

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

In the Matter of	)	
	)	
Petition of USTelecom for Forbearance Pursuant to	)	WC Docket No. 18-141
47 U.S.C. § 160(c) to Accelerate Investment in	)	
Broadband and Next-Generation Networks	)	
	)	

**DATA COLLECTION PROTECTIVE ORDER**

**Adopted: April 16, 2019**

**Released: April 16, 2019**

By the Chief, Wireline Competition Bureau:

1. The Wireline Competition Bureau (Bureau) adopts the following protective order to permit parties in the USTelecom—The Broadband Association (USTelecom) Forbearance Petition proceeding<sup>1</sup> to access and analyze the confidential and highly confidential information and data submitted in the Commission’s data collection (*2015 Data Collection*) in the price cap business data services (BDS) proceedings (*BDS Rulemaking Proceedings*).<sup>2</sup>

2. This Data Collection Protective Order adopts special protections for the *2015 Data Collection* for purposes of the USTelecom Forbearance Petition proceeding<sup>3</sup> consistent with the protective orders adopted in the *BDS Rulemaking Proceedings (Data Collection Protective Orders)*.<sup>4</sup> Notably, the Data Collection Protective Order maintains the Secure Data Enclave as the exclusive method for authorized parties to access and analyze Highly Confidential Data submitted in the *2015 Data Collection*.<sup>5</sup> The Secure Data Enclave also contains Confidential and Highly Confidential Information submitted in the

<sup>1</sup> Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141 (filed May 4, 2018) (USTelecom Forbearance Petition); *Pleading Cycle Established for Comments on USTelecom’s Petition for Forbearance from Section 251(c) Unbundling and Resale Requirements and Related Obligations, and Certain Section 271 and 272 Requirements*, WC Docket No. 18-141, Public Notice, 33 FCC Rcd 4614 (WCB 2018).

<sup>2</sup> See *Business Data Services in an Internet Protocol Environment et al.*, WC Docket Nos. 16-143, et al., Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 4723, 4737-43, paras. 29-37, 39-43 (2016) (*First Further Notice*) (in-depth discussion of the *2015 Data Collection*).

<sup>3</sup> See *Wireline Competition Bureau to Incorporate Business Data Services Data and Second Further Notice and Further Notice Record into USTelecom Forbearance Proceeding*, WC Docket Nos. 18-141, 17-144, 16-143, 05-25; RM-10593, Public Notice, DA 19-249, at 2 (WCB Apr. 3, 2019) (*Apr. 3, 2019 Public Notice*); USTelecom Forbearance Petition at 13-14.

<sup>4</sup> See *Apr. 3, 2019 Public Notice* at 2-3; *Special Access for Price Cap Local Exchange Carriers et al.*, WC Docket No. 05-25, RM-10593, Order and Data Collection Protective Order, 29 FCC Rcd 11657 (WCB 2014) (*Data Collection Protective Order*); Order and Modified Data Collection Protective Order, 30 FCC Rcd 10027 (WCB 2015) (*Modified Data Collection Protective Order*); *Business Data Services in an Internet Protocol Environment et al.*, WC Docket Nos. 16-143, 05-25, RM-10593, Order, 31 FCC Rcd 7104 (WCB 2016) (*Order Extending Protective Orders*) (collectively *Data Collection Protective Orders*).

<sup>5</sup> See *Data Collection Protective Order*, 29 FCC Rcd at 11657, para. 1; *id.* at 11673, Appx. A at 6; see *id.* at 11677-79, Appx. B.

*2015 Data Collection* that is not Highly Confidential Data.<sup>6</sup> The Bureau will reopen access to the Secure Data Enclave upon publication in the Federal Register of a public notice released on April 15, 2019 and close it following the close of the comment and reply period established by the public notice, unless an interested party demonstrates a continuing need for access.<sup>7</sup> Other confidential information submitted in this docket will continue to be governed by the protective order adopted by the Bureau on June 1, 2018 (*USTelecom Forbearance Protective Order*).<sup>8</sup> While we are mindful of our responsibility to ensure the confidentiality of the *2015 Data Collection*, we also recognize the right of the public to be able, through appropriate representatives, to access the data and information on which we may rely and to participate in this proceeding in a meaningful way. We find that allowing limited access to competitively sensitive materials pursuant to the procedures set forth in this Data Collection Protective Order, including the continued use of the Secure Data Enclave, accomplishes both goals. 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>9</sup>

