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

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Low Volume Long Distance Users	)	CC Docket No. 99-249
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	
	)	
	)	
	)	

ORDER

Adopted: May 3, 2002 **Released: May 6, 2002**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. By this Order, we grant in part the request by the National Association of State Utility Consumer Advocates (NASUCA) for a limited modification of the Common Carrier Bureau's (Bureau) *Interim Protective Order* in the non-rural universal service support proceeding.[1] Specifically, we grant NASUCA's request by modifying the *Interim Protective Order* to permit limited access to certain carrier-filed line count information from the non-rural universal service support proceeding so that it can be used in the Commission's proceeding concerning the remand of the $650 million support amount under the interstate access support mechanism for price cap carriers (*CALLS Order* remand proceeding), subject to the conditions described below.[2]

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[1] *See* Request of the National Association of State Utility Consumer Advocates for a Second Limited Modification of Interim Protective Order (IPO), CC Docket Nos. 96-262, 94-1, 96-45 (filed January 14, 2002). *See also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Interim Protective Order, 15 FCC Rcd 10183 (Com. Car. Bur. 2000)(*Interim Protective Order*).

[2] The *CALLS Order* remand proceeding was initiated by Public Notice on December 4, 2001. *See Common Carrier Bureau Seeks Comment on Remand of $650 Million Support Amount Under Interstate Access Support Mechanism for Price Cap Carriers*, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, Public Notice, 16 FCC Rcd 21307 (Com. Car. Bur. 2001) (*CALLS Remand Public Notice*); *Access Charge Reform, Price Cap Performance*

(continued....)

II. BACKGROUND

2. The Commission requires non-rural carriers and eligible telecommunications carriers in study areas served by non-rural carriers that are seeking to receive support under the forward-looking high cost universal service support mechanism for non-rural carriers to report line count data at the wire center level on a quarterly basis.[3] Several carriers submitting line count data at the wire center level sought confidential treatment of the data pursuant to section 0.459 of the Commission's rules.[4] On April 7, 2000, the Bureau released the *Interim Protective Order* in the universal service proceeding to facilitate and expedite review of the line count data at the wire center level.[5] The Bureau limited use of the Confidential Line Count Information, defined at paragraph 2.c. of the *Interim Protective Order*, "only for the purpose of reviewing the underlying information and verifying the results of the forward-looking cost mechanism."[6]

3. On November 20, 2001, NASUCA requested a limited modification of the Bureau's *Interim Protective Order* to obtain access to Confidential Line Count Information subject to the *Interim Protective Order* specifically for use in the Commission's subscriber line charge (SLC) cap cost review proceeding.[7] On December 6, 2001, the Bureau released an order granting NASUCA's request by modifying in a limited manner the definition of the use of Confidential Line Count Information to include the purpose of producing loop cost studies and evaluating the data and cost studies submitted by price cap carriers in the SLC cap cost review proceeding.[8] All other terms of the *Interim Protective Order*, as well as the conditions proposed by NASUCA and set forth in paragraph 3 of the *First Order Modifying Interim Protective Order*, apply to use of the Confidential Line Count Information in the SLC cap cost review proceeding by NASUCA or any other party to that proceeding.[9]

(...continued from previous page)
Review for Local Exchange Carriers, Sixth Report and Order, CC Docket Nos. 96-262 and 94-1, *Low-Volume Long-Distance Users*, Report and Order, CC Docket No. 99-249, *Federal-State Joint Board on Universal Service*, Eleventh Report and Order, CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (*CALLS Order*), aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Util. Counsel et al. v. FCC, 265 F.3d 313 (5th Cir. 2001) (*TOPUC*).

[3] 47 C.F.R. §§ 36.611, 36.612, 54.307. *See Interim Protective Order*, 15 FCC Rcd at 10183, para. 1. Submission of data at the wire center level permits targeting of support consistent with the Commission's rules.

[4] See 47 C.F.R. § 0.459; *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 8746, 8750 at n. 19 (2000).

[5] *See Interim Protective Order*

[6] *Id.* at 10187, para. 11.

[7] *See* Request of the National Association of State Utility Consumer Advocates for a Limited Modification of Interim Protective Order (IPO), CC Docket Nos. 96-262, 94-1, 96-45 (filed Nov. 20, 2001). The SLC cap cost review proceeding was initiated by Public Notice on September 17, 2001. *See Initiation of Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps*, CC Docket Nos. 96-262 and 94-1, Public Notice, 16 FCC Rcd 16705 (2001).

[8] *In the Matter of Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-262, 94-1, 96-45, Order, 16 FCC Rcd 21356, 21357 para. 4 (2001) (*First Order Modifying Interim Protective Order*).

