



80 South Jefferson Road
Whippany, NJ 07981

Regina McNeil
Vice President of Legal,
General Counsel &
Corporate Secretary
PH 973-884-8168
FX 973-884-8372
rmcneil@neca.org

June 20, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20534

RE: Objection to Request for Confidential Information filed in CC Docket No. 01-92; GN Docket No. 09-51; WC Docket Nos. 05-337, 07-135 and 10-90 (Data Related to Universal Service and Intercarrier Compensation Reform)

Dear Ms. Dortch:

On June 8, 2011, NECA received an e-mail request for access to confidential data NECA filed with the Commission in CC Docket No. 01-92; GN Docket No. 09-51; WC Docket Nos. 05-337, 07-135 and 10-90 on May 25, 2011.¹ NECA promptly filed an objection with Sharon Gillett, Chief, Wireline Competition Bureau, in accordance with the terms of the Protective Order in the above mentioned dockets.²

This letter serves to notify your office of the filing of NECA's objection letter via electronic mail at 11:01 AM on Friday, June 10, 2011 as well as to provide the attached copy of NECA's objection for inclusion on the record of CC Docket No. 01-92; GN Docket No. 09-51; and, WC Docket Nos. 05-337, 07-135 and 10-90.³

Please contact me with any questions.

Sincerely,

Regina McNeil

Attachment

CC: Sharon Gillett, WCB
Kevin King, WCB
Lynne Hewitt Engledow, PPD
Marcus Maher, WCB
Amanda J. Delgado, Levine, Blaszak, Block & Boothby, LLP

¹ E-Mail from Amanda Delgado, Levine, Blaszak, Block & Boothby, LLP to Regina McNeil, NECA. (June 8, 2011, 9:43:59 AM EST)

² *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *et. al.*, Protective Order, 25 FCC Rcd 13160 (2010) (Protective Order).

³ E-Mail from Regina McNeil, NECA to Sharon Gillett, Chief-WCB. (June 10, 2011, 11:01 AM EST)



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rmcneil@neca.org

June 10, 2011

Via Electronic and Regular Mail

Sharon E. Gillett
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Objection to Request for Confidential Information filed in CC Docket No. 01-92; GN Docket No. 09-51; WC Docket Nos. 05-337, 07-135 and 10-90 (Data Related to Universal Service and Intercarrier Compensation Reform)

Dear Ms. Gillett:

On June 8, 2008, NECA received an email request from Amanda Delgado of Levine, Blaszak, Block & Boothby, LLP (LB3) for access to confidential data NECA filed with the Commission in CC Docket No. 01-92; GN Docket No. 09-51; WC Docket Nos. 05-337, 07-135 and 10-90 on May 25, 2011.¹

As you may be aware, the information contained in the May 25, 2011 filing was voluntarily provided to NECA by its members with the understanding that such data would be held in confidence and only viewed by government personnel in aiding their development of regulatory reform measures. With much concern about outside disclosure of such information, NECA nonetheless filed the above mentioned sensitive and confidential information pursuant to the request of the FCC.² Given that the public comment period is now closed, there is no justification for releasing this data at this time.

Given the sensitivity of the data, NECA expects that the data will remain confidential pursuant to the Protective Order in the above mentioned dockets³ and, perhaps more importantly, its further request for confidential protection pursuant to 47 C.F.R. § 0.459.⁴ Accordingly, NECA hereby objects to LB3's request for access to NECA's May 25, 2011, confidential data submission.⁵

When requesting confidentiality pursuant to 47 C.F.R. § 0.459 a party is required to provide detailed explanations as to why the data should not be available for public inspection.⁶ NECA previously submitted the following § 0.459 explanations with the data on May 25th.⁷

¹ E-Mail from Amanda Delgado, Levine, Blaszak, Block & Boothby, LLP to Regina McNeil, NECA. (June 8, 2011, 9:43:59 AM EST)

² Letter from Sharon E. Gillett, Chief – WCB to Regina McNeil, NECA, CC Docket No. 01-92, GN Docket No. 09-51, WC Docket Nos. 05-337, 07-135, 10-90, 26 FCC Rcd 4968 (March 29, 2011).

³ *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *et. al.*, Protective Order, 25 FCC Rcd 13160 (2010) (Protective Order).

