

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

In the Matter of
Rates for Interstate Inmate Calling Services
WC Docket No. 12-375

ORDER

Adopted: December 21, 2015

Released: December 21, 2015

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) denies Global Tel*Link Corporation's (GTL) objection to a request by CenturyLink, Inc.'s (CenturyLink) outside counsel to obtain access to confidential information GTL submitted in response to a mandatory data collection (Mandatory Data Collection) in this docket, some of which was included in the unredacted final Order that the Commission released in this docket on November 5, 2015.

II. BACKGROUND

2. On September 26, 2013, the Commission released the 2013 ICS Order. There, the Commission adopted a one-time Mandatory Data Collection "[t]o enable the Commission to take further action to reform rates, including developing a permanent cap or safe harbor for interstate rates as well as to inform [its] evaluation of other rate reform options." The Commission delegated to the Bureau "the authority to adopt a template for submitting the data and provide instructions to implement the data collection." In anticipation of the data submissions, the Bureau released a Protective Order in this proceeding.

1 Objection of Global Tel*Link Corporation to Disclosure of Confidential Information, WC Docket No. 12-375, at Attach. (filed Oct. 16, 2015), http://apps.fcc.gov/ecfs/comment/view?id=60001304182 (GTL Objection).

2 See Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, 14172, paras. 124-26 (2013) (2013 ICS Order), pets. for stay granted in part sub nom. Securus Techs. v. FCC, No. 13-1280 (D.C. Cir. Jan. 13, 2014); pets. for review pending sub nom. Securus Techs. v. FCC, No. 13-1280 (D.C. Cir. filed Nov. 14, 2013) (and consolidated cases) (adopting Mandatory Data Collection). The following rules are stayed pending resolution of the appeal: 47 C.F.R. §§ 64.6010 (Cost-Based Rates for Inmate Calling Services); 64.6020 (Interim Safe Harbor); and 64.6060 (Annual Reporting and Certification Requirement). The court did not stay the remaining rules and did not issue a general stay of the 2013 ICS Order.

3 See Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 15-136 (rel. Nov. 5, 2015) (2015 ICS Order).

4 2013 ICS Order, 28 FCC Rcd at 14172, para. 124.

5 Id. at 14173, para. 126.

6 See Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, Protective Order, 28 FCC Rcd 16954 (Wireline Comp. Bur. 2013) (Protective Order). Pursuant to the Paperwork Reduction Act, the Commission sought and received Office of Management and Budget approval for the Mandatory Data Collection. See Commission

3. In the *Protective Order*, the Bureau stated that it “is mindful of the sensitive nature of [confidential filings, but is] also mindful of the right of the public to participate in this proceeding in a meaningful way.”⁷ As such, the *Protective Order* allows, *inter alia*, Outside Counsel and Outside Consultants, as those terms are defined in the *Protective Order*, to access confidential data filed in this proceeding if they submit an Acknowledgment of Confidentiality⁸ in which they acknowledge and agree to be bound by the terms of the *Protective Order*, and certify that they are not involved in “Competitive Decision-Making” as defined in the *Protective Order*.⁹ Parties that submit confidential information to the Commission (Submitting Parties) may object to an individual seeking access to their confidential data (a potential Reviewing Party).¹⁰ A potential Reviewing Party that is subject to an objection may not obtain or review confidential information submitted by the objecting party until the objection has been resolved.¹¹

4. On August 22, 2014, GTL submitted confidential data in this proceeding pursuant to the protections of the *Protective Order*,¹² and on September 29, 2014, in response to a request from Commission staff, GTL supplemented its original data filing.¹³ On October 13, 2015, new outside counsel to CenturyLink sent executed Acknowledgments to Chérie R. Kiser, Counsel to GTL, via email “in advance of making any request for access to [her] client’s Stamped Confidential Documents or Confidential Information.”¹⁴ Three days later, GTL objected to the release of its confidential information to CenturyLink’s outside counsel.¹⁵ Citing the competitive bidding process used to award ICS contracts, GTL objected to outside counsel for its competitors obtaining access to GTL’s confidential information.¹⁶ CenturyLink responded on November 24, 2015, arguing that pursuant to the express terms of the *Protective Order*, its outside counsel are entitled to access GTL’s confidential information.¹⁷

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Announces Inmate Calling Services Data Due Date, WC Docket No. 12-375, Public Notice, 28 FCC Rcd 7326 (Wireline Comp. Bur. 2014).

⁷ See *Protective Order*, 28 FCC Rcd at 16954, para. 1.

⁸ See *id.* at Appx. A.

⁹ *Id.* at 16954-55, para. 2 (“‘Competitive Decision-Making’ means a person’s activities, association, or relationship with any of its 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.”).

¹⁰ *Id.*

¹¹ *Id.* Absent an objection, individuals that have filed Acknowledgments may review confidential information once the period for filing an objection has expired.

¹² Letter from Chérie R. Kiser, Counsel to GTL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed Aug. 22, 2014).

¹³ Letter from Chérie R. Kiser, Counsel to GTL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed Sept. 29, 2014).

¹⁴ GTL Objection at Attach.

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 4.

