall submit a request to amend Appendix A along with a supporting explanation. To the extent the request is granted, an amended Appendix A will be issued. In addition, before a Submitting Party may designate particular documents or information as Highly Confidential, it must receive the written approval of the Commission staff, which, based on the Submitting Party’s representations, will make a preliminary determination whether the proposed designation meets the requirements set forth in this Tariff Investigation Protective Order. The requirement of advance written approval does not apply to information submitted in the data template provided by the Wireline Competition Bureau (Bureau) to facilitate incumbent LECs’ submission of data and information required in their direct cases, which may be designated as Highly Confidential. By designating documents and information as Confidential or Highly Confidential under this Tariff Investigation Protective Order, a Submitting Party also 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>2</sup> Information that has been properly designated as Highly Confidential and submitted in WC Docket No. 05-25, RM-10593 and incorporated into the record of this proceeding by the Commission will retain its designation as Highly Confidential without any further action by the original submitting party.

3. *Challenge to Designation.* Any person wishing to challenge the designation of a document, portion of a document or information as Confidential or Highly Confidential must file such a challenge at the Commission and serve it on the Submitting Party and any known Third-Party Interest Holders. The Submitting Party and any Third-Party Interest Holders must file any reply within five business days, and include a justification for treating the information as Confidential or Highly Confidential, as appropriate. The documents and information challenged will continue to be accorded confidential treatment until the Commission acts on the request and any timely motion for a judicial stay has been acted upon.<sup>3</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 an appropriate request under our rules implementing FOIA.<sup>4</sup>

4. *Submission of Stamped Confidential Documents and Stamped Highly Confidential Documents.* A Submitting Party shall submit to the Secretary’s Office one copy of each Stamped Confidential Document and each Stamped Highly Confidential Document it seeks to file and an accompanying cover letter. Before doing so, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in any such Stamped Confidential Document or Stamped Highly Confidential Document. Each page of the Stamped Confidential Document or Stamped Highly Confidential Document shall be stamped “CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 15-247 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION” or “HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 15-247 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION”, as appropriate. The cover letter also shall contain this legend. In addition, with respect to each Stamped Confidential Document and each Stamped Highly Confidential Document submitted, the Submitting Party shall also file through the Commission’s Electronic Comment

---

<sup>2</sup> See 47 C.F.R. §§ 0.459(a), 0.459(a)(3).

<sup>3</sup> Cf. 47 C.F.R. §§ 0.459(g), 0.461(i).

<sup>4</sup> See 47 C.F.R. §§ 0.459(h), 0.461.

Filing System (“ECFS”) a copy of the respective Redacted Confidential Document or Redacted Highly Confidential Document and an accompanying cover letter.<sup>5</sup> Each Redacted Confidential Document or Redacted Highly Confidential Document shall have the same pagination as the Stamped Confidential Document or Stamped Highly Confidential Document from which it is derived. Each page of the Redacted Confidential Document or Redacted Highly Confidential Document and the accompanying cover letter shall be stamped “REDACTED – FOR PUBLIC INSPECTION.” To the extent that any page of the filing contains both Confidential Information or Highly Confidential Information and non-confidential information, only the Confidential Information and Highly Confidential Information may be redacted and the page of the unredacted filing shall clearly distinguish among the Confidential Information, the Highly Confidential Information and the non-confidential information. In addition, two copies of each Stamped Confidential Document and Stamped Highly Confidential Document and the accompanying cover letter shall be delivered, as directed by Commission staff, to Marvin Sacks, Marvin.Sacks@fcc.gov, (202) 418-2017, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 5-A260, Washington, D.C. 20554

5. *Copying Sensitive Documents.* If, in the reasonable judgment of the Submitting Party, a Stamped Highly Confidential Document contains information so sensitive that copying of it should be restricted, the Submitting Party may mark the document with the legend “Additional Copying Restricted.” Subject to the provisions for access to information in electronic format in paragraph 9, each Outside Firm shall receive only one copy of the document and no more than two additional copies, in any form, shall be made. Application for relief from this restriction against further copying may be made to the Commission, with notice to Counsel of Record for the Submitting Party, which will be granted only for cause.

