

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

In the Matter of )
Special Access for Price Cap Local Exchange ) WC Docket No. 05-25
Carriers )
AT&T Corporation Petition for Rulemaking to ) RM-10593
Reform Regulation of Incumbent Local Exchange )
Carrier Rates for Interstate Special Access Services )

ORDER

Adopted: November 24, 2015

Released: November 24, 2015

By the Associate Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) denies four objections filed by TransWorld Network, Corp. (TransWorld) against the release of its confidential and highly confidential information submitted in response to the data collection in the business data services (special access) proceeding.<sup>1</sup>

II. BACKGROUND

2. As part of the rulemaking considering business data services, the Commission adopted the Data Collection Order on December 11, 2012, initiating a data collection for a comprehensive analysis of the market, and delegated authority to the Bureau to implement the collection.<sup>2</sup> The data collection sought data and information as a critical piece of the evidentiary record necessary for reforming the Commission’s business data services rules.<sup>3</sup> The last group of data submissions was due February 27, 2015.<sup>4</sup>

1 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, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012) (Data Collection Order); Report and Order, 28 FCC Rcd 13189 (Wireline Comp. Bur. 2013); Order on Reconsideration, 29 FCC Rcd 10899 (Wireline Comp. Bur. 2014); Order, 29 FCC Rcd 14346 (Wireline Comp. Bur. 2014) (Extension Order).

2 See Data Collection Order, 27 FCC Rcd at 16340, para. 52 (The Commission’s delegation gives the Bureau authority to: “(a) draft instructions to the data collection and modify the data collection based on public feedback; (b) amend the data collection based on feedback received through the [Paperwork Reduction Act] process; (c) make corrections to the data collection to ensure it reflects the Commission’s needs as expressed in [the Data Collection Order]; and (d) issue Bureau-level orders and Public Notices specifying the production of specific types of data, specifying a collection mechanism (including necessary forms or formats), and setting deadlines for response to ensure that data collections are complied with in a timely manner, and (e) take other such actions as are necessary to implement [the Data Collection Order].”).

3 Id. at 16345-49, paras. 66-71.

4 See Extension Order, 29 FCC Rcd at 14346, para. 1.

3. Much of the data and information sought in the collection are competitively sensitive and not publically available.<sup>5</sup> The process for designating, submitting, and accessing highly sensitive information collected is provided for in a *Protective Order* adopted by the Bureau on October 1, 2014.<sup>6</sup> To access information designated as either confidential or highly confidential information, as those terms are defined in the *Protective Order*, individuals must file with the Bureau executed Acknowledgments of Confidentiality (Acknowledgments) expressly agreeing to be bound by the terms of the *Protective Order*.<sup>7</sup> Companies that submitted confidential and highly confidential information to the Commission (Submitting Parties) may object to individuals seeking access to their data (potential Reviewing Parties), and must do so within five business days of release of a public notice announcing potential Reviewing Parties who have filed Acknowledgments seeking access.<sup>8</sup> Absent the filing of an objection, the Bureau will authorize access to the information sought by the potential Reviewing Parties.<sup>9</sup>

4. On September 23, October 5, October 13, and November 14, 2015, TransWorld objected to the release of its confidential and highly confidential information to a total of 86 individuals who had signed Acknowledgments seeking data access.<sup>10</sup> In all four objections, TransWorld specifically objected to the release of its information until each potential Reviewing Party states whether or not it is seeking access to TransWorld's confidential and highly confidential information, and identifies its intended purpose for accessing the information.<sup>11</sup> In response, AT&T urged the Bureau to dismiss TransWorld's

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<sup>5</sup> 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*, WC Docket No. 05-25, RM-10593, Order and Data Collection Protective Order, 29 FCC Rcd 11657, 11658, para. 3 (Wireline Comp. Bur. 2014) (*Protective Order*).

<sup>6</sup> *Id.*; *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, Order and Modified Data Collection Protective Order, 30 FCC Rcd 10027 (Wireline Comp. Bur. 2015) (*Modified Protective Order*). Among other things, the Bureau established a Secure Data Enclave via the NORC Data Enclave® to securely access and analyze the data. See *Protective Order*, 29 FCC Rcd at 11660, para. 12. No party filed an application for review or petition for reconsideration with respect to the *Protective Order* or the *Modified Protective Order*.

