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

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| In the Matter of | ) | |
| | ) | |
| Connect America Fund | ) | WC Docket No. 10-90 |

## THIRD SUPPLEMENTAL PROTECTIVE ORDER

**Adopted: December 11, 2012** **Released: December 11, 2012**

By the Chief, Wireline Competition Bureau:

1. On November 18, 2011, the Federal Communications Commission (Commission) released the *USF/ICC Transformation Order*.[1] In that Order, the Commission adopted a methodology for distributing universal service support under the newly created Connect America Fund Phase II in areas served by price cap carriers. The methodology will use a forward-looking cost model to estimate the costs of deployment of voice and broadband capable networks in high-cost areas and identify at a granular level the areas where support will be made available. The Commission delegated to the Wireline Competition Bureau (Bureau) "the task of selecting a specific engineering cost model and associated inputs" that meet the criteria specified in the *USF/ICC Transformation Order*.[2]

2. In order to provide the Commission with a potential model, the Universal Service Administrative Corporation (USAC) contracted with CostQuest Associates, Inc. (CostQuest) to develop the Connect America Cost Model (or "CACM"), a forward-looking cost model intended to enable the Commission to accurately "estimate the cost of a modern voice and broadband capable network in price cap served areas."[3] The model will be made available to the public subject to a licensing agreement and a non-disclosure agreement (respectively Appendices B and C attached hereto). To ensure that the proprietary features of the cost model are afforded adequate protection in any submissions made to the Commission and to ensure that the public has the opportunity for robust participation, the Bureau, on its own motion, adopts this Third Supplemental Protective Order.[4] We find that the procedures we adopt in this Order, along with the acknowledgement of confidentiality, the licensing agreement and non-

[1] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GC Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*); *pets. for review pending sub nom. In re: FCC 11-161, No. 11-9900* (10th Cir. filed Dec. 8, 2011).

[2] *USF/ICC Transformation Order*, 26 FCC Rcd at 17725, para. 157.

[3] *Id.* at 17735, para. 184.

[4] This Third Supplemental Protective Order does not constitute a determination whether any materials would be released publicly by the Commission upon a proper request under the Freedom of Information Act or otherwise.

disclosure agreement, provide the public with appropriate access to the model while protecting competitively sensitive information from improper disclosure.

3. There have been prior protective orders in this proceeding—a traditional Protective Order to address the treatment of traditional confidential filings,[5] a Supplemental Protective Order to address the terms and conditions of access to the model that CostQuest submitted in September 2011,[6] a Second Protective Order to address access to highly confidential information, including a cost model submitted in this proceeding by Alaska Communications Services (ACS),[7] a Second Supplemental Protective Order to address access to the CostQuest Broadband Analytical Tool (CQBAT) submitted in this proceeding by the ABC Coalition,[8] and a Third Protective Order to address the treatment of traditional confidential filings that superseded the initial Protective Order and expanded its scope to include additional relevant proceedings.[9] We make no change here to the treatment of documents and other materials already submitted or that may be submitted under the previous protective orders. Parties who previously followed procedures to review materials under those orders need not take any additional steps unless they want access to the CACM. Parties who obtained access to CostQuest's models either under the original Supplemental Protective Order or under the Second Supplemental Protective Order do not automatically have access to the CACM. Any party—including a party who gained access under the original Supplemental Protective Order or the Second Supplemental Protective Order—must follow the terms of this Third Supplemental Protective Order in order to gain access to the CACM.

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

"Acknowledgement" means the Acknowledgement of Confidentiality attached as Appendix A hereto.

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[5] *Developing a Unified Intercarrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers; Connect America Fund; High-Cost Universal Service Support; A National Broadband Plan for Our Future*, CC Docket No. 01-92, WC Docket Nos. 07-135, 10-90, 05-337, GN Docket No. 09-51, Protective Order, 25 FCC Rcd 13160 (Wireline Comp. Bur. 2010) (Protective Order).

[6] *Developing a Unified Intercarrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers; Connect America Fund; High-Cost Universal Service Support; A National Broadband Plan for Our Future*, CC Docket No. 01-92, WC Docket Nos. 07-135, 10-90, 05-337, GN Docket No. 09-51, Supplemental Protective Order, 26 FCC Rcd 12795 (Wireline Comp. Bur. 2011) (Supplemental Protective Order).

