



PUBLIC NOTICE

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ANNOUNCING PROCEDURES FOR OBTAINING CONFIDENTIAL INFORMATION FOR 2019 ANNUAL ACCESS CHARGE TARIFF FILINGS

WC Docket No. 19-47

This Public Notice describes the process necessary for carriers to obtain access to confidential information provided with the 2019 annual access charge tariff filing in support of a carrier's tariff review plan (TRP).

Based on our previous experience, we expect that carriers will be requesting confidential treatment for certain data filed with the 2019 annual access charge tariff filing.¹ We therefore provide guidance to carriers regarding the procedure they must follow in requesting access to confidential information filed with a streamlined tariff.

In the *Tariff Streamlining Order*,² the Commission adopted a standard protective order for purposes of tariff review for tariffs filed pursuant to section 204(a)(3) of the Communications Act of 1934, as amended.³ Carriers seeking access to confidential information filed in this year's annual access charge tariff filing must comply with the protective order contained in the *Tariff Streamlining Order*, as updated and modified herein.⁴ Because there will be limited time for review before annual access tariffs become effective, we suggest that carriers complete the necessary declaration ahead of time to expedite obtaining and reviewing confidential information. We provide the protective order and declaration as Attachment A to this Public Notice.

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¹ See *Material to be Filed in Support of 2019 Annual Access Tariff Filings*, WC Docket No. 19-47, Order, DA 19-313 (WCB May 1, 2019).

² Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, Report and Order, 12 FCC Rcd 2170 (1997) (*Tariff Streamlining Order*).

³ *Id.* at 2210-16, paras. 87-95. See 47 U.S.C. § 204(a)(3).

⁴ *Tariff Streamlining Order*, 12 FCC Rcd at 2239-45, Appx. B.

ATTACHMENT A

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

In the Matter of

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Material to be Filed in Support of
2019 Annual Access Tariff Filings

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WC Docket No. 19-47

PROTECTIVE ORDER

This Protective Order is intended to facilitate and expedite the review of documents containing trade secrets and commercial or financial information that is privileged or confidential obtained from a Submitting Party. This Protective Order governs the manner in which “Confidential Information,” as that term is defined herein, is to be treated. The Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 CFR § 0.442.

1. Definitions.

- a. Authorized Representative. “Authorized Representative” shall have the meaning set forth in Paragraph seven.
- b. Commission. “Commission” means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.
- c. Confidential Information. “Confidential Information” means: (i) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which 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. Confidential Information includes additional copies of Confidential Information or any notes or other information derived from Confidential Information.
- d. Declaration. “Declaration” means the Appendix to this Protective Order.
- e. Reviewing Party. “Reviewing Party” means a person or entity participating in this proceeding or considering in good faith filing a document in this proceeding.
- f. Submitting Party. “Submitting Party” means a person or entity that seeks confidential treatment of Confidential Information pursuant to this Protective Order.

- g. Third-Party Interest Holder. “Third-Party Interest Holder” means a person who is not a Submitting Party who has a confidentiality interest in Confidential Information submitted pursuant to this Protective Order.
2. Claim of Confidentiality. The Submitting Party may designate information as “Confidential Information” consistent with the definition of that term in Paragraph 1 of this Protective Order. By designating documents and information as Confidential under this 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.⁵ The Commission may, *sua sponte* or upon petition, pursuant to 47 CFR §§ 0.459 & 0.461, determine that all or part of the information claimed as “Confidential Information” is not entitled to such treatment.
3. Challenge to Designation. Any person wishing to challenge the designation of a document, portion of a document or information as 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. 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.⁶ 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.⁷
4. Procedures for Claiming Information is Confidential. Confidential Information submitted to the Commission shall be filed under seal and shall bear on the front page in bold print: “CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION - DO NOT RELEASE.” Confidential Information shall be segregated by the Submitting Party from all non-confidential information submitted to the Commission. To the extent a document contains both Confidential Information and non-Confidential Information, the Submitting Party shall designate the specific portions of the document claimed to contain Confidential Information and shall also submit a redacted version not containing Confidential Information.
5. Access to Confidential Information. Confidential Information shall be made available only to Commission staff, Commission consultants and counsel to the Reviewing Parties, or if a Reviewing Party has no counsel, a person designated by the Reviewing Party, and as provided pursuant to paragraph 7. Before counsel to a Reviewing Party or such other designated person designated by the Reviewing Party may obtain access to Confidential Information, counsel, or such other designated person, must execute the appended Declaration. Consultants under contract to the Commission may obtain access to Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement or if they execute the appended Declaration.
6. Counsel to a Reviewing Party or such other person designated pursuant to Paragraph 5 may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of paragraph 7 of this Protective Order only after advising such

⁵ See 47 CFR § 0.459(a).

⁶ Cf. 47 CFR §§ 0.459(g), 0.461(i).

⁷ See 47 CFR §§ 0.459(h), 0.461.

Authorized Representatives of the terms and obligations of the Protective Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the appended Declaration. This Protective Order does not restrict a Submitting Party or its Counsel from disclosing or reviewing the Submitting Party's own Confidential Information.

