

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	

ORDER

Adopted: July 25, 2011

Released: July 25, 2011

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order we address two objections to requests for access to confidential data filed pursuant to the *Protective Order* adopted in the above-captioned proceeding.¹ On June 10, 2011, the National Exchange Carrier Association (NECA) filed with the Commission an objection to a request for access to confidential data it filed in this proceeding.² On June 27, 2011, John Staurulakis, Inc. (JSI) filed with the Commission an objection to a request for access to confidential data it filed in this proceeding.³ We find that the importance of interested parties having access to such data coupled with the protections afforded by the *Protective Order* justify the denial of the objections to disclosure.

II. BACKGROUND

2. Consistent with recommendations in the National Broadband Plan⁴ and the Federal Communications Commission's Joint Statement on Broadband,⁵ the Commission is working to reform the

¹ *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; WC Docket Nos. 07-135, 10-90, 05-337; GN Docket No. 09-51, Protective Order, 25 FCC Rcd 13160 (WCB 2010) (*Protective Order*).

² See Letter from Regina McNeil, VP of Legal, General Counsel & Corporate Secretary, NECA to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92; GN Docket No. 09-51; WC Docket Nos. 05-337, 07-135, 10-90 (filed June 20, 2011) (attaching objection letter) (NECA Objection).

³ See Letter from Kenneth T. Cartmell, Manager – Regulatory Affairs, JSI to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92; GN Docket No. 09-51; WC Docket Nos. 05-337, 07-135, 10-90 (filed June 27, 2011) (JSI Objection).

⁴ See generally, Federal Communications Commission, *Connecting America: The National Broadband Plan* (rel. Mar. 16, 2010).

Universal Service Fund (USF) and the intercarrier compensation (ICC) system.⁶ In anticipation of the possible receipt of proprietary or confidential information in the above-captioned proceedings, the Wireline Competition Bureau (Bureau), on its own motion, adopted the *Protective Order* at issue here.⁷ The *Protective Order* describes the process for submitting confidential information and the process for obtaining access to such confidential information.⁸

3. In the *USF/ICC Transformation NPRM* the Commission described and requested specific data to be filed on a voluntary basis that would assist the Commission in developing a revenue recovery mechanism.⁹ In its request, the Commission noted that it had “established a protective order in this docket to permit the data to be provided subject to confidentiality protections.”¹⁰ Both NECA and JSI have made several confidential data filings in this proceeding on behalf of their member companies and clients, respectively.¹¹ Both NECA and JSI received requests for access to confidential data, pursuant to the terms of the *Protective Order*, from the law firm of Levine, Blaszak, Block & Boothby LLP (LB3).¹² NECA and JSI each then filed their objections to the requests with the Commission,¹³ and LB3 filed a response.¹⁴ We note that both NECA and JSI also sought confidential protection pursuant to section 0.459¹⁵ of the Commission’s rules.¹⁶

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⁵ See *Joint Statement on Broadband*, GN Docket No. 10-66, Joint Statement on Broadband, 25 FCC Rcd 3420 (2010).

⁶ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, CC Docket Nos. 96-45, 01-92; GN Docket No. 09-51; WC Docket Nos. 03-109, 05-337, 07-135, 10-90, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 at 4733 para. 572 (2011) (*USF/ICC Transformation NPRM*).

⁷ See *Protective Order*, 25 FCC Rcd at 13160, para. 1.

⁸ See *Protective Order*, 25 FCC Rcd at 13161-62, paras. 4, 6.

⁹ See *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4733, para. 572.

¹⁰ *Id.* & n. 854.

¹¹ NECA also submitted data as a result of a specific Bureau request. See Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, to Regina McNeil, Vice President and General Counsel, NECA, CC Docket No. 01-92; GN Docket No. 09-51; WC Docket Nos. 05-337, 07-135, 10-90, Letter, 26 FCC Rcd 4968 at 4970 (WCB 2011) (Mar. 29, 2011 Letter to NECA).

¹² On June 8, 2011, NECA received an email request from Amanda Delgado of LB3 for access to its May 25, 2011 confidential data filing. See generally NECA Objection at 1. On June 21, 2011, JSI received an email request from Amanda Delgado of LB3 for access to its May 25, 2011 confidential data filing. See generally JSI Objection at Appendix. The law firm had previously filed the requisite Acknowledgments of Confidentiality on behalf of its client, the Ad Hoc Telecommunications Users Committee. See Letter from Amanda J. Delgado, Legal Assistant, Levine, Blaszak, Block & Boothby LLP to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92; WC Docket Nos. 05-337, 07-135, 10-90; GN Docket No. 09-51, at Attach. (filed Mar. 16, 2011) (LB3 Acknowledgments).

¹³ See generally NECA Objection and JSI Objection.

¹⁴ Letter from Amanda J. Delgado, Levine, Blaszak, Block & Boothby LLP to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92; WC Docket Nos. 05-337, 07-135, 10-90; GN Docket No. 09-51 at Attach. (filed July 1, 2011) (LB3 Response).

¹⁵ See 47 C.F.R. § 0.459.