[7] *Developing a Unified Intercarrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers; Connect America Fund; High-Cost Universal Service Support; A National Broadband Plan for Our Future*, CC Docket No. 01-92, WC Docket Nos. 07-135, 10-90, 05-337, GN Docket No. 09-51, Second Protective Order, 27 FCC Rcd 1494 (Wireline Comp. Bur. 2012) (Second Protective Order).

[8] *Developing a Unified Intercarrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers; Connect America Fund; High-Cost Universal Service Support; A National Broadband Plan for Our Future*, CC Docket No. 01-92, WC Docket Nos. 07-135, 10-90, 05-337, GN Docket No. 09-51, Second Supplemental Protective Order, 27 FCC Rcd 1503 (Wireline Comp. Bur. 2012) (Second Supplemental Protective Order).

[9] *Developing a Unified Intercarrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers; Connect America Fund; High-Cost Universal Service Support; A National Broadband Plan for Our Future*, CC Docket No. 01-92, WC Docket Nos. 07-135, 10-90, 05-337, GN Docket No. 09-51, Third Protective Order, 27 FCC Rcd 10276 (Wireline Comp. Bur. 2012) (Third Protective Order).

"Competitive Decision Making" means that a person's activities, association, or relationship with his or her employer or any of his or her clients involve advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the employer or client in competition with or in a business relationship with CostQuest.

"CACM" means the Connect America Cost Model, a proprietary software application owned by CostQuest.

"Licensed Materials" means, and includes any derivative works of: (i) the CACM and CACM documentation, (ii) the output of the CACM which includes only screen shots, CACM Reports, CACM Solution Sets, CACM derived data provided by CostQuest to USAC, and downloads available directly from the CACM website ("CACM Output"), (iii) proprietary CACM inputs, data and databases, (iv) a system evaluator version of the CACM along with any sample CACM databases, which may be used to test the operation of the CACM ("System Evaluator package"), (v) network topologies provided as inputs to CACM, (vi) a digital rights management protected PDF file or files containing the processing source code for the network topology application and CACM, as appropriate, and (vii) related drawings, designs, object code, applications, analytic tools, data provided by CostQuest that is not otherwise publicly available and that CostQuest has kept strictly confidential, defined processes and approaches, and concepts, created or generated by CostQuest at any time before, during, and under this protective order.

"Licensee" means a person who has obtained access to Licensed Materials pursuant to the Licensing Agreement.

"Licensing Agreement" means the Licensing Agreement attached as Appendix B hereto.

"Non-Disclosure Agreement for Source Code" means the Non-Disclosure Agreement attached as Appendix C hereto.

"Reviewing Party" means a person who has obtained access to any Licensed Materials pursuant to this Third Supplemental Protective Order.

"Source Code Materials" means subsections (iv) and (vi) of the definition of Licensed Materials.

"User Materials" means subsections (i) through (iii), (v) and (vii) of the definition of Licensed Materials.

5. *Persons Eligible To Obtain Access to Licensed Materials*. Access to Licensed Materials is limited to persons not engaged in Competitive Decision Making.

6. *Procedures for Obtaining Access*. Any person seeking access to any Licensed Materials shall sign and date the Acknowledgment (Appendix A) agreeing to be bound by the terms and conditions of the Third Supplemental Protective Order, and file it with the Commission in ECFS in the above-referenced docket. In addition, any person seeking access to the User Materials shall sign and date the Licensing Agreement (Appendix B); any person seeking access to the Source Code Materials shall sign and date the Non-Disclosure Agreement for Source Code (Appendix C); and any person seeking access to the System Evaluator package shall sign and date both the Licensing Agreement and the Non-Disclosure Agreement for Source Code. Any person seeking access to any Licensed Materials shall serve a copy of all relevant, fully executed documents to CostQuest through its Counsel of Record so that they are received at least