3. In the separate *BDS Rulemaking Proceedings*, WC Docket Nos. 16-143, 05-25, and RM-10593, the Commission has evaluated the BDS market in price cap incumbent local exchange carrier (LEC)-served areas.<sup>10</sup> As part of the record in the *BDS Rulemaking Proceedings*, providers and purchasers of BDS and larger entities that provide “best efforts” business broadband Internet access service in price cap areas were required to submit facilities and competition data and information in response to the *2015 Data Collection*.<sup>11</sup> The *2015 Data Collection* contains highly competitively sensitive data and information that is not publicly available and may only be reviewed pursuant to the *Data Collection Protective Orders* in the *BDS Rulemaking Proceedings*.<sup>12</sup>

4. On April 3, 2019, the Bureau announced its intention to incorporate the *2015 Data Collection* into the record of the USTelecom Forbearance Petition proceeding subject to a protective order given that it is “the most comprehensive source of data for business data services” and, as such, will significantly enhance the Commission’s ability to analyze competitive facilities deployment for purposes

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<sup>6</sup> See *id.* at 11673-74, para. 7.

<sup>7</sup> *Wireline Competition Bureau Seeks Focused Additional Comment on Business Data Services and USTelecom Forbearance Petition Proceedings and Reopens Secure Data Enclave*, WC Docket Nos. 18-141, 17-144, 16-143, 05-25; RM-10593, Public Notice, DA 19-281 (WCB Apr. 15, 2019).

<sup>8</sup> See *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141, Protective Order, DA 18-575 (WCB 2018) (*USTelecom Forbearance Protective Order*).

<sup>9</sup> 47 U.S.C. § 154(j).

<sup>10</sup> See *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers; Business Data Services in an Internet Protocol Environment; Special Access for Price Cap Local Exchange Carriers*, WC Docket Nos. 17-144, 16-143, 05-25, Report and Order, Second Further Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 33 FCC Rcd 10403, 10453-57, paras. 147-56 (2018) (*Second Further Notice and Further Notice*); *Business Data Services in an Internet Protocol Environment; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket Nos. 16-143, 05-25, GN Docket No. 13-5, RM-10593, Report and Order, 32 FCC Rcd 3459 (2017), *remanded in part, sub nom., Citizens Telecomms. Co. of Minn., LLC v. FCC*, 901 F.3d 991 (8th Cir. Aug. 28, 2018), *mandate stayed*, Nos. 17-2296 et al. (8th Cir. Nov. 9, 2018) (staying mandate until Nov. 12, 2019).

<sup>11</sup> See *First Further Notice*, 31 FCC Rcd at 4737-43, paras. 29-37, 39-43.

<sup>12</sup> See *Data Collection Protective Order*, 29 FCC Rcd 11657; *Modified Data Collection Protective Order*, 30 FCC Rcd 10027; *Order Extending Protective Orders*, 31 FCC Rcd 7104.

of evaluating the USTelecom Forbearance Petition.<sup>13</sup> U.S. TelePacific (TPx) filed an objection to incorporating in this docket certain data submitted in the *2015 Data Collection*.<sup>14</sup> TPx argues that the Commission should not rely in this docket on TPx's responses to Question II.A.4 in the *2015 Data Collection* "unless it provides sufficient opportunity for TPx to review and correct the underlying data."<sup>15</sup> The Bureau acknowledges the concerns raised by TPx with respect to certain of its location data submitted in the *2015 Data Collection*. TPx will have an opportunity to file comments in this proceeding with the Commission addressing the record, including data it argues are flawed.<sup>16</sup> Further, INCOMPAS filed an objection to incorporating the *2015 Data Collection* into this proceeding, arguing that consideration of such information would violate section 1.54 of the Commission's rules requiring petitions for forbearance to be "complete-as-filed."<sup>17</sup> This objection is not based on the confidential nature of the data to be incorporated but instead is based on INCOMPAS's assertion that USTelecom has not complied with the complete-as-filed rule, codified in section 1.54(b). In light of the statutory deadline applicable to forbearance petitions, this objection will be taken under advisement and ruled on, as appropriate, at a later date, and the *2015 Data Collection* is incorporated into this proceeding as of April 16, 2019.