6. *Procedure for Obtaining Access to Confidential Information and Highly Confidential Information.* Access to Highly Confidential Information (including Stamped Highly Confidential Documents) is limited to Outside Counsel of Record, Outside Consultants, their employees and employees of their Outside Firms, and Support Personnel. Any person other than Support Personnel seeking access to Confidential Information or Highly Confidential Information subject to this Tariff Investigation Protective Order shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this Tariff Investigation Protective Order, and file the Acknowledgment with the Commission. A copy of the Acknowledgment also shall be delivered to the relevant Submitting Party through its Counsel of Record and any known Third-Party Interest Holders through counsel so that it is received at least five business days prior to such person’s reviewing or having access to the Submitting Party’s Confidential Information or Highly Confidential Information. Where there are multiple Submitting Parties or Third-Party Interest Holders, a copy of the Acknowledgment must be served on each within the time period stated above.

7. *Procedure for Objecting to the Disclosure of Confidential Information and Highly Confidential Information to a Potential Reviewing Party.*<sup>6</sup> Each Submitting Party and Third-Party

---

<sup>5</sup> If a party is not able to submit a copy of the Redacted Confidential Document or Redacted Highly Confidential Document via ECFS, it must file two copies of the Redacted Confidential Document or Redacted Highly Confidential Document with the Secretary’s Office along with the appropriately stamped cover letter.

<sup>6</sup> This paragraph describes the procedure for objecting to a specific individual being permitted to review Confidential and Highly Confidential Information pursuant to this Tariff Investigation Protective Order. The procedure for objecting to specific Confidential or Highly Confidential Information being reviewed by *any* individual pursuant to the Tariff Investigation Protective Order (in other words, for requesting that certain information be entirely withheld from review under the Tariff Investigation Protective Order) is set forth in paragraph 26 of the Order adopting the Protective Order in MB Docket No. 15-149. *See Applications of Charter Communications, Inc, Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Order, FCC 15-110, 30 FCC Rcd 10360, 10374, para. 26 (2015) (*Charter Order*). As stated there, where such an objection is timely made, we will not

(continued....)



Interest Holder shall have an opportunity to object to the disclosure of its Confidential Information or Highly Confidential Information to a person seeking to review that information pursuant to this Tariff Investigation Protective Order. A Submitting Party or Third-Party Interest Holder must file any such objection at the Commission and serve it on counsel for the person seeking access within three business days after receiving a copy of that person's Acknowledgment. Persons filing Acknowledgments shall not have access to Confidential Information or Highly Confidential Information before the period for filing objections has passed, unless both the Submitting Party and any known Third-Party Interest Holders waive this requirement. If a Submitting Party files additional documents containing Confidential Information or Highly Confidential Information, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in the information before filing the additional documents. The Submitting Party shall file any objection to the disclosure of that additional Confidential Information or Highly Confidential Information to any Reviewing Party before or contemporaneous with the filing, and any Third-Party Interest Holder shall file such any objection as promptly as practicable. Until any timely objection is resolved by the Commission in favor of the person seeking access and, if a motion for a judicial stay is timely filed, until such a motion is acted upon, a person subject to an objection shall not have access to the relevant Confidential Information or Highly Confidential Information.<sup>7</sup> If an objection is not timely filed with the Commission, the Commission will nonetheless consider the objection and retains its discretion to prohibit further access to Confidential Information or Highly Confidential Information by the Reviewing Party until the objection is resolved.

8. *Review of Stamped Confidential Documents and Stamped Highly Confidential Documents.* A Submitting Party shall make available for review the Stamped Confidential Documents and Stamped Highly Confidential Documents of such party at the offices of the party's Outside Counsel of Record. Subject to the provisions of paragraph 5, 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 2. 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 20.