⁴ Letter from Regina McNeil, NECA to Marlene Dortch, Secretary - FCC and Lynne Hewitt Engledow, Pricing Policy Division, FCC (May 25, 2011)

⁵ *See*, Protective Order ¶ 6.

⁶ 47 C.F.R. § 0.459

⁷ *Supra* note 4

NECA submits the following information pursuant to section 0.459 in support of its request for confidential treatment of the data on the CD-Roms comprising *NECA's data filings*.

• **Identification of the specific information for which confidential treatment is sought:**

NECA seeks confidential treatment for the information on the CD-Rom, which contains confidential and proprietary information related to inter- and intrastate intercarrier compensation revenues, expenses, line counts, usage patterns, other regulated and non-regulated revenues, and long-term debt of NECA pool members.

• **Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission:**

This information was submitted in response to a Wireline Competition Bureau request in connection with CC Docket No. 01-92, GN Docket No. 09-51, WC Docket Nos. 05-337, 07-135, and 10-90.

• **Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged:**

The information on the CD-Rom contains sensitive study area specific information provided by pool members to NECA in its capacity as interstate access tariff and pool administrator. At the study area level, the information is granular and highly confidential to the reporting pool members. The information provided also includes supplemental items beyond the scope of interstate access administration, including items concerning non-regulated lines of business, that were provided to NECA in conjunction with data requests under the understanding that such information would be kept confidential.

The interstate access and supplemental data is treated as a confidential trade secret by pool members. NECA would not agree to submit the data in response to the Commission staff's request without assurances that the information will be kept confidential. It would be highly inappropriate for the data to be disclosed to the public or third parties.

• **Explanation of the degree to which the information concerns a service that is subject to competition:**

Rural telephone service has historically lent itself to "cherry picking" by competitors that choose to serve only the low cost areas within a study area. Detailed information about revenues and expenses may help prospective competitors to gain insight to incumbent LEC (ILEC) market strategies and gain competitive advantage. In addition, data on non-regulated services (e.g., video, Internet, etc.) is highly sensitive and commercially valuable. Public disclosure would harm the respondent's competitive position.

• **Identification of any measures taken by the submitting party to prevent unauthorized disclosure:**

The information provided in the attached CD-Rom is made available only to NECA representatives on a need to know basis. Any public information is only made available on an aggregate basis.

• **Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties:**

The information in the Excel spreadsheet on the CD-Rom is not publicly available.

• Justification of the period during which the submitting party asserts that material should not be available for public disclosure:

NECA requests that all of the data provided on the CD-Rom be treated as confidential indefinitely. Because of the sensitive nature of the data, it would not be appropriate for public disclosure at any time in the foreseeable future.

• Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted:

By addressing the data request to NECA, the Commission avoided the burden of seeking out the data for 1100+ study areas. However, the Commission should take care to not deprive those ILECs of the opportunity to speak for themselves in the event of a FOIA request for access to data. NECA requests that the Commission notify carriers of any FOIA request and allow them to be given a reasonable opportunity to file detailed information supporting continued confidential treatment of their respective data.

Although the above language makes reference to a Freedom of Information Act (FOIA) request for data, NECA's request for confidentiality and the rationale for such request is applicable for all public demands to inspect the data, including the present demand submitted by LB3.

For all of the reasons raised in the above explanations NECA respectfully urges the FCC to uphold this objection to LB3's request for access to confidential submissions made by NECA in the instant proceedings. The failure to do so will put NECA members at risk of serious economic harm as competitors and/or potential competitors will obtain a significant competitive advantage. In addition, disclosure of this data, even under a protective order, likely will impede NECA's ability to obtain information from its member companies in the future concerning data that is voluntarily provided by member companies related to unregulated products and services.

If the Commission does not believe that it can maintain the confidentiality of the data that NECA voluntarily provided to the Commission, NECA respectfully request that the Commission return the data to NECA without disclosure pursuant to 47 C.F.R. §.0.459(e).

Please contact me with any questions.

Sincerely,



Regina McNeil

CC: Amanda J. Delgado, Levine, Blaszak, Block & Boothby, LLP
Kevin King, WCB
Lynne Hewitt Engledow, PPD