five business days prior to such person's reviewing or having access to Licensed Materials,[10] except that, where the person seeking access is one described in the third sentence of paragraph 8, the executed documents shall be delivered promptly prior to the person's obtaining access. CostQuest shall have an opportunity to object to granting access to Licensed Materials to any such person. CostQuest must file any such objection at the Commission and serve it on counsel representing, retaining or employing such person (or on such person directly if counsel is not indicated) within three business days after receiving copies of that person's executed documents (or where the person seeking access is one described in the third sentence of paragraph 8, file and serve such objection as promptly as practicable after receipt of the relevant executed documents). Until any such objection is resolved by the Commission and, if appropriate, by any court of competent jurisdiction, and unless such objection is resolved in favor of the person seeking access, a person subject to an objection from CostQuest shall not have access to Licensed Materials. Unless CostQuest has filed an objection to granting access to Licensed Materials to a person seeking such access, and that objection remains pending at the Commission, CostQuest shall execute the Licensing Agreement and/or Non-Disclosure Agreement for Source Code on or before the fourth business day after receiving the Licensing Agreement and/or Non-Disclosure Agreement for Source Code (or where the person seeking access is one described in the third sentence of paragraph 8, as promptly as practicable after receipt of the relevant Acknowledgment and Licensing Agreement and/or Non-Disclosure Agreement for Source Code) and return a copy of the executed Licensing Agreement and/or Non-Disclosure Agreement for Source Code to the Reviewing Party.

7. *Use of Licensed Materials.* A Reviewing Party shall use the Licensed Materials solely for the preparation for and conduct of this proceeding before the Commission and any concurrent related or subsequent related administrative or judicial proceedings and, except as provided herein, shall not use such Licensed Materials for any other purpose, including without limitation business, educational, research, governmental, or commercial purposes, or in any other administrative, regulatory or judicial proceedings. A Reviewing Party also shall not disassemble, decompile, reverse engineer, or otherwise recreate the Licensed Materials, or allow any other person to do so.

8. *Permissible Disclosure.* A Reviewing Party with access to the Licensed Materials may discuss and share those materials with another Reviewing Party with equivalent access and with USAC and the Commission and their respective staffs. CostQuest's Licensed Materials may also be disclosed to employees and counsel of CostQuest. Subject to the requirements of paragraph 6, a Reviewing Party may disclose Licensed Materials to (1) paralegals or other employees of such Reviewing Party assisting him in this proceeding; and (2) employees of third-party contractors involved solely in 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, or performing other clerical or ministerial functions with regard to materials connected with this proceeding. A Reviewing Party may disclose, without restriction, any information that properly has been made publicly available by the FCC or USAC.

9. *Filings with the Commission.* A Reviewing Party or CostQuest may in any document that it files in this proceeding disclose Licensed Materials only if it complies with the following procedure. The party shall submit to the Secretary's Office one copy of the filing containing Licensed Materials (the "Highly Confidential Filing"), two copies of the filing in redacted form, *i.e.*, containing no Licensed Materials (the "Redacted Highly Confidential Filing"), and an accompanying cover letter. The cover or first page of the Highly Confidential Filing, and each page of the Highly Confidential Filing that contains or discloses Licensed Materials subject to this order must be clearly marked: "CONFIDENTIAL INFORMATION – SUBJECT TO THIRD SUPPLEMENTAL PROTECTIVE ORDER IN WC

[10] Service by electronic mail is acceptable and can be sent to CostQuest's Counsel of Record at lawson@taftlaw.com.

DOCKET NO. 10-90 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The cover letter shall also contain this legend. The Highly Confidential Filing shall be made under seal, and will not be placed in the Commission's public file. The two copies of the Redacted Highly Confidential Filing and the accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Highly Confidential Filing shall state that the party is filing a redacted version of the filing. Each Redacted Highly Confidential Filing shall have the same pagination as the Highly Confidential Filing from which it is derived. To the extent that any page of the Highly Confidential Filing contains both Licensed Materials and non-protected materials, only the Licensed Materials may be redacted and the page of the unredacted Highly Confidential Filing shall clearly distinguish the Licensed Materials from the non-protected Materials. Two copies of each Highly Confidential Filing and the accompanying cover letter must be delivered, as directed by Commission staff, to Katie King, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, or katie.king@fcc.gov and one copy must be served on CostQuest's counsel of record, Margaret Avril Lawson, Taft Stettinius & Hollister LLP, 425 Walnut Street, Suite 1800, Cincinnati, Ohio 45202-3957 or lawson@taftlaw.com. Parties should not provide courtesy copies of pleadings containing Licensed Materials to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

10. *Non-Disclosure of Licensed Materials.* Except with the prior written consent of CostQuest, or as provided under this Third Supplemental Protective Order, no Licensed Materials may be disclosed further.