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

"Acknowledgment" means the Acknowledgment of Confidentiality attached as the Appendix.

"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 submitted in the *2015 Data Collection* designated as Confidential Information pursuant to the *Data Collection Protective Orders* and any information derived from the Confidential Information, unless the Commission determines, *sua sponte* or by request pursuant to paragraph 6 or pursuant to Sections 0.459 or 0.461 of its rules,<sup>18</sup> that such information is not entitled to confidential treatment.

"Counsel" means In-House Counsel and Outside Counsel of Record.

"*Data Collection Protective Orders*" means *Special Access for Price Cap Local Exchange Carriers et al.*, WC Docket No. 05-25, RM-10593, Order and Data Collection Protective Order, 29 FCC Rcd 11657 (WCB 2014); *Special Access for Price Cap Local Exchange Carriers et al.*, WC Docket No. 05-25, et al., Order and Modified Data Collection Protective Order, 30 FCC Rcd 10027 (WCB 2015);

<sup>13</sup> See *April 3, 2019 Public Notice* at 2 (quoting *Second Further Notice and Further Notice*, 33 FCC Rcd at 10457, para. 156); USTelecom Forbearance Petition at 13-14; see *First Further Notice*, 31 FCC Rcd at 4741-42, paras. 39-41 (scope and mandatory nature of *2015 Data Collection*).

<sup>14</sup> Letter from Tamar E. Finn, Counsel for U.S. TelePacific Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Apr. 15, 2019) (TPx Letter); see *Special Access for Price Cap Local Exchange Carriers et al.*, WC Docket No. 05-25, RM-10593, Order on Reconsideration, 29 FCC Rcd 10899, 10912, Appx. A, Question II.A.4 (WCB 2014).

<sup>15</sup> TPx Letter at 2.

<sup>16</sup> See *id.* at 2.

<sup>17</sup> Letter from John T. Nakahata, Counsel for INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 18-141, 17-144, 16-143, 05-25, RM-10593 (filed Apr. 15, 2019); see 47 CFR § 1.54.

<sup>18</sup> 47 CFR §§ 0.459, 0.461.

*Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143, et al., Order, 31 FCC Rcd 7104 (WCB 2016).

“Document” means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. For the sake of clarity, the term “document” includes responses created and submitted to the Commission electronically. “Highly Confidential Data” means data submitted in the *2015 Data Collection* designated as Highly Confidential Data pursuant to the *Data Collection Protective Orders* and any information derived from the Highly Confidential Data, unless the Commission determines, *sua sponte* or by request pursuant to paragraph 6 or pursuant to Sections 0.459 or 0.461 of its rules,<sup>19</sup> that such information is not entitled to confidential treatment.

“Highly Confidential Information” means information submitted in the *2015 Data Collection* designated as Highly Confidential Information pursuant to the *Data Collection Protective Orders* and any information derived from Highly Confidential Information, unless the Commission determines, *sua sponte*, by request pursuant to paragraph 6 or pursuant to Sections 0.459 or 0.461 of its rules, that any such information is not entitled to confidential treatment.

“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 material comments in the USTelecom Forbearance Petition proceeding, WC Docket No. 18-141.

“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 and Highly Confidential Data) pursuant to paragraphs 7, 9, or 10 of this Data Collection Protective Order.

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<sup>19</sup> 47 CFR §§ 0.459, 0.461.

“Secure Data Enclave” or “SDE” means the secure computing environment where Reviewing Parties may access and analyze Highly Confidential Data, as established by the Bureau in the *Data Collection Protective Orders*.

“Stamped Confidential Document” means any document, or any part thereof, that contains Confidential Information submitted in the *2015 Data Collection* pursuant to the *Data Collection Protective Orders* 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 ORDERS IN WC DOCKET NO. 05-25 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION,” or “CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDERS IN WC DOCKET NO. 18-141 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION.”

