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January 27, 2011

FILED/ACCEPTED

JAN 27 2011

Federal Communications Commission
Office of the Secretary

BY HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: **Cox Communications, Inc.**
WCB Docket No. 05-25, RM-10593
Data Request Response

Dear Ms. Dortch:

Attached are an original and four copies of the redacted response of Cox Communications, Inc. ("CCI") to the Commission's data request in the above-referenced proceeding. As directed by the "Data Request in Special Access NPRM" Public Notice, DA 10-273 (rel. Oct. 28, 2010), and the *Second Protective Order*, DA 10-2419 (rel. Dec. 27, 2010), an original unredacted copy of this filing that includes information designated by CCI as highly confidential has been provided today to Marvin Sacks of the Pricing and Policy Division of the Wireline Competition Bureau.

Please contact me if you have any questions regarding this request or if you require additional information.

Sincerely,

J.G. Harrington
Counsel for Cox Communications, Inc.

cc (w/attachments): Marvin Sacks

REDACTED – FOR PUBLIC INSPECTION

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January 27, 2011

BY HAND DELIVERY
CONFIRMATION BY ELECTRONIC MAIL

Marvin Sacks
Pricing Policy Division
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: **Cox Communications, Inc.**
WCB Docket No. 05-25, RM-10593
Data Request Response
Request for Confidentiality

Dear Mr. Sacks:

Pursuant to the procedures established by the Commission's *Special Access Data Request*, the *Second Protective Order* in the above-referenced docket, and Sections 0.459 and 0.457(d) of the Commission's rules, Cox Communications, Inc. ("CCI"), hereby requests that the Commission afford highly confidential treatment to the information CCI is providing at the Commission's request in response to Questions III. A, III.B.1, III.B.2, and III.B.3 of the *Special Access Data Request*.[1] CCI also requests that the Commission provide CCI and its counsel reasonable advance notice and an opportunity to respond to any third-party request for disclosure of such information.[2]

Non-disclosure of the information provided in response to the questions identified above is consistent with Section 552(b)(4) of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4), and Section 0.457(d) of the Commission's rules, 47 C.F.R. § 0.457(d), because CCI's responses consist of highly confidential commercial information that CCI does not disclose to the public. Further disclosure of this information would cause CCI substantial competitive injury.

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[1] Data Requested in *Special Access NPRM, Public Notice*, 25 FCC Rcd 15146 (WCB 2010); Special Access for Price Cap Local Exchange Carriers, *Second Protective Order*, DA 10-2419 (WCB rel. Dec. 27, 2010) (the "*Second Protective Order*"); 47 C.F.R. §§ 0.459 and 0.457(d).

[2] Nearly all of the highly confidential information Cox is submitting falls within the categories of information identified in the *Second Protective Order* as qualifying for highly confidential treatment. *See Second Protective Order* ¶6. The *Second Protective Order* further notes that FOIA requests for such information will be entertained pursuant to 47 C.F.R. §§ 0.442 and 0.461. *Id.* ¶14. This letter therefore includes a showing that the information it is submitting today should be exempt from disclosure requests pursuant to FOIA.

REDACTED – FOR PUBLIC INSPECTION

Under exemption 4 of FOIA, the Commission need not disclose, among other things, any confidential commercial or financial information.[3] "Commercial or financial matter is 'confidential' . . . if disclosure of the information is likely . . . to cause substantial harm to the competitive position of the person from whom the information was obtained."[4] Both the Commission and the courts have acknowledged that commercial and financial information can include business sales statistics, research data, technical designs, overhead and operating costs, and information regarding an entity's financial condition.[5] Moreover, "financial or commercial information provided to the Government on a voluntary basis is 'confidential' under Exemption 4 if it is of a kind that would customarily not be released to the public by the person from whom it was obtained."[6]

Under these standards, the designated information provided by CCI in response to the data request is proprietary, non-public information that would likely cause CCI substantial competitive harm if it were publicly disclosed. This information therefore constitutes "confidential commercial or financial information" within the meaning of FOIA exemption 4 and should be protected from public disclosure. This information includes without limitation: (a) the locations of its connections that it owns or leases from another entity under an indefeasible right of use agreement (Question III.A); (b) the precise location and capacity of lines over which CCI provides to users a dedicated communications path to its network (Question III.B.1); (c) the locations where Cox has collocated facilities in certain LEC wire centers (Question II.B.2); and (d) a map of the routes traveled by the fiber that constitutes CCI's network, and that connects end users locations to CCI's network (Question III.B.3).

