

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

In the Matter of	)	
	)	
Business Data Services in an Internet Protocol Environment	)	WC Docket No. 16-143
	)	
Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans	)	WC Docket No. 15-247
	)	
Special Access for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
	)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	RM-10593

**ORDER**

**Adopted: March 15, 2017**

**Released: March 15, 2017**

By the Associate Bureau Chief:

1. In this Order, the Wireline Competition Bureau (Bureau) denies the objection filed by NCTA – The Internet & Television Association (NCTA) to a request from the California Public Utilities Commission (CPUC) seeking access to Confidential and Highly Confidential data submitted in response to the data collection in the special access (business data services) rulemaking proceeding.

2. The Federal Communications Commission (Commission or FCC) initiated a data collection in December 2012 to inform its competitive analysis of the market for business data services (Collection).<sup>1</sup> Providers and purchasers of business data services (the Submitting Parties) were required to respond to the collection, pursuant to a *Data Collection Protective Order* establishing the process for designating, submitting and accessing the data submitted.<sup>2</sup> Parties seeking access to the submitted

<sup>1</sup> *Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318, 16319, para. 1 (2012) (*Data Collection Order*); Report and Order, 28 FCC Rcd 13189 (WCB 2013); Order on Reconsideration, 29 FCC Rcd 10899 (WCB 2014); Order, 29 FCC Rcd 14346 (WCB 2014).

<sup>2</sup> See *Data Collection Order*, 27 FCC Rcd at 16327, para. 20; *Special Access for Price Cap Local Exchange Carriers, AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order and Data Collection Protective Order, 29 FCC Rcd 11657 (WCB 2014) (*Data Collection Protective Order*); Order and Modified Data Collection Protective Order, 30 FCC Rcd 10027 (WCB 2015) (*Modified Data Collection Protective Order*); Order, 31 FCC Rcd 7104 (WCB 2016) (extending the protective orders adopted in the business data services (special access) rulemaking proceeding, WC Docket No. 05-25, to Confidential Information filed in the record in WC Docket No. 16-143). Earlier protective orders are the *Modified First Protective Order* and the *Second Protective Order*. 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*, Modified Protective Order, 25 FCC Rcd 15168 (WCB 2010) (*Modified First Protective Order*); Second Protective Order, 25 FCC Rcd 17725 (WCB 2010) (*Second Protective Order*).

Confidential and Highly Confidential data must file executed Acknowledgements of Confidentiality (Acknowledgements) agreeing to be bound by the terms of the applicable protective order; Submitting Parties are given an opportunity to object to the potential reviewing parties' access.<sup>3</sup>

3. The data collected pursuant to the *Data Collection Protective Order* is competitively and commercially sensitive, including rates charged to customers, revenues, expenditures, locations of facilities, and business strategies. Submitting Parties do not routinely make these data available to the public.<sup>4</sup> In addition to restricting access to the collected data, strict use constraints were adopted as part of the protective orders in this proceeding.<sup>5</sup> Parties granted access to the collected data are allowed to use them for the sole purpose of participating in this rulemaking proceeding, and are prohibited from using them for any purpose other than such participation.<sup>6</sup>

4. The CPUC filed Acknowledgements of Confidentiality on December 14, 2016 and January 5, 2017 on behalf of four CPUC staff members.<sup>7</sup> On January 9, 2017, the Bureau released a public notice announcing that the CPUC had filed signed Acknowledgements seeking access to the collected data pursuant to the *Data Collection Protective Order*, the *Modified First Protective Order* and the *Second Protective Order*.<sup>8</sup> NCTA filed an objection on January 17, 2017, challenging the CPUC's access to the data.<sup>9</sup> According to NCTA, "[t]he request for access cannot be granted because the CPUC has not been a Participant in the Business Data Services (BDS) proceeding, which is a prerequisite for access to Confidential or Highly Confidential Information under the Protective Orders issued by the Commission."<sup>10</sup> In any event, NCTA states, "even if the CPUC could be deemed to be a Participant based on some future intent to participate, the Commission should hold the CPUC request, and any similar request from any other prospective party, in abeyance until it is clear that further comments will be entertained in the proceeding."<sup>11</sup>

5. The CPUC filed a response to NCTA's objection on January 19, 2017, arguing that it should receive access to the collected data because it is a "Participant," as defined in the *Data Collection*

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<sup>3</sup> *Data Collection Protective Order*, 29 FCC Rcd at 11665, 11673, para. 23 & Appx. A at para. 5 (setting a five-day objection period); see also *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, 31 FCC Rcd 1922 (WCB 2016) (granting objections to individuals seeking access to Confidential and Highly Confidential data).

<sup>4</sup> *Data Collection Protective Order*, 29 FCC Rcd at 11658, para. 3.