11. *Protection of Licensed Materials.* A Reviewing Party shall have the obligation to ensure that access to Licensed Materials is strictly limited as prescribed in this Third Supplemental Protective Order and that Licensed Materials are retained in a secure place of limited access. A Reviewing Party shall further have the obligation to ensure that Licensed Materials are used only as provided in this Third Supplemental Protective Order.

12. *Requests for Additional Disclosure.* If any person requests disclosure of Licensed Materials outside the terms of this Third Supplemental Protective Order, requests will be treated in accordance with Sections 0.442 or 0.461 of the Commission's rules. In the event of such a request, CostQuest will be deemed to have submitted a request that the Licensed Materials not be made routinely available for public inspection under the Commission's rules.[11]

13. *Client Consultation.* Nothing in this Third Supplemental Protective Order shall prevent or otherwise restrict Reviewing Parties from rendering advice to their employers and clients relating to the conduct of this proceeding and any concurrent related or subsequent related administrative or judicial proceedings and, in the course thereof, relying generally on examination of Licensed Materials; provided, however, that in rendering such advice and otherwise communicating with such employer or client, Reviewing Parties shall not disclose Licensed Materials to anyone who is not a Reviewing Party entitled to access to the portion of the Licensed Materials that is disclosed to such Reviewing Party. For example, a Reviewing Party may not disclose Source Code Materials to a Reviewing Party who has executed Appendices A and B but not Appendix C.

14. *No Waiver of Confidentiality.* Disclosure of Licensed Materials as provided herein by any person shall not be deemed a waiver by CostQuest of any privilege, trade secret claim or entitlement to confidential treatment of such Licensed Materials. Reviewing Parties, by accessing Licensed Materials, agree: (1) not to assert any such waiver; (2) not to use Licensed Materials to seek disclosure in any other

[11] *See* 47 C.F.R. § 0.459(a), 0.459(a)(3).

proceeding; and (3) that accidental disclosure of Licensed Materials by CostQuest shall not be deemed a waiver of any privilege, trade secret claim or entitlement as long as CostQuest takes prompt remedial action.

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 Licensed Materials that a party has obtained under terms of this Third Supplemental Protective Order, such party shall promptly notify CostQuest 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 CostQuest has a full opportunity to oppose such production prior to the production or disclosure of any Licensed Materials.

16. *Violations of the Third Supplemental Protective Order.* Should a Reviewing Party violate any of the terms of this Third Supplemental Protective Order, such Reviewing Party shall immediately convey that fact to the Commission and to CostQuest. Further, should such violation consist of improper access to or disclosure of Licensed Materials, the violating person shall take all necessary steps to remedy the improper access or disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Third Supplemental Protective Order, including but not limited to suspension or disbarment from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Licensed Materials in this or any other Commission proceeding. Nothing in this Third Supplemental Protective Order shall limit any other rights and remedies available to CostQuest at law or in equity against any person using Licensed Materials in a manner not authorized by this Third Supplemental Protective Order.

17. *Termination of Proceeding.* The provisions of this Third Supplemental Protective Order shall not terminate at the conclusion of this proceeding and any concurrent related or subsequent related administrative or judicial proceedings. Within two weeks after conclusion of this proceeding and any concurrent related or subsequent related administrative or judicial proceedings, Reviewing Parties shall destroy or return to CostQuest Licensed Materials and all copies of the same. No material whatsoever derived from Licensed Materials may be retained by any person having access thereto, except parties may retain, under the continuing strictures of this Third Supplemental 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 Licensed Materials, and one copy of orders issued by the Commission or Bureau that contain Licensed Materials. In addition, a Reviewing Party may retain any information that properly has been made publicly available by the FCC or USAC.

18. All Reviewing Parties shall certify compliance with these terms and shall deliver the same to counsel for CostQuest not more than three weeks after conclusion of this proceeding. The provisions of this paragraph regarding retention of Licensed Materials and copies of the same shall not be construed to apply to the Commission or its staff.

