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

In the Matter of	)		
Special Access for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25	MAILED
AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	RM 10593	NOV - 2 2010 FCC Mail Room

MODIFIED PROTECTIVE ORDER

Adopted: October 28, 2010 **Released: October 28, 2010**

By the Chief, Wireline Competition Bureau:

1. On January 31, 2005, the Commission released an Order and Notice of Proposed Rulemaking commencing a broad examination of the regulatory framework to apply to price cap local exchange carriers' (LECs') interstate special access services after June 30, 2005.[1] In that NPRM, the Commission explained that an examination of the current state of competition for special access facilities is critical to determine whether the Commission's pricing flexibility rules have worked as intended.[2] In addition, the Commission sought comment on appropriate measures to ensure that price cap rates for special access services remain just and reasonable after expiration of the CALLS plan.[3] Subsequently, the Commission sought updated information on these issues, and the parties continue to provide their views to Commission staff.[4] The Commission later released, on November 5, 2009, a Public Notice inviting comment on the appropriate analytical framework for determining whether the current rules are working.[5] In a Public Notice for this proceeding issued today, it now seeks special access facilities data that would need to be reviewed regardless of which analytical framework is adopted.[6]

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[1] *See Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) (*Special Access NPRM*).
[2] *Special Access NPRM*, 20 FCC Rcd at 2018-19, paras. 71-73. The Commission invited comment on whether the available data and actual marketplace developments support the predictive judgments that underlie the special access pricing flexibility rules. *Id.* at 1996, 2018-19, paras. 5, 71.
[3] *Id.* at 1995, 2004, paras. 2, 22.
[4] *Parties Asked to Refresh Record in the Special Access Notice of Proposed Rulemaking*, WC Docket No. 05-25, Public Notice, 22 FCC Rcd 13352 (2007).
[5] *Parties Asked to Comment on Analytical Framework Necessary to Resolve Issues in the Special Access NPRM*, WC Docket No. 05-25, Public Notice, 24 FCC Rcd 13639 (2009).
[6] *Data Requested in Special Access NPRM,* Public Notice, WC Docket 05-25, RM-10593, DA 10-2073 (Rel. Oct. 28, 2010).

2. Five years ago, the Bureau adopted a Protective Order in this proceeding to ensure that any confidential or proprietary documents would be afforded adequate protection.[7] Since that time, based on its experience in other proceedings implementing protective orders,[8] the Commission has made certain modifications to the standard protective order language to address various issues encountered in the protection of proprietary and confidential information.[9] Accordingly, we are adopting this *Modified First Protective Order*, which supercedes the *First Protective Order* adopted five years ago,[10] to take account of those changes. As before, this *Modified First Protective Order* does not constitute a resolution of the merits concerning whether any information submitted under the Protective Order would be released publicly by the Commission upon a proper request under the Freedom of Information Act ("FOIA") or otherwise.

3. *Acknowledgment.* Any party seeking access to confidential documents and information subject to this Protective Order shall request access pursuant to the terms of the Protective Order and must sign the Acknowledgment of Confidentiality, attached as Appendix A (the "Acknowledgment").

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

"Stamped Confidential Document" means any document, or any part thereof, 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 ORDER IN WC DOCKET NO. 05-25, RM 10593, BEFORE THE FEDERAL COMMUNICATIONS COMMISSION," unless the Commission determines, *sua sponte* or by request pursuant to Sections 0.459 or 0.461 of its rules, that any such document is not entitled to confidential treatment. The term "document" means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. By designating a document a "Stamped Confidential Document," a Submitting Party signifies and represents that it contains information that the Submitting Party believes should be subject to protection under FOIA and the Commission's implementing rules.

"Confidential Information" means information contained in a Stamped Confidential Document or derived therefrom that is not otherwise available from publicly available sources;

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

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[7] *See In the Matter of Special Access Rates for Price Cap Local Exchange Carriers,* WC Docket No. 05-25, Order, 20 FCC Rcd 10160 (2005) (*First Protective Order*).

[8] *See, e.g., In the Matter of 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 No. 07-135, WC Docket 10-90, WC Docket 05-337, GN Docket 09-51, Protective Order, DA 10-1749 (WCB rel. Sep. 16, 2010) (*ICC Protective Order*); *In the Matter of Applications of Comcast Corp., General Electric Co. and NBC Universal, Inc. For Consent to Assign Licenses or Transfer Control of Licensees,* MB Docket 10-56, Protective Order, 25 FCC Rcd 2133 (2010) (*Comcast Protective Order*); *In the Matter of Applications Filed by Frontier Communications Corp. and Verizon Communications Inc. for Assignment or Transfer of Control,* WC Docket 09-95, Protective Order, 24 FCC Rcd 14435 (2009); *In the Matter of Petitions of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. §160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas,* WC Docket No. 07-97, First Protective Order, 22 FCC Rcd 10129 (2007).

[9] For example, current protective orders explicitly provide that outside counsel of record can only obtain access to confidential information if they are not involved in competitive decision making. *See, e.g., ICC Protective Order,* DA 10-1749 at para. 3 (definition of "Outside Counsel of Record"); *Comcast Protective Order*, 25 FCC Rcd at 2134, para. 4 (definition of "Outside Counsel of Record").