9. *Review of Highly Confidential Information in Electronic Format.* A Submitting Party shall make available to a Reviewing Party one copy of Highly Confidential Information contained, recorded, or electronically stored on an appropriate electronic storage device (such as a CD-ROM, DVD, flash drive or portable hard drive), which shall be considered a Stamped Highly Confidential Document. The medium containing the information in electronic format should be physically delivered to the

(Continued from previous page) \_\_\_\_\_  
require that the information at issue be disclosed under this Tariff Investigation Protective Order until the Commission resolves the objection, and if a timely motion for judicial stay is filed, until the court rules upon the stay motion. As stated in the Order above, however, other than Level 3, no entity that has filed Confidential or Highly Confidential Information in the business services data rulemaking proceeding (special access rulemaking proceeding) objected to the incumbent LECs' request that that information be able to be used here in the tariff investigation proceeding.

<sup>7</sup> An objection ordinarily will first be ruled upon by the Bureau. If the Bureau rejects the objection, the objecting party will be provided 10 business days to file an Application for Review with the Commission; if an Application for Review is not filed within that time, the Confidential or Highly Confidential Information shall be made available to the Reviewing Party. If an Application for Review is timely filed and is denied by the Commission, the objecting party will be provided 10 business days to seek a judicial stay of the Commission's Order; if a motion for stay is not filed within that time, the Confidential or Highly Confidential Information shall be made available to the Reviewing Party.

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 Highly Confidential Information shall be password protected immediately. The Highly Confidential Information may be stored on a computer for the duration of the proceeding. All files containing Highly Confidential Information shall be deleted from the computer no later than proceedings at the Commission are complete. The original disk or other storage medium shall be stored securely and a record kept of any persons given access to it.

10. *Use of Confidential and Highly Confidential Information.* Persons obtaining access to Confidential and Highly Confidential Information under this Tariff Investigation Protective Order shall use the information 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 documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in any other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to any Confidential or Highly Confidential Information in its orders in this proceeding, it will do so by redacting any Confidential or Highly Confidential Information from the public version of the order and by making the unredacted version of the order available only to a court and to those persons entitled to access to Confidential or Highly Confidential Information under this Tariff Investigation Protective Order, as appropriate.

11. *Permissible Disclosure.* A Reviewing Party may discuss and share the contents of Confidential Information and Highly Confidential Information with another Reviewing Party, with Support Personnel, as appropriate, and with the Commission and its staff. A Submitting Party's Confidential Information and Highly Confidential Information may be disclosed to employees and Counsel of the Submitting Party, and a Third-Party Interest Holder's Confidential Information and Highly Confidential Information may be disclosed to employees and Counsel of the Third-Party Interest Holder.

12. *Filings with the Commission.* A party making a filing in this proceeding that contains Confidential or Highly Confidential Information shall submit to the Secretary's Office one copy of the filing containing the Confidential or Highly Confidential Information (the "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 only Confidential Information shall be clearly marked "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 15-247 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses Highly Confidential Information shall be clearly marked "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDERS IN WC DOCKET NO. 15-247 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The accompanying cover letter shall also contain the appropriate legend. The Confidential Filing shall be made under seal, and will not be placed in the Commission's public file. The party shall submit a copy of the filing in redacted form, *i.e.*, containing no Confidential or Highly Confidential Information (the "Redacted Confidential Filing") to the Commission via ECFS.<sup>8</sup> 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 Confidential Information or Highly Confidential Information, only the Confidential Information or Highly Confidential Information may be redacted and the page of the unredacted Confidential Filing shall clearly distinguish among the

---

<sup>8</sup> If a party is not able to submit a copy of the Redacted Confidential Filing via ECFS, it must file two copies of the Redacted Confidential Filing with the Secretary's Office along with the appropriately stamped cover letter, as described in this paragraph.