[9] *Id.*

4. On September 10, 2001, the United States Court of Appeals for the Fifth Circuit remanded the *CALLS Order* to the Commission for, among other things, further analysis and explanation regarding the establishment of an annual amount of $650 million for the interstate access support mechanism.[10] On December 4, 2001, the Bureau released a Public Notice seeking comment on this issue.[11] Specifically, the Bureau sought comment on the uses of a cost model, including the Commission's current forward-looking cost model for universal service, the study submitted by AT&T in the *CALLS* proceeding, or any other studies or analyses to determine the appropriate amount of support under the interstate access support mechanism.[12]

5. On January 14, 2002, NASUCA filed a request for a second modification of the *Interim Protective Order* to permit it to use the Confidential Line Count Information to provide comments in response to the Public Notice.[13] NASUCA stated in its request that the information would be used to help it prepare comments in the *CALLS Order* remand proceeding addressing the appropriate amount of support under the interstate access support mechanism.[14] Aside from its request for a limited expansion of the permissible uses, NASUCA agrees to comply with all of the *Interim Protective Order's* restrictions on the disclosure of Confidential Line Count Information. Alternatively, NASUCA seeks permission to use the Confidential Line Count Information "in any proceeding established by the FCC to consider appropriate cost models to be used to establish any universal service fund and any proceeding in which the FCC considers establishing an amount for any universal service fund."[15]

6. On February 6, 2002, NASUCA and the Maryland Office of People's Counsel filed joint reply comments with the Commission in the *CALLS Order* remand proceeding. In their reply comments, they provide summary forward-looking cost estimates based on the cost studies submitted by NASUCA in the SLC cap cost review proceeding pursuant to the *First Order Modifying Interim Protective Order.*[16] Their reply comments, however, do not contain the Confidential Line Count Information at the wire center level contained in NASUCA's comment in the SLC cap cost review proceeding.

III. DISCUSSION

7. Based on the specific circumstances presented here, and subject to the conditions specified below, we grant in part NASUCA's request for a second limited modification of the *Interim Protective Order* to permit access to the Confidential Line Count Information for use in the *CALLS Order* remand proceeding. The Bureau finds that granting access to Confidential Line

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[10] *See TOPUC*, 265 F.3d at 328. *See also CALLS Order*, 15 FCC Rcd 12962.

[11] *See CALLS Remand Public Notice*, 16 FCC Rcd 16705.

[12] *Id.*

[13] *See* Request of the National Association of State Utility Consumer Advocates for a Second Limited Modification of Interim Protective Order (IPO), CC Docket Nos. 96-262, 94-1, 96-45 (filed January 14, 2002).

[14] *Id.* at 3.

[15] *Id.* at 4. NASUCA suggests that, "[t]o the extent that the Common Carrier Bureau believes that it would facilitate efficient resolution of universal service support related issues which may arise in the future," this broad request should be granted. *Id.*

[16] See Comment of the Maryland Office of People's Counsel and the National Association of State Utility Consumer Advocates (NASUCA), CC Docket Nos. 96-262, 94-1, 99-249, 96-45 (filed February 6, 2002).

Count Information will allow parties to develop the most complete possible record in the *CALLS Order* remand proceeding and give interested parties the opportunity to respond fully to arguments through the *ex parte* process.[17]

8. Specifically, the use of Confidential Line Count Information defined in paragraph 11 of the *Interim Protective Order* and modified as described in paragraph 4 of the *First Order Modifying Interim Protective Order* is further modified in a limited manner to include the purpose of preparing submissions in the *CALLS Order* remand proceeding. All other terms of the *Interim Protective Order,* and the conditions proposed by NASUCA and set forth in this Order, will apply to use of Confidential Line Count Information in the *CALLS Order* remand proceeding by NASUCA or any other party to that proceeding.[18] Use of the Confidential Line Count Information shall also be subject to the following conditions established in the *First Order Modifying Interim Protective Order*: (1) in any filing, line count data will be aggregated to the unbundled network element (UNE) zone level or above, so that no wire center line data will be filed, and (2) parties will request confidential treatment of filings that rely on Confidential Line Count Information.[19] As required by the *Interim Protective Order*, parties seeking access to the Confidential Line Count Information are required to execute a Declaration agreeing to the terms of the *Interim Protective Order*.[20] To ensure compliance with the specific conditions required by this Order for use of Confidential Line Count Information in the *CALLS Order* remand proceeding, we adopt a modified Declaration, included as Attachment A, which parties must execute and comply with in this proceeding.