19. *Authority.* This Order is issued pursuant to sections 4(i), 4(j), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 403, Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief, Wireline Competition Bureau

## APPENDIX A

### Acknowledgement of Confidentiality—WC Docket No. 10-90 and Concurrent Related or Subsequent Related Administrative or Judicial Proceedings

I hereby acknowledge that I have received and read a copy of the foregoing Third Supplemental Protective Order in the above-captioned proceeding. If I am seeking access to the User Materials, I also acknowledge that I have received and read a copy of the attached Restricted CACM License (the "Licensing Agreement"), and I understand it. If I am seeking access to the Source Code Materials, I acknowledge that I have received and read a copy of the attached Non-Disclosure Agreement for Source Code, and I understand it. If I am seeking access to the System Evaluator package, which provides access to both User Materials and Source Code Materials, I acknowledge that I have received and read a copy of both the Licensing Agreement and the Non-Disclosure Agreement for Source Code, and I understand both.

I agree that I am bound by the Third Supplemental Protective Order and by one or both of the Licensing Agreement and/or Non-Disclosure Agreement for Source Code, as appropriate, and that I shall not disclose or use Licensed Materials except as allowed by the Third Supplemental Protective Order, the Licensing Agreement and/or Non-Disclosure Agreement for Source Code.

I acknowledge that a violation of the Third Supplemental Protective Order is a violation of an order of the Federal Communications Commission.

I acknowledge specifically that my access to any information obtained as a result of the Third Supplemental Protective Order and the Licensing Agreement and/or Non-Disclosure Agreement for Source Code is due solely to my capacity as a party or representative of a party to this proceeding or as a person described in paragraph 9 of the Third Supplemental Protective Order and agree that I shall not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Licensed Materials are not accessed or used except as specifically permitted by the terms of the Third Supplemental Protective Order and the Licensing Agreement and/or Non-Disclosure Agreement for Source Code, as appropriate.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized access to or disclosure of Licensed Materials.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Third Supplemental Protective Order.

| | | |
|---|---|---|
| **I hereby request access to the User Materials:** | _x_ Yes | ____ No |
| **I hereby request access to the Source Code Materials:** | ____ Yes | _x_ No |
| **I hereby request access to the System Evaluator package:** | ____ Yes | _x_ No |

Executed this _6_ day of May, 2015.

Jennifer Otwell, Vice President
Totelcom Communications, LLC
6100 Highway 16 S De Leon, TX 76444
(254) 893-1000
Jennifer.otwell@totelcom.net

## APPENDIX B

**CostQuest Associates, Inc. Restricted CACM License Limited To Use Solely for Review and Evaluation for Purposes of the FCC Proceeding in WC Docket No. 10-90 and Concurrent Related or Subsequent Related Administrative or Judicial Proceedings**

THIS LIMITED LICENSE ("Licensing Agreement") is accepted and made effective as of the 6 day of May, 2015 ("Effective Date"), between CostQuest Associates, Inc. ("CostQuest") and Jennifer Otwell ("Licensee") with respect to, and including any derivative works of: (i) CostQuest's proprietary software application (the Connect America Fund Phase II forward-looking model or the "Connect America Cost Model" or "CACM"), (ii) the output of the CACM which includes only screen shots, CACM Reports, CACM Solution Sets, CACM audit reports, CACM derived data provided by Contractor to Company, and downloads available directly from the CACM website ("CACM Output"), (iii) proprietary CACM inputs, data and databases, (iv) network topologies provided as inputs to the CACM, and shall also include related drawings, designs, object code, applications, analytic tools, data provided by CostQuest that is not otherwise publicly available and that CostQuest has kept strictly confidential, defined processes and approaches, and concepts, created or generated by CostQuest at any time before, during, and under this protective order (collectively, the "User Materials"). Licensee and CostQuest will be referred to collectively as the "Parties."

