

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

In the Matter of )
Establishing a 5G Fund for Rural America ) GN Docket No. 20-32

PROTECTIVE ORDER

Adopted: May 1, 2020

Released: May 1, 2020

By the Chiefs, Office of Economics and Analytics and Wireline Competition Bureau:

1. In connection with the Commission’s consideration of a proposed adjustment factor for the 5G Fund, Commission staff anticipate utilizing two datasets containing non-public information that will be placed in the record of this proceeding: (1) aggregated and anonymized county-level cell site location counts for AT&T Services, Inc., Verizon Communications, Sprint Corporation, and T-Mobile US, Inc., derived from their responses to Question II.E.2. of the Business Data Services Data Collection (BDS Cell Site Confidential Information), and (2) anonymized subscriber counts at the Cellular Market Area (CMA) level for carriers engaged in the provision of wireless telecommunications services (Wireless Telecommunications Carriers), derived from the Number Resource Utilization Forecast reports filed by those carriers. We anticipate that these data will assist Commission staff in estimating appropriate adjustment factor values. We also anticipate that parties participating in the proceeding as it relates to the development of an adjustment factor for the 5G Fund may seek to review these data.

2. The Commission previously recognized the competitive sensitivity of the information submitted in the Business Data Services Collection and permitted cell site location information submitted in response to Question II.E.2 to be viewed only by outside experts and outside attorneys who were not involved in the competitive decision-making processes of their clients, subject to the provisions of a protective order. Similarly, the Commission has recognized that disaggregated, carrier-specific forecast and utilization data should be treated as confidential and should be exempt from general public disclosure under 5 U.S.C. § 552(b)(4). While we are mindful of the sensitive nature of both sets of information, we are also mindful of the right of the public to participate in this proceeding in a meaningful way, and therefore these datasets, even though containing anonymized data, will not be available for review except

1 See Establishing a 5G Fund for Rural America, GN Docket No. 20-30, Notice of Proposed Rulemaking and Order, FCC 20-52 (Apr. 23, 2020) (5G Fund NPRM and Order).

2 The BDS Data Collection was undertaken in support of a one-time, multi-faceted market analysis to obtain a more accurate picture of competition for special access services. See Special Access for Price Cap Local Exchange Carriers et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318, 16345-49, 16360, paras. 66-71 & App. A (2012); Special Access for Price Cap Local Exchange Carriers et al., Report and Order, 28 FCC Rcd 13189 (WCB 2013); Special Access for Price Cap Local Exchange Carriers et al., Order on Reconsideration, 29 FCC Rcd 10899 (WCB 2014).

3 See 47 CFR §§ 1.907, 52.5.

4 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, Order and Data Collection Protective Order, 29 FCC Rcd 11657, 11677-78, App. B (2014) (BDS Data Collection Protective Order).

5 Numbering Report and Order, 15 FCC Rcd at 7607, para. 78.

pursuant to the terms of this Protective Order: we will make such information available to representatives of parties participating or intending to participate in this proceeding as it relates to the development of an adjustment factor for the 5G Fund, but will limit such access to the parties' Outside Counsel and Outside Consultants whom they retain to assist them in this proceeding, and those Outside Counsels' and Outside Consultants' employees. We also find that access to the BDS Cell Site Confidential Information, because the data is aggregated at the county level and anonymized, poses less risk of competitive harm to the companies owning such data than access to the location-specific data that was available in the Business Data Services proceeding and, therefore, that the additional protections that were imposed in that proceeding (above and beyond those in our ordinary protective orders)<sup>6</sup> are not necessary here. We conclude that the procedures we adopt in this Protective Order give appropriate access to the public while protecting particularly competitively sensitive information from improper disclosure, and that the procedures we adopt thereby serve the public interest.<sup>7</sup>

3. *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 A hereto.

“Adjustment Factor Confidential Information” means both the BDS Cell Site Confidential Information and the NRUF CMA Data, and any information derived from the data that is not otherwise available from publicly available sources.

“BDS Cell Site Confidential Information” means the cell site location information submitted in response to Question II.E.2. of the BDS Data Collection, aggregated to the county level, as placed into the record in this proceeding, and any information derived from the data that is not otherwise available from publicly available sources.

“Competitive Decision-Making” means a person's activities, association, or relationship with any of his or her clients that involve 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 a Wireless Telecommunications Carrier.

“NRUF CMA Data” means the subscriber information at the Cellular Market Area (CMA) level derived from NRUF reports and LNP data, as placed into the record in this proceeding, and any information derived from the data that is not otherwise available from publicly available sources.

“Outside Counsel” means the attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, retained by a Participant provided that such attorneys are not involved in Competitive Decision-Making. The term “Outside Counsel” includes any attorney employed by a non-commercial Participant, 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, provided that such consultant or expert is not involved in Competitive Decision-Making.

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<sup>6</sup> See *BDS Data Collection Protective Order*, 29 FCC Rcd 11657. The submitting companies have consented to this use of their data.