9. We deny NASUCA's alternative request for a modification to the *Interim Protective Order,* which would permit it to obtain and utilize Confidential Line Count Information in any Commission proceeding considering appropriate cost models for universal service purposes or the appropriate amount of any universal service support mechanism. Grant of this request would allow NASUCA access to the Confidential Line Count Information for purposes beyond the scope of the *Interim Protective Order* and *First Order Modifying Interim Protective Order* without a fact-specific showing of why such inspection is necessary, contrary to the Commission's rules governing treatment of records withheld from inspection.[21]

10. As stated in the *Interim Protective Order*, several carriers submitting the Confidential

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[17] Although the reply comments in response to the *CALLS Remand Public Notice* were due on February 4, 2002, NASUCA may submit an *ex parte* filing on the record and interested parties may respond to NASUCA's *ex parte* filing on the record through the *ex parte* process, consistent with the Commission's rules. *See* 47 C.F.R. §§ 1.1200 - 1.1216.

[18] *See Interim Protective Order.*

[19] *First Order Modifying Interim Protective Order*, 16 FCC Rcd at 21357, para. 3.

[20] *See Interim Protective Order*, 15 FCC Rcd at 10186, para. 10.

[21] *See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816, 24828 (1998). Section 0.461(c) of the Commission's rules requires that each request for inspection of confidential material make a persuasive showing as to the reasons for inspection. 47 C.F.R. § 0.461(c). We note that Verizon Communications (Verizon) filed a response objecting to NASUCA's request as overly broad and inconsistent with the original intent of the *Interim Protective Order. See* Letter from W. Scott Randolph, Director – Regulatory Affairs, Verizon Communications, to Magalie R. Salas, Secretary, Federal Communications Commission, Ex Parte: CC Docket Nos. 96-262, 94-1, 96-45, January 18, 2002. Verizon does not oppose, however, NASUCA's request for limited use of the Confidential Line Count Information in order to submit comments in the *CALLS Order* remand proceeding. *Id.*

Line Count Information have sought confidential treatment of the data pursuant to section 0.459 of the Commission's rules.[22] The question whether such data should be afforded confidential treatment on a permanent basis is the subject of a pending proceeding before the Commission, and nothing in this Order is intended to prejudge the outcome of that proceeding. The Confidential Line Count Information, as used under the terms of this Order in the *CALLS Order* remand proceeding, shall be subject to the terms of the *Interim Protective Order*, as modified herein, until a final determination by the Commission on the manner in which such information is to be treated. This Order does not constitute a resolution of the merits concerning whether any Confidential Line Count Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including section 0.442 of the Commission's rules.[23]

IV. ORDERING CLAUSE

11. Accordingly, pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303(r), and sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, IT IS ORDERED that the Request of the National Association of State Utility Consumer Advocates for a Second Limited Modification of Interim Protective Order GRANTED IN PART AND DENIED IN PART to the extent stated herein.

FEDERAL COMMUNICATIONS COMMISSION

Dorothy T. Attwood

Dorothy T. Attwood
Chief, Wireline Competition Bureau

[22] *See Interim Protective* Order, 15 FCC Rcd at 10183, para. 1. *See also* 47 C.F.R. § 0.459; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 8746 (2000). Anchorage Telephone Utility, Bell Atlantic, BellSouth, GTE, SBC (including Ameritech), Sprint and U S West requested confidential treatment of these data.

[23] 47 C.F.R. § 0.442.

ATTACHMENT A

DECLARATION

Access Charge Reform (CC Docket No. 96-262), Price Cap Performance Review for Local Exchange Carriers (CC Docket No. 94-1), Low Volume Long Distance Users (CC Docket 99-249), and Federal-State Joint Board on Universal Service (CC Docket No. 96-45).

I, _____, hereby declare under penalty of perjury that I have read the Interim Protective Order (DA 00-773) and the subsequent Second Modification Order (DA 02-**[XX]**) that have been entered by the Wireline Competition Bureau in these dockets, and that I agree to be bound by their terms pertaining to the treatment of Confidential Line Count Information submitted by parties pursuant to sections 36.611, 36.612, and 54.307 of the Commission's rules, 47 C.F.R. §§ 36.611, 36.612, 54.307. I understand that the Confidential Line Count Information shall not be disclosed to anyone except in accordance with the terms of these Orders and shall be used only for purposes specified in these Orders. I acknowledge that a violation of either of these Orders is a violation of an order of the Wireline Competition Bureau. I acknowledge that these Orders are also binding agreements with every Submitting Party.

(signed) _____
(printed name) _____
(representing)_____
(title) _____
(employer) _____
(address) _____
(phone) _____
(date) _____