CostQuest hereby grants to Licensee, and Licensee hereby accepts, a non-exclusive, non-transferable, limited license to use the User Materials, whether in form of the on-line or system evaluator versions, without fees, charges, or costs to the Licensee of any kind. Licensees will be provided with a minimum of 50 GB of storage capacity for Licensee CACM solution sets at no charge (for additional storage, a fee of $55 per 10 GBs may be assessed). Licensee shall make use of the User Materials under the following terms and restrictions:

1. License Grants and Restrictions

   1.1. Licensee shall utilize the User Materials only for review and evaluation for purposes of providing comments and other filings to the Federal Communication Commission ("FCC") in WC Docket No. 10-90, and in concurrent related or subsequent related administrative or judicial proceedings (the "Project").

   1.2. Licensee shall not transfer, sell, rent, disclose, make available or otherwise communicate, resell, sublicense or use the User Materials for any other purpose or in any other manner.

   1.3. Licensee shall make copies only of the licensed CACM Output as required for the Project as described in section 1.1 above. On any copy of the CACM Output that Licensee is permitted to make or distribute, Licensee shall reproduce all copyright notices and any other proprietary legends of CostQuest as they appear.

   1.4. Licensee shall not make any copies, distribute, sublicense, transfer, sell, rent, disclose, or make available any User Materials provided under this Licensing Agreement except consistent with the Third Supplemental Protective Order.

   1.5. Licensee shall at all times maintain the confidentiality of the User Materials, handling the User Materials in compliance with the Third Supplemental Protective Order. In the event that any portion of the User Materials should come into the possession of unauthorized third parties as a result of a breach by Licensee of this Licensing Agreement, Licensee shall, at its expense and

without limiting any other rights available to CostQuest, immediately notify CostQuest and use all commercially reasonable efforts to retrieve such materials and shall reimburse CostQuest for all reasonable expenses incurred by CostQuest in attempting to retrieve such materials.

1.6. Licensee shall not, and shall not permit any third party to, disassemble, decompile, reverse engineer, or otherwise recreate the User Materials.

1.7. In accessing or using the User Materials, Licensee shall not, by any action or inaction, violate laws or regulations promulgated by any governmental or quasi-governmental authorities that are binding upon it and shall take all reasonable steps to assist CostQuest or any other participant in the Project, or their affiliates, to avoid any violations of any such laws or regulations that are binding upon them.

1.8. Upon reasonable notice to Licensee, and at CostQuest's sole expense, CostQuest's auditors shall have the right to inspect Licensee's records relating to the Project as necessary for CostQuest to verify Licensee's compliance with the terms of this Licensing Agreement. Audits shall be conducted at Licensee's premises during normal business hours and in a manner that does not unreasonably interfere with Licensee's operations.

1.9. If Licensee sells, makes available to a third party, or otherwise disposes of Licensee-owned media on which the User Materials are or were resident, that media must be erased and scrubbed of the User Materials before such sale or disposal.

1.10. The Universal Service Administrative Company ("USAC") in consultation with the FCC, may limit or may allow CostQuest to limit the number of downloads of each type of CACM audit report by Licensee and other licensees each day where necessary to manage server resources (including bandwidth) and to preserve the integrity and/or proprietary nature of the data provided.

1.11. The foregoing does not preclude Licensee from disclosing any information made publicly available by the FCC or USAC.

2. Disclaimer of Warranties

2.1. LICENSEE ACKNOWLEDGES AND AGREES THAT (A) COSTQUEST HAS NOT MADE ANY EXPRESS OR IMPLIED WARRANTIES TO LICENSEE REGARDING THE USER MATERIALS AND (B) THE USER MATERIALS ARE BEING PROVIDED TO LICENSEE "AS IS," WITHOUT WARRANTIES OF ANY KIND. COSTQUEST DOES NOT WARRANT THAT THE USER MATERIALS ARE FREE FROM DEFECTS. COSTQUEST EXPRESSLY EXCLUDES AND DISCLAIMS ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

3. Term and Termination

3.1. This Licensing Agreement shall terminate automatically upon the termination of the FCC proceeding in WC Docket No. 10-90 and concurrent related or subsequent related administrative or judicial proceedings.

3.2. Notwithstanding section 3.1, if Licensee agrees that Licensee does not continue to require any User Materials, CostQuest may terminate this Licensing Agreement.

3.3. If CostQuest believes that Licensee is in violation of the Third Supplemental Protective Order or this Licensing Agreement, CostQuest shall so notify the FCC. If the FCC determines that Licensee is in violation of the Third Supplemental Protective Order or this Licensing Agreement and so orders, CostQuest may terminate this Licensing Agreement.

