

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

In the Matter of )
Telecommunications Relay Services and Speech- ) CG Docket No. 03-123
to-Speech Services for Individuals with Hearing )
and Speech Disabilities )
Structure and Practices of the Video Relay Service ) CG Docket No. 10-51
Program )
Misuse of Internet Protocol (IP) Captioned ) CG Docket No. 13-24
Telephone Service )

ORDER AND THIRD PROTECTIVE ORDER

Adopted: July 20, 2018

Released: July 20, 2018

By the Chief, Consumer and Governmental Affairs Bureau

I. INTRODUCTION

1. The Consumer and Governmental Affairs Bureau (Bureau) of the Federal Communications Commission (Commission), for the reasons set forth below, hereby adopts the attached Third Protective Order in the above-captioned dockets. The Third Protective Order applies to the submission and review of confidential information in response to Commission requests for public comment in these dockets. It does not apply to the submission and review of any confidential information that may be submitted in reports that are required by the rules adopted in these dockets.

II. BACKGROUND

2. On May 4, 2018, the TRS Fund administrator submitted the 2018 TRS Rate Report proposing provider compensation rates, funding requirement, and carrier contribution factor for the period from July 1, 2018, through June 30, 2019 (2018-19 Fund year), for TRS compensated by the Interstate TRS Fund (Fund). The administrator's filing included a request for confidential treatment of an exhibit detailing company-specific cost and demand data reported to the TRS Fund administrator by Internet Protocol Captioned Telephone Service (IP CTS) providers. On May 14, 2018, the Commission released

1 See, e.g., 47 CFR § 64.606(g) (requiring Internet-based TRS providers to submit annual reports demonstrating compliance with section 64.604).

2 See Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51 (filed May 4, 2018) (2018 TRS Rate Filing).

3 Letter from David Rolka, President, Rolka Loube Associates, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 and 10-51 at 1 (filed May 4, 2018) (requesting confidential treatment of Exhibit 1-3.1 of the 2018 TRS Rate Filing). The TRS Fund administrator subsequently submitted a revised Exhibit 1-3 and a request for (continued....)

a public notice stating that it intends to place the confidential version of the 2018 TRS Rate Report into the record and to designate the confidential version of Exhibit 1-3.1 (Highly Confidential Rate Report Exhibit) as Highly Confidential Information subject to the *Second Protective Order* previously issued in CG Docket Nos. 03-123 and 10-51.<sup>4</sup>

3. Hamilton Relay, Inc. (Hamilton) filed an opposition in response to the *Confidential Data Public Notice*, objecting that the *Second Protective Order* affords rights to protect the Confidential Information and Highly Confidential Information only to the TRS Fund administrator, as the Submitting Party, and does not expressly afford the same rights to the IP CTS providers who supplied the company-specific data.<sup>5</sup> Hamilton requests that a new protective order or modification be issued affording IP CTS providers third-party rights equivalent to Submitting Parties under the *Second Protective Order* and that the restriction on “additional copying” of the *Second Protective Order* be applied to the Highly Confidential Rate Report Exhibit.<sup>6</sup>

### III. DISCUSSION

4. To address Hamilton’s concerns and remove any uncertainty regarding the protection of third-party information, we adopt the attached Third Protective Order, which revises the protective orders previously adopted in CG Docket Nos. 03-123 and 10-51.<sup>7</sup> The Third Protective Order will also apply to materials filed in CG Docket No. 13-24. The purpose of these protective orders is to allow the Commission to consider confidential information filed in these proceedings, subject to procedures that (i) limit access such information and (ii) more strictly limit access to certain particularly competitively sensitive information, which, if released to competitors or those with whom the Submitting Party or a Third-Party Interest Holder does business, would allow those persons to gain a significant competitive advantage or an advantage in negotiations. While we are mindful of the sensitive nature of some of the information involved, we are also mindful of the general right of the public, and our desire for the public, to participate in this proceeding in a meaningful way. We reaffirm that allowing limited access to competitively sensitive materials pursuant to the procedures set forth in this Protective Order allows the public (through appropriate representatives) to fully participate in these proceedings while also protecting competitively sensitive information from improper disclosure and use. Accordingly, sensibly balancing the public and private interests involved, we conclude that these procedures serve the public interest and adopting them “best conduce[s] to the proper dispatch of the Commission’s business and to the ends of justice.”<sup>8</sup>

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confidential treatment of revised Exhibit 1-3.1 of the 2018 TRS Rate Filing. See Letter from David Rolka, President, Rolka Loube Associates, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 and 10-51, at 1 (filed May 25, 2018).