<sup>7</sup> *Protective Order*, 29 FCC Rcd at 11657, para. 1, 11670-71, Appx. A at para. 1.

<sup>8</sup> See *id.* at 11665, para. 23, 11673, Appx. A at para. 5, 11680, Appx. C.

<sup>9</sup> *Id.* at 11665, para. 23, 11673, Appx. A at para. 5.

<sup>10</sup> The objections cover 23 parties listed in the *Modified Protective Order*; 45 parties listed in a September 17, 2015 public notice; nine parties listed in a September 29, 2015 public notice; four parties listed in an October 7, 2015 public notice; and five parties listed in a November 6, 2015 public notice. See TransWorld Objection, WC Docket No. 05-25, RM-10593, at 1 (filed Sept. 23, 2015) (Sept. 23 Objection); TransWorld Objection, WC Docket No. 05-25, RM-10593, at 1 (filed Oct. 5, 2015) (Oct. 5 Objection); TransWorld Objection, WC Docket No. 05-25, RM-10593, at 1 (filed Oct. 13, 2015) (Oct. 13 Objection); TransWorld Objection, WC Docket No. 05-25, RM-10593, at 1 (filed Nov. 14, 2015) (Nov. 14 Objection); see also *Modified Protective Order*, 30 FCC Rcd at 10041, Appx. 1; *Parties Seeking Access to Data and Information Filed in Response to the Special Access Data Collection*, WC Docket No. 05-25, RM-10593, Public Notice, 30 FCC Rcd 10049, 10051-53, Attach. (Wireline Comp. Bur. 2015) (Sept. 17 Public Notice); *Additional Parties Seeking Access to Data and Information Filed in Response to the Special Access Data Collection*, WC Docket No. 05-25, RM-10593, Public Notice, DA 15-1083, Attach. (Wireline Comp. Bur. rel. Sept. 29, 2015) (Sept. 29 Public Notice); *Additional Parties Seeking Access to Data and Information Filed in Response to the Special Access Data Collection*, WC Docket No. 05-25, RM-10593, Public Notice, DA 15-1149, Attach. (Wireline Comp. Bur. rel. Oct. 7, 2015) (Oct. 7 Public Notice); *Additional Parties Seeking Access to Data and Information Filed in Response to the Special Access Data Collection*, WC Docket No. 05-25, RM-10593, Public Notice, DA 15-1254, Attach. (Wireline Comp. Bur. rel. Nov. 6, 2015) (Nov. 6 Public Notice).

<sup>11</sup> See Sept. 23 Objection at 2-3; Oct. 5 Objection at 2-3; Oct. 13 Objection at 2-3; Nov. 14 Objection at 2-3.

objection both on its merits and as an untimely challenge to the *Protective Order*.<sup>12</sup> The National Association of State Utility Consumer Advocates (NASUCA) also urged the Bureau to dismiss TransWorld's objection.<sup>13</sup>

### III. DISCUSSION

5. TransWorld objects to the release of its confidential and highly confidential information until potential Reviewing Parties disclose their intended purpose for accessing the data.<sup>14</sup> This objection is based on language in a footnote of the order adopting the *Protective Order*.<sup>15</sup> TransWorld raised the same argument in its objection in response to the July 10, 2015 public notice announcing a prior set of individuals who had filed Acknowledgments seeking access to confidential and highly confidential information. The Bureau subsequently rejected this argument in the *Modified Protective Order*.<sup>16</sup> As the Bureau explained, by virtue of executing an Acknowledgement, each potential Reviewing Party certifies that it is seeking access to the business data services data solely to participate in the business data services proceeding.<sup>17</sup> All 86 potential Reviewing Parties that TransWorld challenged executed Acknowledgments so certifying.<sup>18</sup> Requiring potential Reviewing Parties to specifically state this purpose when submitting their executed Acknowledgments is thus "unnecessary and redundant."<sup>19</sup> In the *Modified Protective Order*, the Bureau stated that it would make this intended purpose clearer in the subsequent public notices announcing potential Reviewing Parties, and it has done so.<sup>20</sup> TransWorld is not raising any new arguments on this issue previously addressed by the Bureau, and, we accordingly deny TransWorld's objections on this point.