4. Limitation of Liability

4.1. IN NO EVENT SHALL COSTQUEST HAVE ANY LIABILITY FOR DAMAGES SUSTAINED BY LICENSEE IN CONNECTION WITH THIS LICENSING AGREEMENT, THE PROJECT OR THE POSSESSION OR USE OF USER MATERIALS, INCLUDING, WITHOUT LIMITATION, ANY LOST REVENUES OR PROFITS, OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF COSTQUEST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5. Ownership of Intellectual Property

5.1. Licensee acknowledges that the User Materials, including without limitation all output and derivatives of, as well as all modifications and customizations to the User Materials, are proprietary to CostQuest and that CostQuest retains exclusive ownership of all such User Materials and all proprietary rights associated therewith. Licensee shall, at the direction of CostQuest, take all commercially reasonable measures to protect CostQuest's rights in the User Materials. Nothing in this Section 5.1 limits Licensee's ability to use outputs and descriptions of the User Materials in accordance with the terms of this Licensing Agreement in the above-captioned proceeding and concurrent related or subsequent related administrative and judicial proceedings.

5.2. Except as expressly provided herein, Licensee is not granted any other rights or license to patents, copyrights, trade secrets, data or trademarks with respect to User Materials. Licensee shall promptly notify CostQuest in writing upon its discovery of any unauthorized use or infringement of the User Materials.

6. Additional Terms

6.1. Compliance with FCC Requirements and Other Laws. This Licensing Agreement is expressly made subject to any United States government laws, regulations, orders or other restrictions regarding the Project or use of software, data, output or products thereof. Notwithstanding anything to the contrary in this Licensing Agreement, Licensee shall not directly or indirectly export, or permit the transfer of, any software, data, output or products (a) to any country or destination for which the United States government or a United States governmental agency requires an export license or other approval for export without first having obtained such license or other approval; or (b) otherwise contrary to United States law, including, without limitation, FCC rules, policies and regulations.

6.2. No Waivers. No delay or omission by either party to exercise any right or power accruing upon any noncompliance or default by the other party with respect to any of the terms of this Licensing Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of any breach of the covenants, conditions or agreements to be

performed or honored by the other party shall not be construed to be a waiver of any later breach thereof or of any other covenant, condition or agreement herein contained.

6.3. Assignments. This Licensing Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and assigns. Licensee shall not assign this Licensing Agreement or transfer any rights granted hereunder, in whole or in part, without obtaining the prior written consent of CostQuest, and any attempted assignment or transfer in violation of this provision is void.

6.4. Severability and Survival of Obligations. If any provision of this Licensing Agreement is held invalid or unenforceable, the remainder of this Licensing Agreement shall not be affected thereby, and each remaining provision of this Licensing Agreement shall be valid and enforceable to the extent permitted by law. Sections 1, 2, 4, 5, and 6 shall survive any expiration or termination of this Licensing Agreement.

6.5. Nothing in this Licensing Agreement gives anyone, other than the Parties, any rights or remedies under this Licensing Agreement.

6.6. This Licensing Agreement may be executed in counterparts, and each (whether an original or facsimile) is considered an original and all constitute one and the same instrument.

6.7. Governing Law. This Licensing Agreement shall be governed by and construed in accordance with Federal law.

6.8. Entire Agreement. This Licensing Agreement, the Third Supplemental Protective Order, and the Non-Disclosure Agreement for Source Code (if it is executed) constitute the Parties' entire understanding with regard to the matters herein, and there are no other understandings, either written or unwritten, with regard to such matters. Any terms on either Party's web site, product schedule, or contained in any "shrinkwrap" or "clickwrap" agreement shall not have force or effect if the provision conflicts with the terms of this Licensing Agreement. The Licensing Agreement may not be modified, amended, canceled or waived, in whole or in part, except by a written instrument signed by the Parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Licensing Agreement by their duly authorized representatives effective as of the date first set forth above.

COSTQUEST:

CostQuest Associates, Inc.

By: _____
James Stegeman, President

LICENSEE:

Jennifer Otwell
[name]

Vice President
[position]

Totelcom Communications, LLC
[company]

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