“Stamped Highly Confidential Document” means any document, or any part thereof, that contains Highly Confidential Information submitted in the *2015 Data Collection* pursuant to the *Data Collection Protective Orders* 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 ORDERS IN WC DOCKET NO. 05-25 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION,” or “HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDERS IN WC DOCKET NO. 18-141 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION.”

“Submitting Party” means a person or entity who submitted a Stamped Confidential Document, a Stamped Highly Confidential Document, or Highly Confidential Data in the *2015 Data Collection* pursuant to the *Data Collection Protective Orders*. Submitting Parties are listed in *Wireline Competition Bureau Releases List of Special Access Data Collection Respondents*, WC Docket No. 05-25, RM-10593, Public Notice, 30 FCC Rcd 4462 (WCB 2015).

“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 Data Collection Protective Order.

“*2015 Data Collection*” means the Commission’s one-time, mandatory data collection established in *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012) (*Data Collection Order*), and implemented by the Bureau pursuant to delegated authority in *Special Access for Price Cap Local Exchange Carriers et al.*, WC Docket No. 05-25, et al., Order on Reconsideration, 29 FCC Rcd 10899 (WCB 2014), including the submission of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information and Highly Confidential Information, and Highly Confidential Data.

6. *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 Commission may also initiate such a review on its own. 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>20</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 our rules implementing the Freedom of Information Act.<sup>21</sup>

7. *Procedure for Obtaining Access to Confidential Information and Highly Confidential Information.* Access to Highly Confidential Information (including Stamped Highly Confidential Documents and Highly Confidential Data) and the Secure Data Enclave is limited to Outside Counsel of Record, Outside Consultants, their employees and employees of their Outside Firms, and Support Personnel. Subject to a limited exception for Support Personnel, any person seeking access to Confidential Information or Highly Confidential Information including Highly Confidential Data subject to this Data Collection Protective Order shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this Data Collection Protective Order, file the Acknowledgment with the Commission in WC Docket No. 18-141 and send a copy to [SpecialAccess@fcc.gov](mailto:SpecialAccess@fcc.gov). Support Personnel only seeking access to Confidential Information or Highly Confidential not including Highly Confidential Data do not need to file an Acknowledgment. A copy of the Acknowledgment does not need to be delivered to the relevant Submitting Party or any known Third-Party Interest Holders. Instead, the Bureau periodically will issue a public notice in WC Docket Nos. 18-141, 16-143, 05-25, and RM-10593, identifying potential Reviewing Parties who have filed Acknowledgments pursuant to this Data Collection Protective Order (Acknowledgement Public Notice) as the Acknowledgments are received.<sup>22</sup>

8. *Procedure for Objecting to the Disclosure of Confidential Information and Highly Confidential Information to a Potential Reviewing Party.*<sup>23</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 any person seeking to review that information pursuant to this Data Collection Protective Order. A Submitting Party or Third-Party Interest Holder must file any such objection at the Commission in WC Docket No. 18-141 and serve it on Counsel for the person seeking access within the time period specified in the Acknowledgment Public Notice, generally five business days. 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. 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>24</sup> If an objection is not timely

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<sup>20</sup> Cf. 47 CFR §§ 0.459(g), 0.461(i).

<sup>21</sup> See 47 CFR §§ 0.459(h), 0.461; see 5 U.S.C. § 552

<sup>22</sup> See *Data Collection Protective Order*, 29 FCC Rcd at 11673, Appx. A at para. 5; see *Wireline Competition Bureau Now Receiving Acknowledgements of Confidentiality Pursuant to Special Access Data Collection Protective Order*, WC Docket No. 05-25, RM-10593, Public Notice, 30 FCC Rcd 6421 (WCB 2015).

<sup>23</sup> This paragraph describes the procedure for objecting to a specific individual being permitted to review Confidential 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, where such an objection is timely made, 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>24</sup> An objection ordinarily will first be ruled upon by the 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 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

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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.