6. TransWorld also objected to the release of its confidential and highly confidential information until potential Reviewing Parties disclose whether or not a party is specifically seeking access

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<sup>12</sup> Letter from Christopher T. Shenk, Counsel to AT&T, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-25, RM-10593 (filed Sept. 29, 2015) (AT&T Letter).

<sup>13</sup> Letter from Regina Costa, Chair, NASUCA Telecommunications Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, RM-10593 (filed Oct. 22, 2015).

<sup>14</sup> See Sept. 23 Objection at 2-3; Oct. 5 Objection at 2-3; Oct. 13 Objection at 2-3; Nov. 14 Objection at 2-3.

<sup>15</sup> See *Protective Order*, 29 FCC Rcd at 11665, para. 23 n.57 ("In addition to identifying the requesting party, we will include details about the requesting party, e.g., job title, employer, client represented, intended purpose for accessing data, to help Submitting Parties evaluate whether to object to the access sought.").

<sup>16</sup> Compare TransWorld Objection, WC Docket No. 05-25, RM-10593, at 2-3 (filed July 17, 2015) (July 17 Objection) with, e.g., Sept. 23 Objection at 2-3. See also *Modified Protective Order*, 30 FCC Rcd at 10035-36, paras. 18-20.

<sup>17</sup> *Modified Protective Order*, 30 FCC Rcd at 10036, para. 20. The *Protective Order* limits the use of the business data services data and information to "the preparation and conduct of this proceeding before the Commission," prohibiting use "for any other purpose." *Protective Order*, 29 FCC Rcd at 11674, Appx. A at para. 8; see also AT&T Letter at 1-2. By the terms of the *Protective Order*, potential Reviewing Parties assist Participants, who are "any person or entity that has filed, or has a good faith intention to file, material comments in this proceeding." See *Protective Order*, 29 FCC Rcd at 11671, Appx. A at para. 1, 11674, Appx. A at para. 8 (defining Participant and discussing restrictions on use).

<sup>18</sup> Sept. 17 Public Notice; Sept. 29 Public Notice; Oct. 7 Public Notice; Nov. 6 Public Notice; see also Parties Authorized to Review Special Access Data, <https://www.fcc.gov/encyclopedia/acknowledgement-confidential-special-access-data-collection>.

<sup>19</sup> See *Modified Protective Order*, 30 FCC Rcd at 10036, para. 20.

<sup>20</sup> The subsequent public notices have included language noting that by certifying Acknowledgments, potential Reviewing Parties attested their purpose for accessing the data is solely to participate in the business data services proceeding. See Sept. 17 Public Notice; Sept. 29 Public Notice; Oct. 7 Public Notice; Nov. 6 Public Notice.

to TransWorld's information.<sup>21</sup> TransWorld raised this argument in a previous objection, which the Bureau denied in the *Modified Protective Order*.<sup>22</sup> When initially proposing to use a third-party vendor for hosting data for inspection by authorized Reviewing Parties, the Bureau reasoned that parties would need access to the complete data set to conduct a full analysis. The Bureau made that determination to further the Commission's goal of facilitating a robust and comprehensive market analysis by participants in the business data services proceeding.<sup>23</sup> The complete data set by definition includes the data collected from all filers, including TransWorld.<sup>24</sup> Given our conclusion that access to the complete data set is necessary to conduct a full analysis, we find that requiring potential Reviewing Parties to identify the Submitting Parties whose data they intend to review would be inconsistent with the comprehensive market analysis envisioned by the Commission. Accordingly, we also deny TransWorld's objections on this point.

