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

In the Matter of	)	
	)	
Applications of Global Crossing Limited and Level 3 Communications, Inc.	)	IB Docket No. 11-78
	)	
Applications for Consent To Transfer Control of Licenses and Authorizations	)	
	)	

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SECOND LEVEL PROTECTIVE ORDER

Adopted: July 22, 2011 **Released: July 22, 2011**

By the Chief, International Bureau:

1. In this Protective Order, we adopt procedures to provide second level protection to limit access to certain especially competitively sensitive information that may be filed in this proceeding, which, if released to competitors or those with whom the Submitting Party does business, would allow those persons to gain a significant advantage in the marketplace or in negotiations. We anticipate that such materials will be necessary to develop a more complete record on which to base the Commission's decision. While we are mindful of the highly sensitive nature of such information, we are also mindful of the right of the public to participate in this proceeding in a meaningful way. Therefore, consistent with past practice,[1] we will make such information available to participants in this proceeding, but limit such access to their Outside Counsel of Record, their Outside Consultants and experts whom they retain to assist them in this proceeding, and their Outside Counsel's and Outside Consultants' employees. We conclude that the procedures we adopt in this Second Level Protective Order give appropriate access to the public while protecting especially competitively sensitive information from improper disclosure, and that the procedures thereby serve the public interest.[2]

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

"Acknowledgement" means the Acknowledgement of Confidentiality attached as Appendix B hereto.

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[1] *See, e.g., Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses or Transfer Control of Licensees,* MB Docket 10-56, Second Protective Order, 25 FCC Rcd 2140 (MB 2010); *Application of News Corporation and The DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, for Authority to Transfer Control,* MB Docket 07-18, Protective Order, 22 FCC Rcd 12797 (MB 2007) (adopting a second protective order); *News Corporation, General Motors Corporation, and Hughes Electronic Corporation,* MB Docket No. 03-124, Order, 18 FCC Rcd 15198 (MB 2003) (adopting a second protective order).

[2] This Second Level Protective Order does not constitute a resolution of the merits concerning whether any information submitted under the Second Level Protective Order would be released publicly by the Commission upon a proper request under the Freedom of Information Act (FOIA) or otherwise.

"Competitive Decision-Making" means that a person's activities, association, or relationship with any of its clients involve advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party.

"Highly Confidential Information" means information that is not otherwise available from publicly available sources; that the Submitting Party has kept strictly confidential; that is subject to protection under FOIA and the Commission's implementing rules; that the Submitting Party claims constitutes some of its most sensitive business data which, if released to competitors or those with whom the Submitting Party does business, would allow those persons to gain a significant advantage in the marketplace or in negotiations; and that it is described in Appendix A to this Second Level Protective Order, as the same may be amended from time to time.

"Outside Counsel of Record" or "Outside Counsel" means the attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, retained by a party in this proceeding, provided that such attorneys are not involved in Competitive Decision-Making. The term "Outside Counsel of Record" includes any attorney representing a non-commercial party in this proceeding, provided that such attorney is not involved in Competitive Decision-Making.

"Outside Consultant" means a consultant or expert retained for the purpose of assisting Outside Counsel or a party in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making. The term "Outside Consultant" includes any consultant or expert employed by a non-commercial party in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making.

"Redacted Highly Confidential Document" means a copy of a Stamped Highly Confidential Document where the Highly Confidential Information has been redacted.

"Reviewing Party" means a person who has obtained access to Highly Confidential Information (including Stamped Highly Confidential Documents) pursuant to paragraphs 6 or 10 of this Second Level Protective Order.

"Stamped Highly Confidential Document" means any document, or any part thereof, that contains Highly Confidential Information and 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) "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND LEVEL PROTECTIVE ORDER IN IB DOCKET NO. 11-78 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 highly confidential or 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 Highly Confidential Document," a Submitting Party signifies and represents that it contains Highly Confidential Information.

"Submitting Party" means a person who submits a Stamped Highly Confidential Document.

3. *Designation of Information as Highly Confidential.* Only that information described in Appendix A to this Second Level Protective Order may be designated by a Submitting Party as Highly Confidential. To the extent that a Submitting Party believes that future submissions contain information that should be designated as Highly Confidential, the Submitting Party must file a request to designate the information as Highly Confidential along with a supporting explanation. If the request is granted, in whole or in part, an amended Appendix A will be issued, and the Submitting Party may designate as Highly Confidential Information only that information and those documents specifically described in the amended Appendix A.