9. *Review of Stamped Confidential Documents and Stamped Highly Confidential Documents (other than Highly Confidential Data).* A Reviewing Party may inspect and analyze these documents, as appropriate, in the Secure Data Enclave, which also houses the Highly Confidential Data.<sup>25</sup> In the alternative, a Reviewing Party may request a complete set of Stamped Confidential Documents and/or Stamped Highly Confidential Documents (other than Highly Confidential Data) in electronic format. Reviewing Parties may submit their request to [SpecialAccess@fcc.gov](mailto:SpecialAccess@fcc.gov), allowing five business days after the request is made for receipt of the copies. A Reviewing Party may temporarily load onto a computer the information in electronic format. Once loaded onto a computer, any files containing Confidential Information or Highly Confidential Information shall be password protected immediately. The Confidential Information and Highly Confidential Information may be stored on a computer for the duration of the proceeding. All files containing Confidential Information or Highly Confidential Information shall be deleted from the computer no later than when 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. *Review of Highly Confidential Data.* Pursuant to the *Data Collection Protective Orders*, the Secure Data Enclave was established to enable participants in the *BDS Rulemaking Proceedings* to access and analyze the *2015 Data Collection* and is the exclusive method to access and analyze Highly Confidential Data.<sup>26</sup> A Reviewing Party may inspect and analyze Highly Confidential Data only at the Secure Data Enclave, either at its physical location in the Washington, D.C. metropolitan area or by accessing the Secure Data Enclave remotely through a Virtual Private Network (VPN).<sup>27</sup> The Commission has contracted with NORC at the University of Chicago (NORC) as the Secure Data Enclave administrator to host the Secure Data Enclave via a VPN and at NORC facilities in Bethesda, Maryland.<sup>28</sup> A Reviewing Party may not download, print out or otherwise remove any Highly Confidential Data from the Secure Data Enclave (however accessed). A Reviewing Party may store its analyses in a virtual locker located in the Secure Data Enclave and accessible only to that party. A Reviewing Party may obtain physical or electronic copies of its analyses from the Secure Data Enclave administrator upon request, and at cost; the Secure Data Enclave administrator will ensure that the copies contain only the analyses and not any underlying raw data except as permitted by the Secure Data Enclave administrator under the Bureau's output disclosure guidelines.<sup>29</sup>

11. *Use of Confidential and Highly Confidential Information.* Reviewing Parties obtaining access to Confidential and Highly Confidential Information under this Data Collection Protective Order shall use the information solely for the preparation and conduct of the USTelecom Forbearance Petition

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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 or Highly Confidential Information shall be made available to the Reviewing Party.

<sup>25</sup> *Data Collection Protective Order*, 29 FCC Rcd at 11673, Appx. A at para. 6.

<sup>26</sup> *Id.*; *Modified Data Collection Protective Order*, 30 FCC Rcd at 10036-37, paras. 21-23.

<sup>27</sup> *See Modified Data Collection Protective Order*, 30 FCC Rcd at 10036-37, paras. 21-23; *see also Data Collection Protective Order*, 29 FCC Rcd at 11660-61, paras. 8-11.

<sup>28</sup> *See Data Collection Protective Order*, 29 FCC Rcd at 11661, para. 12 n.32; *Secure Data Enclave for Accessing Highly Confidential Business Data Services Data to Reopen*, WC Docket Nos. 16-143, 05-25, RM-10593, Public Notice, 33 FCC Rcd 11064 (WCB 2018).

<sup>29</sup> *See Data Collection Protective Order*, 29 FCC Rcd at 11673, Appx. A at para. 6.

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 or Highly Confidential Information in its orders in this proceeding, it will do so by redacting any Confidential 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 or Highly Confidential Information under this Data Collection Protective Order, as appropriate.

12. *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. Information derived from Confidential Information or Highly Confidential Information shall be treated as Confidential Information or Highly Confidential Information, respectively, unless the Commission determines otherwise.

