



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 16-81

Released: January 21, 2016

**PARTIES ARE REMINDED THAT RESULTS OF ANALYSES OF THE HIGHLY
CONFIDENTIAL DATA FILED IN RESPONSE TO THE BUSINESS DATA SERVICES
(SPECIAL ACCESS) DATA COLLECTION ARE HIGHLY CONFIDENTIAL**

WC Docket No. 05-25; RM-10593

Following recent public statements and inquiries by several participants in this proceeding, we reiterate that the results of any analyses (including statistical descriptions) performed on the Confidential and Highly Confidential data submitted in response to the Commission's business data services data collection¹ are themselves Confidential or Highly Confidential, depending on the data from which they are derived. As such, pursuant to the *Data Collection Protective Order*, they may not be publicly disclosed but may be disclosed only to those persons who are eligible to review the information under the *Data Collection Protective Order*. If the results are contained in a filing with the Commission, they must be marked as Confidential or Highly Confidential; the filing must be made under seal; and the public version of the filing must redact the results.²

We also remind parties that they are not permitted to disclose information submitted as Confidential or Highly Confidential based on their own belief that the information is not, in fact, confidential. There is a procedure for parties to challenge the confidential designation of information, and unless and until the Commission rules in favor any challenge, the information must continue to be treated

¹ 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, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318, 16340, para. 52 (2012) (*Data Collection Order* or *Data Collection FNPRM*); *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, 11670, para. 1 (Wireline Comp. Bur. 2014) (*Order* and/or *Data Collection Protective Order*) (defining Data Collection).

² The *Order and Data Collection Protective Order* established a special Secure Data Enclave to store the Confidential and Highly Confidential Information collected pursuant to the business data services collection. It established special procedures for the storage and review of that information, and for the removal from the Special Data Enclave of the results of any analysis of that data. *Order*, 29 FCC Rcd at 11664, paras. 20-21. The *Order* emphasized that results of analyses performed on the data collected pursuant to the business data services collection "maintain their identity as Confidential Information, Highly Confidential Information, and/or Highly Confidential Data as those terms are defined in the Protective Order, and may not be disclosed except as provided by that order." *Id.* at 11664, para. 21. The *Data Collection Protective Order* further stated that "Parties filing comments or other filings in the special access rulemaking proceeding, WC Docket No. 05-25, 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" under seal. *Data Collection Protective Order*, 29 FCC Rcd at 11674, para. 10 (emphasis added).

as confidential.³ This restriction applies to the results of analyses of confidential information, including aggregations, statistical descriptions, etc., of confidential information and data. Parties who have obtained access to confidential information pursuant to the *Data Collection Protective Order* and the other protective orders adopted in this proceeding are not free to determine for themselves what information derived from that information is and is not “still” Confidential or Highly Confidential.⁴

Despite these restrictions, persons who have reviewed Confidential and Highly Confidential Information pursuant to the protective orders adopted in this proceeding may, in the course of advising their clients, “rely generally” on their examination of the information, provided that, in doing so, they do not disclose any Confidential or Highly Confidential Information.⁵ Consistent with this provision, the Commission has never interpreted its protective orders to prevent the public version of filings made at the Commission from containing general, qualitative descriptions or characterizations of Confidential or Highly Confidential Information. Thus, there is no Commission precedent viewing descriptions or characterizations such as “the majority,” “almost all,” “virtually none,” or “only a small number of,” or statements such as “This view is confirmed by the party’s own documents,” as violating a protective order’s prohibitions against the release of confidential information.

Finally, we remind those persons who have properly gained access to and are permitted to review Confidential and Highly Confidential Information pursuant to the *Data Collection Protective Order* and the other protective orders in this proceeding, that they may use that 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.”⁶ For further information, please contact Joel Rabinovitz, Office of General Counsel, at (202) 418-0689 or via email at Joel.Rabinovitz@fcc.gov.

- FCC -

³ *Id.* at 11671-72, para. 2. If the Commission agrees that the information is not confidential, the Submitting Party has the opportunity to seek a judicial stay before the information may be publicly released. *Cf.* 47 CFR §§ 0.459(g), 0.461(i).

⁴ While persons having access to information pursuant to the protective orders may not make their own determinations as to the confidentiality of other parties’ information, the Commission, of course, does make those determinations, either by request or on its own motion. *See Data Collection Protective Order*, 29 FCC Rcd at 11671-72, para. 2 (challenges to confidentiality designations); 47 CFR § 0.459(g) (denial of request for confidentiality); *see also, e.g.*, the Commission’s periodic Internet Access Services Reports, <https://www.fcc.gov/reports-research/reports/internet-access-services-reports/internet-access-services-reports>.

⁵ *Data Collection Protective Order*, 29 FCC Rcd at 11672, para. 14.

⁶ *Id.* at 11674, para. 8. *See also id.* at 11675, para. 12 (Reviewing Parties have the “obligation to ensure that Confidential Information and Highly Confidential Information are used only as provided in this Data Collection Protective Order”).