7. Furthermore, the *Protective Order* contains no requirement that potential Reviewing Parties identify specifically which companies' business data services data is sought, nor does it provide a mechanism to request specific filers' data and omit other filers' data. AT&T asserts that "to the extent TransWorld is now arguing that such a requirement should have been included in the *Protective Order*, such arguments must be rejected because they are untimely attacks on the *Protective Order*, which was adopted nearly a year ago."<sup>25</sup> We agree. The objection process was not intended, and may not be used, to collaterally challenge the protective order itself.<sup>26</sup> TransWorld had numerous opportunities to raise an objection to the procedures adopted in the *Protective Order* but failed to do so.<sup>27</sup> Accordingly, to the extent TransWorld argues that the Bureau should have required potential Reviewing Parties to disclose whether they are particularly seeking access to TransWorld's confidential and highly confidential

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<sup>21</sup> Sept. 23 Objection at 2-3; Oct. 5 Objection at 2-3; Oct. 13 Objection at 2-3; Nov. 14 Objection at 2-3.

<sup>22</sup> See July 17 Objection at 3; *Modified Protective Order*, 30 FCC Rcd at 10039, para. 30.

<sup>23</sup> See *Protective Order*, 29 FCC Rcd at 11661, para. 9; see also *Data Collection Order*, 27 FCC Rcd at 16327, para. 20, 16328, para. 23, 16331-32, para. 31; *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, 27 FCC Rcd 10557, 10561, para. 7, 10604-13, paras. 85-103 (2012) (both explaining the importance of a comprehensive analysis of the business data services market).

<sup>24</sup> See *Protective Order*, 29 FCC Rcd at 11661, para. 9, 11665, para. 23, 11673, Appx. A at para. 5, 11680, Appx. C; *Modified Protective Order*, 30 FCC Rcd at 10031-32, para. 9.

<sup>25</sup> AT&T Letter at 2.

<sup>26</sup> See *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Order, 30 FCC Rcd 10360, 10375, para. 27 (2015) (*Charter Order*); see also *Motions for Declaratory Rulings Regarding Commission Rules and Policies for Frequency Coordination in the Private Land Mobile Radio Services*, Memorandum Opinion and Order, 14 FCC Rcd 12752, 12757, para. 11 (1999); *MCI Telecomms. Corp. v. Pac. Northwest Bell Tel. Co. et al.*, Memorandum Opinion and Order, 5 FCC Rcd 216, 228 n.38 (1990), *recon. denied*, 5 FCC Rcd 3463 (1990) *appeal dismissed sub nom. Mountain States Tel. and Tel. Co. v. FCC*, 951 F.2d 1259 (10th Cir. 1991) (*per curiam*).

<sup>27</sup> *Modified Protective Order*, 30 FCC Rcd at 10031-32, para. 9 & n.38. TransWorld knew the scope of the information it would be required to file when the Commission adopted the *Data Collection Order* on December 11, 2012. It also had an opportunity to comment on the draft protective order in response to a June 28, 2013 public notice but failed to do so. See *Wireline Competition Bureau Seeks Comment on Protective Order for Special Access Data Collection*, WC Docket No. 05-25, RM-10593, Public Notice, 28 FCC Rcd 9170 (Wireline Comp. Bur. 2013). Nor did TransWorld file a petition for reconsideration or an application for review after the *Protective Order* was adopted on October 1, 2014.

information, independently from our rejection of the argument on the merits, we reject it as an untimely challenge to the *Protective Order*.<sup>28</sup>

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to paragraph 5 of the *Protective Order*, 29 FCC Rcd at 11673, Appx. A at para. 5, sections 1, 4(i), and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), sections 0.91, and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, and 0.291, and the authority delegated to the Bureau in the *Data Collection Order*, 27 FCC Rcd at 16340, para. 52, that the objections filed by TransWorld Network, Corp. on September 23, 2015, October 5, 2015, October 13, 2015, and November 14, 2015 ARE DENIED.

9. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Deena M. Shetler  
Associate Chief  
Wireline Competition Bureau

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<sup>28</sup> Consistent with the *Charter Order*, we will not allow access to the filers' data covered by the scope of these objections until the ten business day window for filing challenges to this Order has expired without the filing of a challenge. See *Charter Order*, 30 FCC Rcd at 10374, para. 26 ("If the Bureau overrules the objection, we will not require that the information be made available for review pursuant to the protective order for ten business days and, if an application for review is filed within that time, until the Commission acts upon the application for review (if an application for review is not filed within that time, the information will be required to be made available for review pursuant to the terms of the protective order).").