<sup>4</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Individual IP CTS Provider Cost and Demand Data to be Placed in the Record Subject to Second Protective Order*, Public Notice, DA 18-495, at 1 (May 14, 2018) (*Confidential Data Public Notice*); see also *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Protective Order, 27 FCC Rcd 5914 (CGB 2012) (*Second Protective Order*).

<sup>5</sup> Opposition of Hamilton Relay, Inc., CG Docket Nos. 03-123 and 10-51, at 2, 4-5 (filed May 24, 2018) (Hamilton Opposition).

<sup>6</sup> *Id.* at 2, 4-6.

<sup>7</sup> See, e.g., *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Protective Order, 27 FCC Rcd 2557 (CGB 2012) (*First Protective Order*); *Second Protective Order*, 27 FCC Rcd 5914.

<sup>8</sup> 47 U.S.C. § 154(j).

5. This Third Protective Order supersedes the *First Protective Order* and the *Second Protective Order*, previously issued in these proceedings. This Third Protective Order does not limit the proprietary or confidential treatment of documents and other materials already submitted under the *Protective Order* or *Second Protective Order*. Further, parties who previously followed procedures to review materials under the *Protective Order* or *Second Protective Order* need not take any additional steps as a result of our adoption of the Third Protective Order.

6. To address the concern raised by Hamilton, the Third Protective Order expressly defines the rights of Third-Party Interest Holders.<sup>9</sup> A Third-Party Interest Holder, defined as any person who is not a Submitting Party and who has a confidentiality interest in Confidential Information or Highly Confidential Information that is submitted into the record,<sup>10</sup> is expressly afforded the same notice and objection rights provided to Submitting Parties in response to requests to obtain access to Confidential Information and Highly Confidential Information.<sup>11</sup> For example, where the TRS Fund administrator files Confidential Information or Highly Confidential Information collected from a TRS provider (or derived from information collected from a TRS provider), the TRS provider is a Third-Party Interest Holder.

7. Having expressly protected IP CTS providers' third-party interests by adopting the Third Protective Order, we find it appropriate to place the Highly Confidential Rate Report Exhibit in the record of CG Docket Nos. 03-123 and 13-24. This document, which includes Fund Year 2018-19 estimates for minutes, revenue, revenue requirements, profit, expenses, and the operating margin for each IP CTS provider, will be designated as Highly Confidential Information under the Third Protective Order and will be available for review only by outside counsel and outside consultants in accordance with the terms of the Third Protective Order.<sup>12</sup> For purposes of reviewing this document, the Submitting Party is the Bureau and the Submitting Party contact person on whom copies of Acknowledgments should be served is Michael Scott, [michael.scott@fcc.gov](mailto:michael.scott@fcc.gov).

8. To address Hamilton's specific objection to additional copying, we also apply, in this instance, the additional copying restriction provided for in the Third Protective Order to the Highly Confidential Rate Report Exhibit.<sup>13</sup> Accordingly, the legend "Additional Copying Restricted" shall be added to the document and, subject to the provisions for access to information in electronic format in paragraph 9 of the Third Protective Order, each Outside Firm shall receive only one copy of the document and no more than two additional copies, in any form, shall be made.<sup>14</sup> Further the Outside Firms hired by any individual party to this proceeding shall collectively hold no more than 15 copies of the document.<sup>15</sup> 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 and any known Third-Party Interest Holders, which will be granted only for cause.<sup>16</sup>

9. Because the Third Protective Order contains new language that explicitly accords rights to third parties, we will allow additional time for a Submitting Party or Third-Party Interest Holder to object to acknowledgments received from parties seeking access to the Highly Confidential Rate Report Exhibit. Specifically, we will allow five business days after release of this Order for a Submitting Party or Third-Party Interest Holder to file and serve an objection to any acknowledgments previously received

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<sup>9</sup> *Infra* Appx. A, Third Protective Order, at paras. 1, 3-7, 11, 18-19.

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

<sup>11</sup> *Compare* Appx. A with *Second Protective Order*, 27 FCC Rcd 5914.

<sup>12</sup> *See infra* Appx. C, Acknowledgment of Confidentiality.

<sup>13</sup> *See* Hamilton Opposition at 5-6 (requesting application of the copying restriction in the *Second Protective Order*).

<sup>14</sup> Appx. A at para. 5.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

in response to the *Confidential Data Public Notice*. Similarly, for acknowledgments received on or after the release date of this Order from parties seeking access to the Highly Confidential Rate Report Exhibit, objections may be filed and served within five business days after receipt of the acknowledgment (rather than three business days as provided in the attached Third Protective Order).<sup>17</sup> These extended time periods apply only to acknowledgments that seek access to the Highly Confidential Rate Report Exhibit.