<sup>7</sup> This Protective Order does not constitute a resolution of the merits concerning whether any information covered by the Protective Order would be released publicly by the Commission upon a proper request or by the Commission acting *sua sponte* under our rules.

“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, material comments in this proceeding as it relates to the development of an adjustment factor for the 5G Fund.

“Reviewing Party” means a person who has obtained access to Adjustment Factor Confidential Information pursuant to paragraphs 4 or 8 of this Protective Order.

“Submitting Company” means, with respect to BDS Cell Site Confidential information, AT&T Services, Inc., Verizon Communications, Sprint Corporation, or T-Mobile US, Inc., and, with respect to NRUF CMA Data, a Wireless Telecommunications Carrier.

“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 as it relates to the development of an adjustment factor for the 5G Fund, provided such persons are involved solely in performing clerical or ministerial functions with regard to documents and information connected with the development of an adjustment factor for the 5G Fund in 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 the development of an adjustment factor for the 5G Fund in this proceeding.

4. *Procedure for Obtaining Access to Adjustment Factor Confidential Information.* Access to Adjustment Factor Confidential Information is limited to Outside Counsel, Outside Consultants, their employees and employees of their Outside Firms, and Support Personnel. Any person, other than Support Personnel, seeking access to Adjustment Factor Confidential Information 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 in this docket, so that it is received at least five business days prior to such person’s reviewing or having access to the Adjustment Factor Confidential Information.

5. *Procedure for Objecting to the Disclosure of Adjustment Factor Confidential Information to a Potential Reviewing Party.* Each Submitting Company shall have an opportunity to object to the disclosure of its Adjustment Factor Confidential Information to any person seeking to review that information pursuant to this Protective Order. A Submitting Company must file any such objection at the Commission and serve it on Counsel representing, retaining, or employing such person within three business days after that person’s Acknowledgment has been filed with the Commission. Persons filing Acknowledgments shall not have access to the Adjustment Factor Confidential Information before the period for filing objections has passed. 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 from a Submitting Company shall not have access to that Submitting Company’s Adjustment Factor Confidential Information.<sup>8</sup> If an objection is untimely filed with the Commission, the Commission will nonetheless consider the objection and retains its discretion to prohibit further access to Adjustment Factor Confidential Information by the Reviewing Party until the objection is resolved.

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<sup>8</sup> An objection ordinarily will first be ruled upon by the Wireline Competition Bureau. If the objection is rejected, 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 Adjustment Factor 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 Adjustment Factor Confidential Information shall be made available to the Reviewing Party.

6. *Review of Adjustment Factor Confidential Information.* A Reviewing Party shall contact Kate Matraves, catherine.matraves@fcc.gov, Office of Economics and Analytics, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, to receive instructions on how to obtain and review Adjustment Factor Confidential Information. A Reviewing Party may temporarily load onto a computer Adjustment Factor Confidential Information. Once loaded, any files containing Adjustment Factor Confidential Information shall be password protected immediately. The Adjustment Factor Confidential Information may not be stored on a computer after being analyzed. After the analysis is complete, the results of such analysis may be stored by saving the results (but not the original underlying Adjustment Factor Confidential Information) to a password protected mobile data storage medium. All files containing Adjustment Factor Confidential Information shall be deleted from the computer and the mobile data storage medium as soon as practicable. The computer, original files, and mobile storage medium containing the Adjustment Factor Confidential Information or the results of analysis of the Adjustment Factor Confidential Information shall be stored securely and a record kept of any persons given access to them.

7. *Use of Adjustment Factor Confidential Information.* Persons obtaining access to Adjustment Factor 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 information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory, or judicial proceedings. Should the Commission include any Submitting Company's Adjustment Factor Confidential Information in any order or decision in this proceeding, it will do so by redacting any such Adjustment Factor Confidential Information from the public version of the decision and by making the unredacted version of the decision available only to a court and to those persons entitled to access to Adjustment Factor Confidential Information under this Protective Order, or as otherwise permitted by law.<sup>9</sup>

8. *Permissible Disclosure.* A Reviewing Party may discuss and share the contents of Adjustment Factor Confidential Information with another Reviewing Party, with Support Personnel, as appropriate, and with the Commission and its staff. A Submitting Company's own Adjustment Factor Confidential Information may also be disclosed to its employees and Counsel.

9. *Filings with the Commission.* A party making a filing in this proceeding that contains Adjustment Factor Confidential Information shall submit to the Secretary's Office one copy of the filing containing Adjustment Factor Confidential Information (the "Adjustment Factor Confidential Filing") and an accompanying cover letter. The cover or first page of the Adjustment Factor Confidential Filing and each page of the Adjustment Factor Confidential Filing that contains Adjustment Factor Confidential Information must be clearly marked "ADJUSTMENT FACTOR CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN GN DOCKET NO. 20-32 before the Federal Communications Commission." The accompanying cover letter shall also contain this legend. The Adjustment Factor 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 Adjustment Factor Confidential Information (the "Redacted Adjustment Factor Confidential Filing") to the Commission via ECFS.<sup>10</sup> The Redacted Adjustment Factor Confidential Filing and the accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Adjustment Factor Confidential Filing shall state that the party is filing a redacted version of the filing. Each Redacted Adjustment Factor Confidential Filing shall have the same pagination as the Adjustment

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<sup>9</sup> See n. 7, *supra*.