7. Authorized Representatives shall be limited to:
 - a. Counsel for the Reviewing Parties to this proceeding, including in-house counsel actively engaged in the conduct of this proceeding and their associated attorneys, paralegals, clerical staff and other employees, to the extent reasonably necessary to render professional services in this proceeding;
 - b. Specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding, except that disclosure to persons in a position to use this information for competitive commercial or business purposes shall be prohibited; and
 - c. Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper.
8. Filing of Declaration. Counsel for Reviewing Parties shall provide to the Submitting Party and the Commission a copy of the appended Declaration for each Authorized Representative within five (5) business days after the appended Declaration is executed, or by any other deadline that may be prescribed by the Commission.
9. Procedure for Objecting to the Disclosure of Confidential Information to a Potential Reviewing Party.⁸ Each Submitting Party and Third-Party Interest Holder shall have an opportunity to object to the disclosure of its 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 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, 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 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

⁸ This paragraph describes the procedure for objecting to a specific individual being permitted to review 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.

objection shall not have access to the relevant Confidential Information.⁹ 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 by the Reviewing Party until the objection is resolved.

10. Inspection of Confidential Information. Confidential Information shall be maintained by a Submitting Party for inspection at two or more locations, at least one of which shall be in Washington, D.C. Inspection shall be carried out by Authorized Representatives upon reasonable notice, not to exceed one business day during normal business hours.
11. Copies of Confidential Information. The Submitting Party shall provide a copy of the Confidential Material to Authorized Representatives upon request and may charge a reasonable copying fee not to exceed twenty-five cents per page. Authorized Representatives may make additional copies of Confidential Information but only to the extent required and solely for the preparation and use in this proceeding, Authorized Representatives must maintain a written record of any additional copies made and provide this record to the Submitting Party upon reasonable request. The original copy and all other copies of the Confidential Information shall remain in the care and control of Authorized Representatives at all times. Authorized Representatives having custody of any Confidential Information shall keep the documents properly secured at all times.
12. Use of Confidential Information. Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than for use in this proceeding (including any subsequent administrative or judicial review), shall not be used for competitive business purposes, and shall not be used or disclosed except in accordance with this Protective Order or with the prior written consent of the Submitting Party. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents.
13. Pleadings Using Confidential Information. Submitting Parties and Reviewing Parties may, in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:
 - a. Any portions of the pleadings that contain or disclose Confidential Information must be filed under seal;
 - b. The portions containing or disclosing Confidential Information must be covered by a separate letter referencing this Protective Order;
 - c. Each page of any Party's filing that contains or discloses Confidential Information subject to this Protective Order must be clearly marked: "Confidential Information included pursuant to Protective Order, WC Docket No. 19-47;" and

⁹ An objection ordinarily will first be ruled upon by the Wireline Competition 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 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 Information shall be made available to the Reviewing Party.

- d. The confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission, the Submitting Party, and those Reviewing Parties that have signed the appended Declaration. Such confidential portions shall be served under seal, and shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party and an opportunity to comment on such proposed disclosure). A Submitting Party or a Reviewing Party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. A Submitting Party or a Reviewing Party may provide courtesy copies of pleadings containing Confidential Information to Commission staff so long as the notation required by subsection c. of this paragraph is not removed.
- 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 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 Confidential Information.
- 15. Violations of Protective Order. Should a Reviewing Party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, it shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure or use of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The Violating Party shall also immediately notify the Commission and the Submitting Party, in writing, of the identity of each party known or reasonably suspected to have obtained the Confidential Information through any such 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 attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to 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 at law or equity against any party using Confidential Information in a manner not authorized by this Protective Order.
- 16. Termination of Proceeding. Within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall destroy or return to the Submitting Party all Confidential Information as well as all copies and derivative materials made, and shall certify in a writing served on the Commission and the Submitting Party that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel to a Reviewing Party may retain two copies of pleadings submitted on behalf of the Reviewing Party. Any Confidential Information contained in any copies of pleadings retained by counsel to a Reviewing Party or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with paragraphs 11 and 12 of this Protective Order unless such Confidential Information is released from the restrictions of this Protective Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

17. No Waiver of Confidentiality. Disclosure of Confidential Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information shall not be deemed a waiver of the privilege.
18. Additional Rights Preserved. The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary, or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Information.
19. Effect of Protective Order. This Protective Order constitutes an order of the Commission and an agreement between the Reviewing Party, executing the appended Declaration, and the Submitting Party.
20. Authority. This Protective Order is issued pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), and 47 CFR § 0.457(d).

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

APPENDIX TO PROTECTIVE ORDER

DECLARATION

In the Matter of)
)
Material to be Filed in Support of) WC Docket No. 19-47
2019 Annual Access Tariff Filings)

I, _____, hereby declare under penalty of perjury that I have read the Protective Order that has been entered by the Commission in this proceeding, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceedings in this matter. I acknowledge that it is my obligation to ensure that there is no disclosure of Confidential Information in my possession or in the possession of those who work for me, except as provided in the Protective Order. I certify that I have verified that there are procedures in place at my firm or office to prevent the unauthorized disclosure of Confidential Information. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement with the Submitting Party.

(signed) _____

(printed name) _____

(representing)

(title)

(employer)

(address)

(phone)

(date)