III. DISCUSSION

4. The *Protective Order* was adopted to encourage the submission of data to assist the Commission's reform of the universal service and intercarrier compensation regimes while providing appropriate protections of commercially sensitive data. The Commission acknowledged the highly sensitive nature of this data and has taken steps to protect it by issuing a *Protective Order*, which is intended to ensure that sensitive data are protected from unauthorized use and disclosure. By submitting data subject to the *Protective Order*, data owners have consented to use and disclosure in accordance with its terms. Moreover, the *Protective Order* is intended to prevent the potential competitive harms cited by NECA and JSI, and owners of the data have recourse if parties violate those restrictions. We thus agree with LB3 that the *Protective Order* effectively balances "a Submitting Party's desire to protect sensitive information and a Reviewing Party's legitimate need for access to such data in order to participate in the USF/ICC Reform Proceeding."¹⁷

5. We recognize that, as NECA and JSI observe, public disclosure of certain types of commercial information could lead to competitive harm, but public disclosure is not at issue here.¹⁸ Again, the *Protective Order* is designed to protect against that risk by restricting the individuals that can obtain access to that information and their use of that information.¹⁹ The objections here do not cite a valid basis for denying access under the terms of the *Protective Order*.²⁰ In particular, we are not persuaded by NECA's argument that "[g]iven that the public comment period is now closed, there is no justification for releasing this data at this time,"²¹ since parties may still file documents into the record of

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¹⁶ See Letter from Regina McNeil, VP of Legal, General Counsel & Corporate Secretary, NECA to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92; GN Docket No. 09-51; WC Docket Nos. 05-337, 07-135, 10-90 (filed May 25, 2011). See also JSI Objection, Attach. at 2.

¹⁷ LB3 Response, Attach. at 2.

¹⁸ See, e.g., NECA Objection at 2; JSI Objection, Attach. at 3-4. NECA also expresses concern that requiring disclosure will have a chilling effect on its ability to obtain this type of data from its member companies in the future. See NECA Objection at 3. As discussed in greater detail below, however, we believe the terms of the *Protective Order* adequately address such potential concerns. See, e.g., Mar. 29, 2011 Letter to NECA, 26 FCC Rcd at 4970 ("We understand that some of your members may consider this information to be proprietary. We remind you and your members that the Commission has a protective order in place in this proceeding to protect those reasonable interests.").

¹⁹ See, e.g., *Protective Order*, 25 FCC Rcd at 13160-61, para. 3 (allowing access to in-house counsel only when they are "not involved in competitive decision-making"); *id.* at 13162-63, para. 8 (restricting use of the information only to participation in the proceeding); *id.* at 13163, para. 9 (prohibiting further disclosure of the confidential information by a recipient absent the prior written consent of the submitting party); *id.* at 13165, para. 18 (requiring return or destruction of confidential information within two weeks of the conclusion of the proceeding (including administrative or judicial review)). A party that violates the *Protective Order* is subject to "appropriate sanctions . . . including, but not limited to, suspension or disbarment of Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of future access to Confidential Information in this or any other Commission proceeding." *Id.* at 13164-65, para. 17.

²⁰ For instance, neither NECA nor JSI object to the requesting parties' claim that they meet the definition of "Outside Counsel of Record" provided in the *Protective Order*. See *Protective Order*, 25 FCC Rcd at 13160-61, para. 3; see also LB3 Acknowledgments. Under the *Protective Order* "Outside Counsel of Record" may review confidential material if they are "not involved in competitive decision-making." See *Protective Order*, 25 FCC Rcd at 13161-62, para. 3.

²¹ NECA Objection at 1.

this proceeding pursuant to the *ex parte* process.²²

6. NECA also requests that rather than provide the data to LB3, “the Commission return the data to NECA without disclosure pursuant to 47 C.F.R. § 0.459(e).”²³ Section 0.459(e) provides for the possibility of returning documents should the Commission determine that they are not confidential.²⁴ We make no such finding here. Additionally, section 0.459(e) addresses a request to make the confidential information public such as under a Freedom of Information Act (FOIA) request. Section 0.459(e) does not apply to either NECA or JSI’s data submissions because the data here will not be made public. Rather, the data will be reviewed, pursuant to the terms of the *Protective Order*, by a party acting in compliance with the protections it affords.

7. We find that the *Protective Order* provides the means necessary to protect the interests of the submitting parties (NECA and JSI) and the reviewing party (LB3), as well as the Commission’s interest in receiving these types of data. Therefore, we find that the parties shall comply with the *Protective Order* and NECA and JSI shall provide the confidential data to LB3 pursuant to its terms.

IV. ORDERING CLAUSE

8. 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 Sections 0.91 and 0.291 of the Commission’s rules, 47 C.F.R. §§ 0.91 and 0.291,²⁵ this Order IS ADOPTED, effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief, Wireline Competition Bureau

²² See *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4780, para. 690. Moreover, NECA’s confidential information at issue here was filed outside of the public comment period and, as LB3 observes, that fact made “it impossible to provide analysis” before the close of the comment cycle. See LB3 Response, Attach. at 6.

²³ NECA Objection at 3.

²⁴ See 47 C.F.R. § 0.459(e).

²⁵ See 47 U.S.C. § 155(c).