4. *Submission of Stamped Highly Confidential Documents.* A Submitting Party shall submit to the Secretary's Office one copy of each Stamped Highly Confidential Document it wishes to file, two copies of the Redacted Highly Confidential Document in redacted form and an accompanying cover letter. Each page of the Stamped Highly Confidential Document shall be stamped "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND LEVEL PROTECTIVE ORDER IN IB DOCKET NO. 11-78 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The cover letter also shall contain this legend. Each Redacted Highly Confidential Document shall have the same pagination as the Stamped Highly Confidential Document from which it is derived. The two copies of the Redacted Highly Confidential Document and the accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." To the extent that any page of the filing contains both Highly Confidential Information or Confidential Information and non-confidential information, only the Highly Confidential Information and Confidential Information may be redacted and the page of the unredacted filing shall clearly distinguish among the Highly Confidential Information, the Confidential Information, and the non-confidential information. In addition, two copies of each Stamped Highly Confidential Document and the accompanying cover letter must be delivered in person to Carrie-Lee Early, Policy Division, International Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 7-B511, Washington, D.C. 20554 and Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

5. *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, subject to the provisions for access to information in electronic format in paragraph 8. Application for relief from this restriction against further copying may be made to the Commission, with notice to Counsel of Record for the Submitting Party.

6. *Procedure for Obtaining Access to Stamped Highly Confidential Documents.* Access to Stamped Highly Confidential Documents and Highly Confidential Information is limited to Outside Counsel of Record, Outside Consultants and those employees of Outside Counsel and Outside Consultants described in paragraph 10. Any person seeking access to Stamped Highly Confidential Documents and Highly Confidential Information subject to this Second Level Protective Order shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this Second Level Protective Order; and file the Acknowledgment with the Bureau, on behalf of the Commission. Where the person seeking access is Outside Counsel or an Outside Consultant, a copy of the Acknowledgment shall be served upon the Submitting Party through its Outside Counsel of Record so that it is received at least five business days prior to such person's reviewing or having access to the Submitting Party's Stamped Highly Confidential Documents or Highly Confidential Information; where the person seeking access is one described in either clause 1 or 2 of paragraph 10, the Acknowledgment shall be served upon the Submitting Party promptly prior to the person's obtaining access. Where there are multiple Submitting Parties, a copy of the Acknowledgment must be served on each Submitting Party within the time periods stated above. Each Submitting Party shall have an opportunity to object to the disclosure of its Stamped Highly Confidential Documents or Highly Confidential Information to any such person. A Submitting Party must file any such objection at the Commission and serve it 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 1 or 2 of paragraph 10, file and serve such objection as promptly as practicable after receipt of the Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, by 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 Highly Confidential Documents or Highly Confidential Information.

7. *Review of Stamped Highly Confidential Documents.* A Submitting Party shall make available for review the Stamped Highly Confidential Documents of such party at the offices of the party's Outside Counsel of Record. A Reviewing Party shall be provided the following alternatives, subject to the terms of paragraph 4: (1) a Reviewing Party will be provided adequate opportunity to inspect the documents on site; (2) a Reviewing Party may inspect the documents on site with the ability to request copies, at cost, of all or some of the documents; or (3) a Reviewing Party 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 Reviewing Party plans on requesting a complete set of documents, it is encouraged to make such a request at the time it submits the Acknowledgment to allow it the opportunity to begin reviewing the documents at the end of the five-day period referred to in paragraph 6. All copies of documents that are removed from the Submitting Party's office must be returned or destroyed in accordance with the terms of paragraph 19.

8. *Review of Highly Confidential Information in Electronic Format.* A Submitting Party shall make available to a Reviewing Party one copy of Highly Confidential Information contained, recorded, or electronically stored on a CD-ROM, DVD, flash drive, portable hard drive or similar electronic storage device, which shall be considered a Stamped Confidential Document. The disk or other medium containing the information in electronic format should be physically sent to the Reviewing Party; a Reviewing Party may not require that it be transmitted electronically. A Reviewing Party may temporarily load onto a computer the information in electronic format. Once loaded onto a computer, any files containing Highly Confidential Information shall be password protected immediately. The Highly Confidential Information may not be stored on a computer after being analyzed. After the analysis is complete, the results of such analysis may be stored by saving the results (but not the original underlying Highly Confidential Information) to a mobile data storage medium, which, if it contains Highly Confidential Information, shall be treated as a Stamped Highly Confidential Document and so marked. All files containing Highly Confidential Information shall be deleted from the computer as soon as practicable. The original disk or other storage medium shall be stored securely and a record kept of any persons given access to it.

9. *Use of Highly Confidential Information.* Persons obtaining access to Highly Confidential Information (including Stamped Highly Confidential Documents) under this Second Level Protective Order shall use the information solely for the preparation and conduct of this proceeding before the Commission 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 Highly Confidential Documents or Highly Confidential Information in its decision in this proceeding, it will do so by redacting any Highly 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 Highly Confidential Information under this Second Level Protective Order.

10. *Permissible Disclosure.* A Reviewing Party may discuss and share the contents of the Stamped Highly Confidential Documents and Highly Confidential Information with another Reviewing Party and with the Commission and its staff. A Submitting Party's Stamped Highly Confidential Documents and Highly Confidential Information may also be disclosed to employees and Counsel of the Submitting Party. Subject to the requirements of paragraph 6, a Reviewing Party may disclose Stamped Highly Confidential Documents and Highly Confidential Information to: (1) paralegals or other employees of such Reviewing Party assisting them in this proceeding; and (2) employees of third-party contractors 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.