Confidential Information, the Highly 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 Marvin Sacks, Marvin.Sacks@fcc.gov, (202) 418-2017, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 5-A260, Washington, D.C. 20554. Parties should not provide courtesy copies of pleadings containing Highly Confidential Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

13. *Non-Disclosure of Confidential Information, and Highly Confidential Information.* Except with the prior written consent of the Submitting Party or as provided under this Tariff Investigation Protective Order, Confidential Information and Highly Confidential Information shall not be disclosed further.

14. *Protection of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information.* A Reviewing Party shall have the obligation to ensure that access to Confidential Information and Highly Confidential Information (including Stamped Confidential Documents and Stamped Highly Confidential Documents) is strictly limited as prescribed in this Tariff Investigation Protective Order. A Reviewing Party shall have the further obligation to ensure that Confidential Information and Highly Confidential Information are used only as provided in this Tariff Investigation Protective Order.

15. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential or Highly Confidential Information outside the terms of this Tariff Investigation Protective Order, such a request will be treated in accordance with sections 0.442 and 0.461 of the Commission's rules.

16. *Client Consultation.* Nothing in this Tariff Investigation Protective Order shall prevent or otherwise restrict 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 Confidential Information or Highly Confidential Information to which they have access under this Tariff Investigation Protective Order; *provided, however*, that in rendering such advice and otherwise communicating with such clients, Counsel shall not disclose Confidential Information or Highly Confidential Information.

17. *No Waiver of Confidentiality.* Disclosure of Confidential or Highly 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 or Highly Confidential Information. Reviewing Parties, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Confidential or Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential or Highly Confidential Information by a Submitting Party to a Reviewing Party shall not be deemed a waiver of any privilege or entitlement provided that the Submitting Party takes prompt remedial action.

18. *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, Stamped Highly Confidential Documents, Confidential Information or Highly Confidential Information that a party has obtained under the terms of this Tariff Investigation Protective Order, such party shall promptly notify each relevant Submitting Party and each known Third-Party Interest Holder 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 each Submitting Party and Third-Party Interest Holder has sufficient opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document, Stamped Highly Confidential Document, Confidential Information or Highly Confidential Information.

19. *Violations of the Tariff Investigation Protective Order.* Should a Reviewing Party violate any of the terms of this Tariff Investigation Protective Order, such Reviewing Party shall immediately

convey that fact to the Commission and to the relevant Submitting Parties and known Third-Party Interest Holders. Further, should such violation consist of improper disclosure of Confidential or Highly 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 Tariff Investigation Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding. Nothing in this Tariff Investigation Protective Order shall limit any other rights and remedies available to the Submitting Party or any Third-Party Interest Holder at law or in equity against any person using Confidential or Highly Confidential Information in a manner not authorized by this Tariff Investigation Protective Order.

20. *Termination of Proceeding.* The provisions of this Tariff Investigation 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 Stamped Confidential Documents and Stamped Highly Confidential Documents and all copies of the same. No material whatsoever containing or derived from Confidential and Highly Confidential Information may be retained by any person having access thereto, except Outside Counsel and Outside Consultants may retain, under the continuing strictures of this Tariff Investigation 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 or Highly Confidential Information, and one copy of orders issued by the Commission or Bureau that contain Confidential or Highly Confidential Information. All Reviewing Parties shall certify compliance with these terms and shall deliver such certification to Counsel for the Submitting Party and file such certification with the Commission not more than three weeks after conclusion of this proceeding. Such certification shall be made pursuant to 28 U.S.C. section 1746 and is subject to 18 U.S.C. section 1001. The provisions of this paragraph regarding retention of Stamped Confidential Documents and Stamped Highly Confidential Documents and copies of the same and Confidential and Highly Confidential Information shall not be construed to apply to the Commission or its staff.

21. *Questions.* Questions concerning this Tariff Investigation Protective Order should be addressed to Joel Rabinovitz, Joel.Rabinovitz@fcc.gov, (202) 418-0689, Office of General Counsel.