<sup>5</sup> See *Modified Data Collection Protective Order*, 30 FCC Rcd at 10029, 10034-35, paras. 4, 16-17; see also *Wireline Competition Bureau Seeks Comment on Protective Order for Special Access Data Collection*, Public Notice, 28 FCC Rcd 9170, 9171 (WCB 2013); see also *Modified First Protective Order*, 25 FCC Rcd at 15171, para. 9; *Second Protective Order*, 25 FCC Rcd at 17728, para. 7 (describing use restrictions).

<sup>6</sup> *Modified Data Collection Protective Order*, 30 FCC Rcd at 10036, para. 20.

<sup>7</sup> Letter from Kimberly Lippi, Public Utilities Counsel, California Public Utilities Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 15-247, and 05-25 (filed Dec. 14, 2016) (attaching signed Acknowledgments of four CPUC staff members); Letter from Kimberly Lippi, Public Utilities Counsel, California Public Utilities Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 15-247, and 05-25 (filed Jan. 5, 2017) (attaching signed Acknowledgments of four CPUC staff members).

<sup>8</sup> *Additional Parties Seeking Access to Data and Information Filed in Response to the Special Access Data Collection*, Public Notice, DA 17-32 (WCB rel. Jan. 9, 2017).

<sup>9</sup> Letter from Steven F. Morris, Legal Department, NCTA – The Internet & Television Association, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 15-247, and 05-25 (filed Jan. 17, 2017) (NCTA Objection).

<sup>10</sup> *Id.* at 1.

<sup>11</sup> *Id.*

*Protective Order*.<sup>12</sup> According to the CPUC, “past participation in the proceeding is not a prerequisite for access to this information” while noting the “dockets remain open . . . and many question[s] posed by the Commission remain unanswered.”<sup>13</sup> Access is necessary, the CPUC states, in order for it to “review and analyze the material, and be in a position to provide well-informed comments at the appropriate time (including any proposal to close the proceeding).”<sup>14</sup>

6. We evaluate the CPUC’s request and NCTA’s objection consistent with the protective orders of this proceeding, recognizing the potential harms identified by the Commission that can be caused by an unauthorized disclosure of Confidential and Highly Confidential information.<sup>15</sup> A “Participant,” as that term is defined in the *Data Collection Protective Order*, is “a person or entity that has filed, or has a good faith intention to file, material comments in this proceeding.”<sup>16</sup> When executing the Acknowledgements each individual seeking access on behalf of a participant certifies that he or she will observe the restrictions and obligations of the protective orders of this proceeding, which require the participant’s good faith intention to participate in the proceeding in order to gain access to the collected data.<sup>17</sup> In addition to the CPUC’s Acknowledgement certifications, the CPUC made similar statements as part of its reply to NCTA’s objection, further affirming its intent to participate in this proceeding.<sup>18</sup> We, therefore, find the CPUC qualifies as a Participant, as that term is defined, and eligible to gain access to the collected data.

7. NCTA has not questioned the CPUC’s ability to conform to the requirements of the protective orders of this proceeding, other than the CPUC’s ability to participate if the proceeding were closed. As the proceeding remains open, and the data remain available, the CPUC has an opportunity to participate. Use of the data contrary to the requirements of relevant protective orders is a concern of the Commission in all cases, however, and a reasonable concern raised by NCTA in this instance.<sup>19</sup> The individuals seeking access on CPUC’s behalf certify that they will use the collected Confidential and Highly Confidential data “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.”<sup>20</sup> NCTA does not question these certifications. We accept these certifications and reject NCTA’s objection.

8. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), sections 0.91, and 0.291 of

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<sup>12</sup> Letter from Kimberly Lippi, Public Utilities Counsel, California Public Utilities Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 15-247, and 05-25 at 2 (filed Jan. 19, 2017) (CPUC Response).

<sup>13</sup> *Id.* at 1.

<sup>14</sup> *Id.* at 1-2.

<sup>15</sup> See generally *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, 30 FCC Rcd 10360, 10367, para. 16 (2015).

<sup>16</sup> *Data Collection Protective Order*, 29 FCC Rcd at 11671, Attach. A at para. 1.

<sup>17</sup> *Modified Data Collection Protective Order*, 30 FCC Rcd at 10036, para. 20 (“by virtue of executing the Acknowledgement, each potential Reviewing Party certifies it is seeking access to the data solely to participate in the special access proceeding”).

<sup>18</sup> CPUC Response at 1-2.

<sup>19</sup> NCTA Objection at 2 n.6 (quoting *Data Collection Protective Order*, 29 FCC Rcd at 1166-61, para. 8; *Modified First Protective Order*, 25 FCC Rcd at 15171, para. 9; *Second Protective Order*, 25 FCC Rcd at 17728, para. 7).

<sup>20</sup> *Data Collection Protective Order*, 29 FCC Rcd at 11672, para. 14.

the Commission's rules, 47 CFR §§ 0.91, and 0.291, and the authority delegated to the Bureau in the *Data Collection Order*, 27 FCC Rcd at 16340, para. 52, that the objection filed by NCTA – The Internet & Television Association on January 17, 2017 IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Elizabeth A. Hone  
Associate Bureau Chief  
Wireline Competition Bureau