[10] *See generally First Protective Order,* 20 FCC Rcd 10160.

"In-House Counsel" means an attorney employed by a party to this proceeding or employed by an affiliated entity and who is actively engaged in the conduct of this proceeding, *provided that*, such counsel is not involved in competitive decision-making, *i.e.*, In-House Counsel's activities, association, and relationship with a client are not such as to involve such counsel's advice and participation in any or all of the client's business decisions made in light of similar or corresponding information about a competitor;

"Outside Counsel of Record" means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing a party in this proceeding, *provided that,* the Outside Counsel of Record is not involved in competitive decision-making; and

"Reviewing Party" means a person who has obtained access to Confidential Information (including Stamped Confidential Documents) pursuant to paragraphs 7 and 10 of this Protective Order.

5. *Submission of Stamped Confidential Documents.* Two copies of each document that a Submitting Party claims is confidential or proprietary (a "Confidential Document") must be delivered in person to Marvin Sacks, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The documents shall be accompanied by a cover letter stating "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 05-25, RM 10593 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." Each page of the Confidential Filing shall be stamped with this legend as well. In addition, a Submitting Party shall file with the Secretary's Office one copy of the Confidential Document, two copies of the Confidential Document in redacted form, *i.e.*, containing no Confidential Information (the "Redacted Confidential Document"), and the accompanying cover letter. Each Redacted Confidential Document shall have the same pagination as the Confidential Document from which it is derived. The two copies of the Redacted Confidential Document and the accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." To the extent that any page of the Confidential filing contains both Confidential Information and non-confidential information, only the Confidential Information may be redacted and the page of the unredacted filing shall clearly distinguish the Confidential Information from the non-confidential information.

6. *Copying Sensitive Documents.* If, in the reasonable judgment of the Submitting Party, a document contains information so sensitive that copying of it should be restricted, the Submitting Party may mark the document with the legend "Additional Copying Prohibited." A Reviewing Party shall receive only one copy of the document and no further copies of such document, in any form, shall be made by the Reviewing Party. Application for relief from this restriction against further copying may be made to the Commission, with notice to Outside Counsel of Record for the Submitting Party.

7. *Procedures for Obtaining Access to Stamped Confidential Documents.* In all cases where access to Stamped Confidential Documents and Confidential Information is permitted pursuant to paragraph 10, before reviewing or having access to any Stamped Confidential Documents or Confidential Information, each person seeking such access shall execute a copy of the Acknowledgment and file it with the Bureau, on behalf of the Commission, and serve it upon each Submitting Party through its Outside Counsel of Record so that the Acknowledgment is received by each Submitting Party at least five business days prior to such person's reviewing or having access to the Submitting Party's Stamped Confidential Documents or Confidential Information, except that, where the person seeking access is one described in either clause 2, 3 or 4 of paragraph 10, the Acknowledgment shall be delivered promptly prior to the person's obtaining access. Each Submitting Party shall have an opportunity to object to the disclosure of Stamped Confidential Documents or Confidential Information to any such persons. Any objection must be filed at the Commission and served on Counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment (or where

the person seeking access is one described in clause 2, 3 or 4 of paragraph 10, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, 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 a Submitting Party shall not have access to Stamped Confidential Documents or Confidential Information.

8. *Review of Stamped Confidential Documents.* The Submitting Party shall make available for review the Stamped Confidential Documents of such party at the offices of the party's Outside Counsel of Record or, if the Submitting Party does not have Outside Counsel of Record, at the offices of such party's In-House Counsel. Parties reviewing these documents will be provided the following alternatives: (1) parties will be provided adequate opportunity to inspect the documents on site; (2) parties may inspect the documents on site with the ability to request copies, at cost, of all or some of the documents; or (3) parties may request a complete set of the documents at cost, allowing two business days after the request is made for receipt of the copies. If a complete set of documents will be requested, parties are encouraged to make such requests at the time they submit the Acknowledgment to allow parties the opportunity to begin reviewing the documents at the end of the five-day period referred to in paragraph 7 above. All copies of documents that are removed from the Submitting Party's office will be stamped as described above and in the following paragraph and must be returned or destroyed in accordance with the terms of this Protective Order.

9. *Use of Confidential Information.* Persons obtaining access to Confidential Information (including Stamped Confidential Documents) under this Protective Order shall use the information solely for the preparation and conduct of this proceeding before the Commission as delineated in this paragraph and paragraphs 10, 14 and 15, 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 other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to the contents of any of the Stamped Confidential Documents or Confidential Information in its decision in this proceeding, it will do so by redacting any Confidential Information from the public version of the decision and by making the unredacted version of the decision available only to a court and to those persons entitled to access to Confidential Information under this Protective Order.