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero  
Chief  
Wireline Competition Bureau

**APPENDIX B**  
**Attachment 1**

**Tariff Investigation Protective Order**  
**Highly Confidential Information and Documents**

As specified in paragraphs 1 and 2 of the Tariff Investigation Protective Order, only information and documents set forth in this Appendix and that otherwise meet the definition of Highly Confidential Information or Highly Confidential Documents may be designated as Highly Confidential. This Appendix will be updated as necessary.

Highly Confidential Information to be Submitted in Incumbent LEC Direct Cases in Response to the Designation Order

1. Information included in the data template provided by the Bureau to facilitate incumbent LECs' submission of data and information required in their direct cases.
2. Information that discusses the methodology and calculations used by the incumbent LECs to determine the percentage commitment thresholds in the tariff pricing plans under investigation, the business justifications for those thresholds, and information demonstrating a relation between the percentage commitment thresholds and the incumbent LEC's costs.
3. Information related to the increase in 2010 of the percentage commitment in CenturyLink's Tariff F.C.C. No. 11 Regional Commitment Program (RCP) from 90 to 95 percent, including information concerning the methodology and calculations used in making this change, cost data explaining this change, and analyses of the impact such change would have on CenturyLink's sales or revenues.
4. Information used by incumbent LECs to justify the shortfall penalties in the pricing plans under investigation and data (including cost data), calculations and methodologies used to derive the levels of those shortfall penalties.
5. Information used by incumbent LECs to justify the upper percentage thresholds in the pricing plans under investigation, including the business justification for using such thresholds, and data (including cost data and data showing economies of scale), calculations and methodologies used to derive the levels of those upper percentage thresholds.
6. Information used by incumbent LECs to justify the overage penalties in the pricing plans under investigation, including the business justification for using such penalties, and data (including cost data and data showing economies of scale), calculations and methodologies used to derive the levels of those penalties.
7. Information used by incumbent LECs to justify the early termination fees in the pricing plans under investigation, including the business justification for using such fees, and data (including cost data and data showing economies of scale), calculations and methodologies used to derive the levels of those fees.
8. Information related to the discounts, credits, waivers, refunds, or other benefits for purchasers included in commercial agreements between incumbent LECs and competitive LECs that include the sale of TDM-based business data services, including the basis for determining the amount of each such benefit and whether it is related to the amount of non-recurring charges or circuit termination penalties a purchasing competitive LEC would otherwise have had to pay.



Other Highly Confidential Information in Tariff Investigation

Information and documents that meet the description of the following categories and otherwise meet the definition of Highly Confidential Information or Highly Confidential Documents may be designated as Highly Confidential.

1. Information that discloses the number, identity, location, type or other characteristics of customers, including wholesale and retail customers, including information identifying specific facilities purchased, levels of demand, amounts paid, durations of commitments, and any fees, charges, or penalties assessed or paid.
2. Information that discloses specific aspects of individual agreements between incumbent LECs and purchasers under the tariff pricing plans under investigation or under other relevant pricing plans or arrangements.
3. Information that discusses sales, revenue, volume or percentage commitments, cost, market share, or other financial data that is particularly competitively sensitive information.
4. Information that discusses aspect of the tariff pricing plan terms and conditions at issue and that may not be expressly sought in the tariff investigation order but are instructive in understanding the operation of those terms and conditions.
5. Information that discloses business interpretations, justifications, and applications of tariff or contract provisions, calculations and amounts of discounts, charges, fees, or penalties, and whether these are assessed, waived, or actually paid by customers.
6. Information that details the terms and conditions of or strategy related to a Submitting Party's most sensitive business negotiations or contracts (e.g., marketing, service or product agreements).
7. Information that provides detailed or granular information about specific network facilities, including types, equivalents, and capacities, whether TDM- or IP-based services.
8. Information that discusses in detail current or future plans regarding the transition from TDM- to IP-based services or to compete for a customer or specific groups or types of customers (e.g., retail business or wholesale customers), including specific pricing or (tariffed or non-tariffed) contract proposals, pricing strategies, product strategies, advertising or marketing strategies, future business plans, procurement strategies, technology implementation or deployment plans and strategies (e.g., engineering capacity planning documents).
9. Information that details TDM- to IP-technology migration/Ethernet conversion or processing data, including a provider's daily porting capacity (to the extent not otherwise made public).
10. Information that discloses the nature or contents of private non-tariffed commercial agreements.
11. Detailed information describing or illustrating how a Submitting Party analyzes its competitors, including data, sources and methods used in those analyses, uses of those analyses, and limits on the use of those analyses.