CCI's general company policy prohibits release of this sensitive information to the public. In fact, CCI takes extraordinary measures to prevent the disclosure of system-specific information precisely because competitors may use such information to, among other things, discern those areas that CCI is most and least able to serve as well as CCI's ability to expand in the future. CCI limits the internal circulation of such information to only those employees with a need to know and has an established, strictly enforced policy to limit the public disclosure of system-specific technical information.

Moreover, disclosure of the disaggregated, system-specific technical information reported in CCI's response to Questions III.A, III.B.1, III.B.2, and III.B.3 of the Bureau's data request certainly would result in substantial competitive harm to CCI. The Commission has previously concluded that the public disclosure of disaggregated commercial data entails a "likelihood of substantial competitive harm." *Letter from Kathleen M.H. Wallman to John L. McGrew*, 10 FCC Rcd 10574, 10575 (Com. Car. Bur. 1995). "Because the data is disaggregated, it has the potential of revealing [the Company's] market plans and positions . . . . Such information could

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[3] 5 U.S.C. § 552(b)(4).

[4] *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974); *see also, e.g., Arvig Telephone Co.*, 3 FCC Rcd 3723, 3723-24 (Com. Car. Bur. 1988) (applying *National Parks*).

[5] *See* Examination of the Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, Report and Order, 13 FCC Rcd 24816 at para. 3 (1998) (*citing Landfair v. U.S. Dep't of Army*, 645 F. Supp. 325, 327 (D.D.C. 1986)).

[6] *Id.* at para. 4 (citing *Lykes Bros. S.S. Co. v. Peña*, 1993 U.S. Dist. LEXIS 20279, No. 92-2780, slip op. at 9 (D.D.C. 1993) and Department of Justice FOIA Update, Spring 1993, at 5).

be used by competitors to devise strategies to introduce new services to the competitor's benefit, or exploit weaknesses in the existing [Company] operation." *Id.* These concerns are fully applicable to the disaggregated and confidential technical design data reported in the response to the Bureau's data request.

Indeed, the Bureau already has recognized that the data for which CCI seeks protection is entitled to highly confidential treatment. Nearly all of the information for which CCI seeks highly confidential treatment falls squarely within the categories of highly confidential material set forth in the *Second Protective Order*. Specifically, CCI's response to Question III.B.1 contains "highly detailed or granular customer or geographic information regarding . . . the location that [CCI] serve[s] with last mile facilities and the nature of those facilities;"[7] CCI's response to Question III.B.2 contains "highly detailed or granular customer or geographic information regarding . . . the location of [CCI's] collocations;"[8] and CCI's response to Questions III.B.3 contains "highly detailed or granular customer or geographic information regarding . . . the location of [CCI's] fiber network routes."[9]

For the foregoing reasons, CCI respectfully requests that the Commission afford highly confidential treatment to the information provided in CCI's response to Questions III.A, III.B.1, III.B.2, and III.B.3 of the Bureau's data request and that the Commission provide CCI and its counsel with reasonable advance notice and an opportunity to respond to any request from any third party for disclosure of such information.

Please contact me if you have any questions regarding this request or if you require additional information.

Sincerely,

J.G. Harrington
Counsel for Cox Communications, Inc.

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[7] *Second Protective Order* at para. 6.

[8] *Id.*

[9] *Id.*

III. Voluntary Information Request

A. For each Listed Statistical Area, we request that all providers other than incumbent LECs (*e.g.*, competitive LECs, out-of-region incumbent LECs, cable companies, fixed wireless, etc.) state whether their company has any connections that it owns or that it leases from another entity under an indefeasible right of use (IRU) agreement.

Cox Communications, Inc. Response – Of the listed MSAs, Cox owns connections in the following:

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⇒

⇒
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B. Cox's responses to these requests are included on the attached compact disc.

C. Cox's responses to these requests are included on the attached compact disc.

III. Voluntary Information Request

D. We request that all providers other than incumbent LECs *(e.g.,* competitive LECs, out-of-region incumbent LECs, cable companies, fixed wireless, etc.) answer the following questions pursuant to the Instructions in Section II of this Public Notice:

1. Explain the business rule that you use to determine whether to build a channel termination to a particular location. Please enumerate all underlying assumptions.

Cox Communications, Inc. Response - Cox will build to a particular end

2. Please describe reasons why even if your business rule suggests that it would make sense to build, you would hot, *e.g.,* inability to access building, issues with rights of way, inability to obtain capital, issues of timing.

Cox Communications, Inc. Response - Cox may still choose not to build to a

E. Cox's responses to these requests are included on the attached compact disc.

COMPACT DISC CONTAINING RESPONSES TO REQUESTS III.B., C, AND E CONSISTS OF HIGHLY CONFIDENTIAL INFORMATION AND IS REDACTED IN ITS ENTIRETY