¹⁷ Response of CenturyLink, Inc. to Global Tel*Link Corporation Objection to Disclosure of Confidential Information, WC Docket No. 12-375 at 2 (filed Nov. 24, 2015) <http://apps.fcc.gov/ecfs/comment/view?id=60001316561> (CenturyLink Response). On November 5, 2015, the Commission released an Order in the ICS proceeding. See generally *2015 ICS Order*. CenturyLink explains that its outside counsel must have access to the confidential information in order to evaluate a potential petition for judicial review of the *2015 ICS Order*, which contains – and is based on – confidential information that has been redacted from the public version of the order. CenturyLink Response at 4.

III. DISCUSSION

5. For the reasons discussed below, we find that the record does not provide any grounds under the terms of the *Protective Order* for withholding from CenturyLink's outside counsel access to GTL's confidential information. Therefore, we deny GTL's Objection.

6. GTL does not raise any objections that are specific to CenturyLink's counsel. Rather, it argues that review of its information is not necessary to participate in this proceeding, either before the Commission or before the courts;¹⁸ that it has significant concerns about disclosing its confidential information to counsel;¹⁹ and that the Commission should follow the practice used in the prior ICS proceeding of only allowing confidential information to be seen by outside consultants.²⁰ As CenturyLink points out, however, the *Protective Order* explicitly permits outside counsel to obtain access to confidential information.²¹

7. We agree with CenturyLink that GTL's Objection amounts to a disagreement with the terms of the *Protective Order* and not a particular concern with CenturyLink's outside counsel.²² The objection procedure contained in the *Protective Order* does not, however, serve as a method to collaterally attack the propriety of the *Protective Order*.²³ Rather, its purpose is to allow entities whose confidential information may be disclosed to object to specific individuals on the ground that those persons are not eligible to review the requested information. Such objections are typically based on an argument that a potential Reviewing Party is engaged in competitive decision-making, at least with regard to the entity making the objection. Here, GTL raise no such allegation, and there is, therefore, no basis on which to sustain the Objection.

8. Because GTL's arguments all go to the merits of allowing its information to be reviewed pursuant to the *Protective Order*, we dismiss GTL's objection as untimely. GTL had an opportunity to raise concerns about the terms of the *Protective Order* when that order was adopted in 2013. In fact, GTL and others sought judicial review of the *2013 ICS Order*, but never sought judicial review or Commission review of the *Protective Order*. The time to seek review of the *Protective Order* has long since passed and we therefore dismiss the GTL Objection as untimely.²⁴

9. As an independent reason for rejecting the GTL Objection, we disagree with GTL's arguments on the merits. First, we agree that GTL's information may be confidential and commercially sensitive. That is not a reason to withhold it from review under a *Protective Order*, however; that is a reason to require a protective order in the first instance. Were the information not potentially confidential, it would be made available publicly, without restriction. Insofar as GTL is nonetheless

¹⁸ GTL Objection at 5.

¹⁹ *Id.* at 6.

²⁰ *Id.* at 6. In the prior ICS proceeding, GTL and six other ICS providers agreed among themselves to provide information to Don Wood, an industry consultant, who in 2008 prepared a joint report on behalf of the seven ICS providers, which was then filed with the Commission. *See 2013 ICS Order*, 28 FCC Rcd at 14112, para. 9 n.30.

²¹ CenturyLink Response at 2-3.

²² *See id.*

²³ *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 Nos. 15-149, Order, 30 FCC Rcd 10360, 10375, para. 27 (2015) (*Charter Protective Order*); *Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations, and AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket Nos. 14-57 and 14-90, Order, 29 FCC Rcd 13639, 13642, para. 9 (MB 2014).

²⁴ *See* 47 C.F.R. § 1.429(d) (Requiring that petitions for reconsideration be filed within 30 days from the date of public notice of the relevant order).

concerned that its information may be improperly disclosed,²⁵ the Commission has made clear that its protective orders sufficiently protect a party's confidential information,²⁶ and the *Protective Order* here does the same. We thus find GTL's concerns to be unfounded. Second, the information at issue is part of the record and is relevant to the Commission's decision in this rulemaking; it therefore may be reviewed pursuant to the *Protective Order*.²⁷ Moreover, denying access to the information threatens to hinder counsel from making arguments on appeal and would prevent counsel from even seeing a full copy of the Commission's *2015 ICS Order*, which contains – and is based on – confidential information that has been redacted from the public version of the order. Finally, the previous manner in which GTL and other ICS providers agreed to provide information to the Commission, independent of a formal Commission request and prior to the adoption of the *Protective Order*, which now governs the use of confidential information in this proceeding, is not relevant at this time. In the current rulemaking proceeding, the Commission required ICS providers to submit cost information and to provide access to that information in a manner that is consistent with the *Protective Order*. The fact that GTL may disagree with that decision is not a reason to deny access to a qualified Reviewing Party pursuant to the *Protective Order*.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), 5 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 155, 303(r), and 405(a), and sections 0.91, 0.201(d) and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.201, 0.291, 1.429(d) the Objection to Disclosure of Confidential Information filed by Global Tel*Link Corporation on October 16, 2015 IS DISMISSED, OR IN THE ALTERNATIVE, DENIED.

11. IT IS FURTHER ORDERED that Global Tel*Link Corporation MUST COMPLY with the terms of the *Protective Order* in this docket and provide outside counsel to CenturyLink, Inc. the requested confidential data no later than 11 business days after this Order is released.

12. 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

²⁵ See GTL Objection at 6.

²⁶ See *Charter Protective Order*, 30 FCC Rcd at 10365-72, paras. 12-22.

²⁷ *Id.*