#### IV. ORDERING CLAUSE

10. Accordingly, IT IS ORDERED that pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under sections 0.141 and 0.361 of the Commission's rules, 47 CFR §§ 0.141, 0.361, the Third Protective Order is ADOPTED and SHALL BE EFFECTIVE upon its adoption.

11. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Patrick Webre  
Chief  
Consumer and Governmental Affairs Bureau

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<sup>17</sup> *Id.* at para. 7.

## APPENDIX A

## THIRD PROTECTIVE ORDER

## CG Docket Nos. 03-123, 10-51, and 13-24

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

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

“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 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 or a Third Party Interest Holder claims constitutes some of its most sensitive business data which, if released to competitors or those with whom the Submitting Party or Third Party Interest Holder does business, would allow those persons to gain a significant advantage in the marketplace or in negotiations; and that is described in Appendix B to this Protective Order, as the same may be amended from time to time.

“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, an application, petition to deny, material comments, or other documents 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 6 or 10 of this 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 CG DOCKET NOS. 13-24, 10-51, and 03-123 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION,” unless the Commission determines, *sua sponte* or by request pursuant to paragraph 3 of this 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 CG DOCKET NOS. 13-24, 10-51, and 03-123 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION,” unless the Commission determines, *sua sponte* or by request pursuant to paragraph 3 of this 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.

“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 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 B. If a Submitting Party believes that the descriptions contained in Appendix B should be revised, the Submitting Party shall submit a request to amend Appendix B along with a supporting explanation. To the extent the request is granted, an amended Appendix B 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, who, based on the Submitting Party’s representations, will make a preliminary determination whether the proposed designation meets the requirements set forth in this Protective Order. By designating documents and information as Confidential or Highly Confidential under this Protective

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<sup>1</sup> 47 CFR §§ 0.459, 0.461.

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>

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 the Commission's 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 CG DOCKET NOS. 13-24, 10-51, AND 03-123 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION" or "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN CG DOCKET NOS. 13-24, 10-51, AND 03-123 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 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 Eliot Greenwald, [eliot.greenwald@fcc.gov](mailto:eliot.greenwald@fcc.gov), (202) 418-2235, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, and electronic copies of each Stamped Confidential Document or Stamped Highly Confidential Document and the accompanying cover letter shall be sent by email to [TRSReports@fcc.gov](mailto:TRSReports@fcc.gov) and [eliot.greenwald@fcc.gov](mailto:eliot.greenwald@fcc.gov).

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<sup>2</sup> *Id.* § 0.459(a).

<sup>3</sup> *Cf. id.* §§ 0.459(g), 0.461(i).

<sup>4</sup> *See id.* §§ 0.459(h), 0.461.

<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.

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. Further, the Outside Firms hired by any individual party to this proceeding shall collectively hold no more than 15 copies of the document. 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 and any known Third-Party Interest Holders, 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 Protective Order shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this Protective Order, and file the Acknowledgment with the 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 Submitting Party and each known Third-Party Interest Holder 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 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 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 any such 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

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<sup>6</sup> This paragraph describes the procedure for objecting to a specific individual being permitted to review Confidential Information and Highly Confidential Information pursuant to this Protective Order. If a party timely requests that certain information be entirely withheld from review by *any* individual under the Protective Order, we will not require that the information at issue be disclosed under the 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.

<sup>7</sup> An objection ordinarily will first be ruled upon by the Consumer and Governmental Affairs 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 Information 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

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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 6. 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 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. The results of any analysis may be stored on a mobile data storage medium, which, if it contains Highly Confidential Information, shall be treated as a Stamped Highly Confidential Document and so marked. All files containing Highly Confidential Information shall be deleted from the computer no later than two weeks after the 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 Information and Highly Confidential Information.* Persons obtaining access to Confidential Information and Highly Confidential Information under this 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 Information or Highly Confidential Information in its orders in this proceeding, it will do so by redacting any Confidential Information 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 Information or Highly Confidential Information under this 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.

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of the Commission's Order; if a motion for stay is not filed within that time, the Confidential Information or Highly Confidential Information shall be made available to the Reviewing Party.