<sup>10</sup> If a party is not able to submit a copy of the Redacted Confidential Filing via ECFS, it must submit two copies of the Redacted Confidential Filing to the Secretary's Office along with the appropriately stamped cover letter, as described in this paragraph.

Factor Confidential Filing from which it is derived. To the extent that any page of the Adjustment Factor Confidential Filing contains any type of confidential information (as defined by this and any future protective orders) and non-confidential information, only the confidential information (of whatever type) shall be redacted and the page of the unredacted Adjustment Factor Confidential Filing shall clearly distinguish among the various types of confidential information and the non-confidential information. Unless otherwise instructed by FCC staff, two copies of each Adjustment Factor Confidential Filing and the accompanying cover letter must be delivered, as directed by FCC staff, Kate Matraives, catherine.matraives@fcc.gov, Office of Economics and Analytics, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554. Parties should not provide courtesy copies of pleadings containing Adjustment Factor Confidential Information to Commission staff unless the Bureaus so request, and any such courtesy copies shall be submitted under seal.

10. *Non-Disclosure of Adjustment Factor Confidential Information.* Except with the prior written consent of the relevant Submitting Companies or as provided under this Protective Order, Adjustment Factor Confidential Information shall not be disclosed further.

11. *Protection of Stamped Adjustment Factor Confidential Information.* A Reviewing Party shall have the obligation to ensure that access to Adjustment Factor Confidential Information is strictly limited as prescribed in this Protective Order. A Reviewing Party shall further have the obligation to ensure that Adjustment Factor Confidential Information is used only as provided in this Protective Order.

12. *Requests for Additional Disclosure.* If any person requests disclosure of Adjustment Factor 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.

13. *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 Adjustment Factor Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client, Counsel shall not disclose Adjustment Factor Confidential Information.

14. *No Waiver of Confidentiality.* Disclosure of Adjustment Factor Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Company of any privilege or entitlement to confidential treatment of such Adjustment Factor Confidential Information. Reviewing Parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use Adjustment Factor Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Adjustment Factor Confidential Information shall not be deemed a waiver of any privilege or entitlement.

15. *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 Adjustment Factor Confidential Information that a party has obtained under terms of this Protective Order, such party shall promptly notify the Commission and each affected Submitting Company 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 the Commission and each affected Submitting Company has a full opportunity to oppose such production prior to the production or disclosure of any Adjustment Factor Confidential Information.

16. *Violations of 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. Further, should such violation consist of improper disclosure of Adjustment Factor 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 Outside Counsel or Outside Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Adjustment

Factor Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to any affected Submitting Company at law or in equity against any person using Adjustment Factor Confidential Information in a manner not authorized by this Protective Order.

17. *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 Commission all Adjustment Factor Confidential Information and all copies of the same. No material whatsoever containing Adjustment Factor 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 Adjustment Factor Confidential Information, and one copy of orders issued by the Commission or Bureaus that contain Adjustment Factor Confidential Information. All Reviewing Parties shall certify compliance with these terms and shall deliver such certification to the Commission not more than three weeks after the conclusion of this proceeding. The provisions of this paragraph regarding retention of Adjustment Factor Confidential Information shall not be construed to apply to the Commission or its staff.

18. *Questions.* Substantive questions concerning this Protective Order should be addressed to Kate Matraves, [catherine.matraves@fcc.gov](mailto:catherine.matraves@fcc.gov), Office of Economics and Analytics, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, or Joel Rabinovitz, [joel.rabinovitz@fcc.gov](mailto:joel.rabinovitz@fcc.gov), (202) 418-0689, Office of General Counsel, 445 12<sup>th</sup> Street, S.W., Room 8-A802, Washington, D.C. 20554.

19. *Authority.* This Order is issued pursuant to Sections 1, 2, 4(j), 5, 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(j), 155, 160, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, 503, 1302, Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Sections 0.271 and 0.291 of the Commission's rules, 47 CFR § 0.271, 0.291, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Giulia McHenry  
Chief, Office of Economics and Analytics

Kris A. Monteith  
Chief, Wireline Competition Bureau

APPENDIX A

Acknowledgment of Confidentiality

GN Docket 20-32

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 Adjustment Factor 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. I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of the 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 Adjustment Factor Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Protective Order limits any other rights and remedies available at law or in equity against me if I use Adjustment Factor Confidential Information in a manner not authorized by the 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 Outside Counsel or Outside Consultant to a Participant, and I agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Adjustment Factor Confidential Information is not duplicated except as specifically permitted by the terms of the Protective Order and to ensure that there is no disclosure of Adjustment Factor 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 Adjustment Factor 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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
[Name]

[Position]

[Address]

[Telephone]