10. *Permissible Disclosure.* Subject to the requirements of paragraph 7, Stamped Confidential Documents may be reviewed by Counsel, and Counsel may disclose Stamped Confidential Documents and other Confidential Information to: (1) outside consultants or experts retained for the purpose of assisting Counsel in this proceeding, *provided that,* the outside consultants or experts are not involved in the analysis underlying the business decisions of any competitor of any Submitting Party nor participate directly in those business decisions; (2) paralegals or other employees of such Counsel not described in clause 3 of this paragraph assisting Counsel in this proceeding; (3) employees of such Counsel 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 documents connected with this proceeding; and (4) employees of third-party contractors performing one or more of the functions set forth in clause 3 of this paragraph. Reviewing Parties may discuss and share the contents of the Stamped Confidential Documents and Confidential Information with another Reviewing Party and with the Commission and its staff. A Submitting Party's Stamped Confidential Documents and Confidential Information may also be disclosed to employees and Counsel of the Submitting Party.

11. *Non-Disclosure of Stamped Confidential Documents.* Except with the prior written consent of the Submitting Party, or as provided under this Protective Order, neither a Stamped Confidential Document nor any Confidential Information may be disclosed further.

12. *Protection of Stamped Confidential Documents and Confidential Information.* Persons described in paragraphs 7 and 10 shall have the obligation to ensure that access to Stamped Confidential Documents and Confidential Information is strictly limited as prescribed in this Protective Order. Such persons shall further have the obligation to ensure that: (1) Stamped Confidential Documents and Confidential Information are used only as provided in this Protective Order; and (2) Stamped Confidential Documents are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 14 below.

13. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential Information outside the terms of this Protective Order, requests will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

14. *Filings with the Commission.* Persons described in paragraphs 7 and 10 may, in any documents that they file in this proceeding, reference Confidential Information, but only if they comply with the following procedure:

a. The cover or first page of the filing, and each page of the filing that contains or discloses Confidential Information subject to this order must be clearly marked: "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 05-25, RM 10593 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION."

b. One copy of the filing shall be filed with the Secretary's Office. The filing shall be accompanied by a cover letter stating "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 05-25, RM 10593 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The filing shall be made under seal, and will not be placed in the Commission's public file.

c. Those portions of the filing that constitute Confidential Information shall be clearly identifiable as such, so that those portions that are deemed to be Confidential Information are readily identifiable based on an examination of the filing.

d. Two redacted copies of the filing containing no Confidential Information (the "Redacted Confidential Filing") shall also be filed with the Secretary's Office. Each Redacted Confidential Filing shall have the same pagination as the Confidential Filing from which it is derived. The two copies of the Redacted Confidential Filing and their accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential Filing shall state that the Submitting Party is filing a redacted version of the filing.

e. Two copies of the filing containing Confidential Information and the accompanying cover letter shall be delivered in person to Marvin Sacks, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. In addition, a person making a filing containing Confidential Information shall serve a copy on the relevant Submitting Party.

f. Parties should not provide courtesy copies of pleadings containing Confidential Information to Commission staff unless the Bureau so requests. Any courtesy copies shall be submitted under seal.

15. *Client Consultation.* Nothing in this Protective Order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Confidential Documents or Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client, Counsel shall not disclose Stamped Confidential Documents or Confidential Information.

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

17. *Subpoena by Courts, Departments, or Agencies.* If a court, or a federal or state department or agency issues a subpoena or orders production of Stamped Confidential Documents or Confidential Information that a party has obtained under terms of this Protective Order, such party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document or Confidential Information.

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

19. *Termination of Proceeding.* The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, persons described in paragraph 10 shall destroy or return to the Submitting Party Stamped Confidential Documents and all copies of the same. No material whatsoever derived from Stamped Confidential Documents may be retained by any person having access thereto, except Counsel may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) containing Confidential Information prepared in whole or in part by that party, and one copy of orders issued by the Commission or Bureau containing Confidential Information. All Counsel shall make certification of compliance herewith and shall deliver the same to Counsel for the Submitting Party not more than three weeks after conclusion of this proceeding. The provisions of this paragraph regarding retention of Stamped Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

20. *Authority*. Accordingly, IT IS ORDERED that 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, and pursuant to authority delegated under Section 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291,[11] this Protective Order IS ADOPTED, effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief, Wireline Competition Bureau

[11] *See* 47 U.S.C. § 155(c).

APPENDIX A

Acknowledgment of Confidentiality

WC Docket No. 05-25, RM 10593

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceedings, and I understand it. I agree that I am bound by the Protective Order and that I shall not disclose or use Stamped Confidential Documents or Confidential Information except as allowed by the Protective Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as Counsel or consultant to a party or other person described in paragraph 4 of the foregoing Protective Order and that I will not use such information in any other capacity, nor will I disclose such information except as specifically provided in the Protective Order.

I hereby certify that I am not involved in "competitive decision-making" as that term is used in the definition of In-House Counsel in paragraph 4 of the Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Stamped Confidential Documents and Confidential Information are used only as provided in the Protective Order; and (2) Stamped Confidential Documents are not duplicated except as specifically permitted by the terms of the Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Stamped Confidential Documents or Confidential Information.

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

Executed at _____ this ___ day of _____, ____.

_____
[Name]
[Position]
[Address]
[Telephone]