12. *Filings with the Commission.* A party making a filing in this proceeding that contains Confidential Information or Highly Confidential Information shall submit to the Secretary's Office one copy of the filing containing the Confidential Information 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 CG DOCKET NOS. 13-24, 10-51, AND 03-123 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 ORDER IN CG DOCKET NOS. 13-24, 10-51 AND 03-123 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 Information 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 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 Eliot Greenwald, [eliot.greenwald@fcc.gov](mailto:eliot.greenwald@fcc.gov), (202) 418-2235, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, and electronic copies of each Stamped Confidential Document or Stamped Highly Confidential Document and the accompanying cover letter shall be sent by email to [TRSReports@fcc.gov](mailto:TRSReports@fcc.gov) and [eliot.greenwald@fcc.gov](mailto:eliot.greenwald@fcc.gov). Parties should not provide courtesy copies of pleadings containing Confidential Information or Highly Confidential Information to Commission staff unless the staff 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 Protective Order, Confidential Information and Highly Confidential Information shall not be disclosed further.

14. *Protection of Stamped Confidential Documents and Stamped Highly Confidential Documents and 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 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 Protective Order.

15. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential Information or Highly Confidential Information outside the terms of this Protective Order, such a request will be treated in accordance with sections 0.442 and 0.461 of the Commission's rules.<sup>9</sup>

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<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.

<sup>9</sup> 47 CFR §§ 0.442, 0.461.

16. *Client Consultation.* Nothing in this 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 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 Information 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 Information or Highly Confidential Information. Reviewing Parties, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Confidential Information or Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential Information 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 or Stamped Highly Confidential Documents or Confidential Information or Highly Confidential Information that a party has obtained under the terms of this 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 or Stamped Highly Confidential Document or Confidential Information or Highly Confidential Information.

19. *Violations of the Protective Order.* Should a Reviewing Party violate any of the terms of this Protective Order, such Reviewing Party shall immediately convey that fact to the Commission and to the relevant Submitting Parties and known Third-Party Interest Holders. Further, should such violation consist of improper disclosure of Confidential Information 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 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 Information or Highly Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party or any Third-Party Interest Holder at law or in equity against any person using Confidential Information or Highly Confidential Information in a manner not authorized by this Protective Order.

20. *Termination of Proceeding.* The provisions of this 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 Information 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 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 Information or Highly Confidential Information and one physical copy (which shall not be copied or converted to electronic format) of any FCC order containing Confidential Information 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. § 1746 and is subject to 18 U.S.C. § 1001. The provisions of this paragraph regarding retention of Stamped Confidential Documents and Stamped Highly Confidential Documents and copies of the same and Confidential Information and Highly Confidential Information shall not be construed to apply to the Commission or its staff.

21. *Questions.* Questions concerning this Protective Order should be addressed to Eliot Greenwald, [eliot.greenwald@fcc.gov](mailto:eliot.greenwald@fcc.gov), (202) 418-2235, Consumer and Governmental Affairs Bureau.

**APPENDIX B****Highly Confidential Information and Documents**

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

1. 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, loan agreements and other debt instruments, agreements relating to potential mergers and acquisitions or to technology licensing, and comparably sensitive contracts).
2. Information that discusses in detail current or future plans to compete for a customer or specific groups or types of customers, including specific pricing or contract proposals, pricing strategies, product strategies, advertising or marketing strategies, business plans, procurement strategies, technology implementation or deployment plans and strategies, plans for handling acquired customers, and human resources and staffing strategies.
3. Granular information about a Submitting Party's past, current or future costs, revenues, marginal revenues, profits, dividends, market share, or customers.
4. Granular information describing or illustrating how a Submitting Party analyzes its competitors, including sources and methods used in these analyses, any limits on use of these analyses or data, and how such analyses or data are used.
5. Information that provides numbers of customers or devices when broken down by sub-national geography, customer type, or levels or patterns of usage, or when in a time series.
6. Information that discusses in detail the number or anticipated changes in the number of customers or amount of traffic, including levels or patterns of usage, churn rate data, detailed information about why customers discontinue service, numbering assignments, and customer complaints.
7. Detailed or granular information about specific end point equipment or network facilities and operations, including engineering information and information related to equipment purchases or licensing fees.
8. Granular data and test results regarding a provider's technical and service performance.
9. Granular information regarding Communications Assistant training.
10. Information estimating the number of potential users of a specific type of TRS, and the number of potential customers who lack broadband service or access to broadband service, excluding any data that is publicly available, but not excluding information derived therefrom.

APPENDIX C

Acknowledgment of Confidentiality

CG Docket Nos. 13-24, 10-51, and 03-123

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

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

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

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

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

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

\_\_\_\_\_  
[Name]  
[Position]  
[Firm]  
[Telephone]