### Other Highly Confidential Information from Business Data Services Rulemaking

The following categories of data and information originally sought in the business data services rulemaking<sup>1</sup> will also be considered highly confidential information under this Tariff Investigation Protective Order.

1. The locations that companies serve with last-mile facilities and the nature of those facilities (*e.g.*, whether the last-mile facilities consist of conditioned copper loops, DS1 loops, DS3 loops, Ethernet loops, number of fiber strands, actual and potential capacity, whether the facilities are leased on an indefeasible right of use basis or are self-deployed) (*responses to Questions III.A, III. B, and III.E of the Request include information that falls within this category of documents and information*).
2. The extent to which companies rely on incumbent local exchange carrier (“ILEC”) and non-incumbent LEC last-mile facilities and local transport facilities to provide special access-like services and the nature of those inputs (*e.g.*, the names of suppliers and whether the inputs are conditioned copper loops, DS1 loops, DS3 loops, Ethernet loops).
3. The location of companies’ collocations (*responses to Question III.B.2 of the Request may include information that falls within this category*).
4. The location of companies’ fiber network routes (*responses to Question III.B.3 of the Request includes information that falls within this category*).
5. The business rules and other factors companies take into consideration when deciding whether to self-deploy channel termination and local transport facilities or lease such facilities from a third party (*responses to Question III.D of the Request may include information that falls within this category*).
6. The factors the companies take into account when deciding what types of channel termination and local transport facilities to lease.
7. The types of customers companies serve and the types of special access-type services demanded by those customers.
8. The location of individual companies’ cell sites and the wire center associated with these cell sites, the nature or type of structure where individual companies’ cell sites are placed, the name of the provider that provides a connection to individual companies’ cell sites; and the type or capacity of the connections provided to companies’ cell sites (*responses to Questions III.B.1 and III.C of the Request includes information that falls within this category*).

---

<sup>1</sup> *Data Requested in Special Access NPRM*, WC Docket No. 05-25, RM-10593, Public Notice, 25 FCC Rcd 15146 (Wireline Comp. Bur. 2010) (references to questions indicate questions from the Notice).

**APPENDIX B**  
**Attachment 2**

**Tariff Investigation Protective Order**  
**Acknowledgment of Confidentiality**  
**WC Docket No. 15-247**

I am seeking access to [ ] only Confidential Information or [ ] Confidential and Highly Confidential Information.

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

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

I acknowledge that a violation of the Tariff Investigation Protective Order is a violation of an order of the Federal Communications Commission (Commission). I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of this Tariff Investigation Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Tariff Investigation Protective Order limits any other rights and remedies available to a Submitting Party at law or in equity against me if I use Confidential or Highly Confidential Information in a manner not authorized by this Tariff Investigation Protective Order.

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 Tariff Investigation Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as an employee of Counsel, Outside Consultant, or Outside Firm, and I 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 and Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Tariff Investigation Protective Order and to ensure that there is no disclosure of Confidential Information or Highly Confidential Information in my possession, in the possession of those who work for me or in the possession of other Support Personnel, except as provided in the Tariff Investigation Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Confidential Information and Highly Confidential Information.

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

Executed this \_\_\_ day of \_\_\_\_\_, 20\_\_.

---

[Name]  
[Position]  
[Firm]  
[Telephone]  
[Party]