13. *Filings with the Commission.* A party making a filing in this proceeding that contains Confidential or Highly Confidential Information shall submit to the Secretary's Office one copy of the filing containing the Confidential 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 ORDERS IN WC DOCKET NO. 18-141 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 ORDERS IN WC DOCKET NO. 18-141 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 or Highly Confidential Information or Highly Confidential Data (the "Redacted Confidential Filing"), to the Commission via the Electronic Comment Filing System (ECFS).<sup>30</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 (including Highly Confidential Data), 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 Michele Levy Berlove, [Michele.Berlove@fcc.gov](mailto:Michele.Berlove@fcc.gov), (202) 418-1477, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 5-C260, Washington, D.C. 20554. Parties should not provide courtesy copies of pleadings

<sup>30</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.



containing Highly Confidential Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

14. *Non-Disclosure of Confidential Information, and Highly Confidential Information.*

Except with the prior written consent of the Submitting Party or as provided under this Data Collection Protective Order, Confidential Information and Highly Confidential Information shall not be disclosed further.

15. *Protection of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information.* A Reviewing Party shall have the obligation to ensure that access to Confidential Information (including Stamped Confidential Documents) and Highly Confidential Information (including Stamped Highly Confidential Documents and Highly Confidential Data) is strictly limited as prescribed in this Data Collection 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 Data Collection Protective Order.

16. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential or Highly Confidential Information outside the terms of this Data Collection Protective Order, such a request will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.<sup>31</sup>

17. *Client Consultation.* Nothing in this Data Collection 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 Data Collection 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.

18. *No Waiver of Confidentiality.* Disclosure of Confidential 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 or Highly Confidential Information. Reviewing Parties, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Confidential or Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential or Highly Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement provided that the Submitting Party takes prompt remedial action.

19. *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, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information that a party has obtained under the terms of this Data Collection 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, Stamped Highly Confidential Document, Confidential Information, or Highly Confidential Information.

20. *Violations of the Data Collection Protective Order.* Should a Reviewing Party violate any of the terms of this Data Collection 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 or Highly

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<sup>31</sup> 47 CFR §§ 0.442, 0.461.

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 Data Collection 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 or Highly Confidential Information in this or any other Commission proceeding. Nothing in this Data Collection 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 or Highly Confidential Information in a manner not authorized by this Data Collection Protective Order.

21. *Termination of Proceeding.* The provisions of this Data Collection 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 Stamped Confidential Documents and Stamped Highly Confidential Documents and all copies of the same. No material whatsoever containing or derived from Confidential 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 Data Collection 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 or Highly Confidential Information, and one copy of orders issued by the Commission or Bureau that contain Confidential or Highly Confidential Information. All Reviewing Parties shall certify compliance with these terms. Reviewing Parties shall file such certification with the Commission in WC Docket Nos. 18-141 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 and Highly Confidential Information shall not be construed to apply to the Commission or its staff.

22. *Questions.* Questions concerning this Data Collection Protective Order should be addressed to Michele Levy Berlove, Competition Policy Division, Wireline Competition Bureau, [Michele.Berlove@fcc.gov](mailto:Michele.Berlove@fcc.gov), (202) 418-1477; Christopher S. Koves, Pricing Policy Division, Wireline Competition Bureau, [Christopher.Koves@fcc.gov](mailto:Christopher.Koves@fcc.gov), (202) 418-8209; and Joel Rabinovitz, Office of General Counsel, [Joel.Rabinovitz@fcc.gov](mailto:Joel.Rabinovitz@fcc.gov), (202) 418-0689.

23. *Authority.* This Data Collection Protective Order is issued pursuant to Sections 4(i), 4(j), and 10(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 160(c), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Sections 0.91 and 02.91 of the Commission's rules, 47 CFR §§ 0.91, and 0.291, and by the Commission in paragraph 52 of the *Data Collection Order*,<sup>32</sup> and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Kris A. Monteith  
Chief  
Wireline Competition Bureau

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<sup>32</sup> *Data Collection Order*, 27 FCC Rcd at 16340, para. 52.

**APPENDIX****Acknowledgment of Confidentiality****WC Docket No. 18-141**

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

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

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

I acknowledge that a violation of the Data Collection 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 Data Collection 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 or Highly Confidential Information in this or any other Commission proceeding.

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

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

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[Name]  
[Position]  
[Firm]  
[Telephone]  
[Party]