11. *Filings with the Commission.* A Reviewing Party or a Submitting Party may in any document that it files in this proceeding disclose Highly Confidential Information only if it complies with the following procedure. The party shall submit to the Secretary's Office one copy of the filing containing Highly Confidential Information (the "Highly Confidential Filing"), two copies of the filing in redacted form, *i.e.*, containing no Highly Confidential Information (the "Redacted Highly Confidential Filing"), and an accompanying cover letter. The cover or first page of the Highly Confidential Filing and each page of the Highly Confidential Filing that contains or discloses Highly Confidential Information must be clearly marked "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND LEVEL PROTECTIVE ORDER IN IB DOCKET NO. 11-78 before the Federal Communications Commission." The cover letter shall also contain this legend. The Highly Confidential Filing shall be made under seal, and will not be placed in the Commission's public file. The two copies of the Redacted Highly Confidential Filing and the accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Highly Confidential Filing shall state that the party is filing a redacted version of the filing. Each Redacted Highly Confidential Filing shall have the same pagination as the Highly Confidential Filing from which it is derived. To the extent that any page of the Highly Confidential Filing contains any type of Confidential Information, only the Confidential Information (of whatever type) may be redacted and the page of the unredacted Confidential Filing shall clearly distinguish among the various types of Confidential Information and the non-confidential information. Two copies of each Highly Confidential Filing and the accompanying cover letter must be delivered in person to Carrie-Lee Early, Policy Division, International Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 7-B511, Washington, D.C. 20554 and Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, and one copy must be served on the relevant Submitting Party. Parties should not provide courtesy copies of pleadings containing Highly Confidential Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

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

13. *Protection of Stamped Highly Confidential Documents and Highly Confidential Information.* A Reviewing Party shall have the obligation to ensure that access to Stamped Highly Confidential Documents and Highly Confidential Information is strictly limited as prescribed in this Second Level Protective Order. A Reviewing Party shall further have the obligation to ensure that Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in this Second Level Protective Order.

14. *Requests for Additional Disclosure.* If any person requests disclosure of Highly Confidential Information outside the terms of this Second Level Protective Order, such a request will be treated in accordance with sections 0.442 and 0.461 of the Commission's rules.

15. *Client Consultation.* Nothing in this Second Level Protective Order shall prevent or otherwise restrict Outside 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 Highly Confidential Documents or Highly Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such

client, Outside Counsel shall not disclose Stamped Highly Confidential Documents or Highly Confidential Information.

16. *No Waiver of Confidentiality.* Disclosure of Highly 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 Highly Confidential Information. Reviewing Parties, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Highly 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 for or orders the production of Stamped Highly Confidential Documents or Highly Confidential Information that a party has obtained under terms of this Second Level 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 Highly Confidential Document or Highly Confidential Information.

18. *Violations of Second Level Protective Order.* Should a Reviewing Party violate any of the terms of this Second Level Protective Order, such Reviewing Party shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Highly 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 Second Level Protective Order, including but not limited to suspension or disbarment of Outside Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Highly Confidential Information in this or any other Commission proceeding. Nothing in this Second Level Protective Order shall limit any other rights and remedies available to the Submitting Party at law or in equity against any person using Highly Confidential Information in a manner not authorized by this Second Level Protective Order.

19. *Termination of Proceeding.* The provisions of this Second Level 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, Reviewing Parties shall destroy or return to the Submitting Party Stamped Highly Confidential Documents and all copies of the same. No material whatsoever derived from Stamped Highly Confidential Documents may be retained by any person having access thereto, except Outside Counsel may retain, under the continuing strictures of this Second Level Protective Order, two copies of pleadings (one of which may be in electronic format) prepared in whole or in part by that party that contain Highly Confidential Information, and one copy of orders issued by the Commission or Bureau that contain Highly Confidential Information. All Outside Counsel shall certify compliance with these terms and shall deliver such certification to Outside Counsel for the Submitting Party not more than three weeks after conclusion of this proceeding. The provisions of this paragraph regarding retention of Stamped Highly Confidential Documents and copies of the same and Highly Confidential Information shall not be construed to apply to the Commission or its staff.

20. *Authority.* This Order is issued pursuant to sections 4(i), 214 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214 and 310(d), Section 4 of the

Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under sections 0.261 and 0.291 of the Commission's rules, 47 C.F.R. § 0.261, 0.291, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Mindel De La Torre
Chief, International Bureau

APPENDIX A

Highly Confidential Information and Documents

As specified in paragraphs 2 and 3 of the Second Level Protective Order, only information and documents set forth in this Appendix and that otherwise meet the definition of Highly Confidential Information or Highly Confidential Documents may be designated as Highly Confidential. This Appendix will be updated as necessary.

With respect to XO Communications, LLC ("XO")'s request for highly confidential treatment dated July 14, 2011:

Market share data calculated by XO from its highly sensitive traffic exchanges, included in XO's Comments filed July 11, 2011 and the accompanying report of William P. Rogerson may include information that falls within this category of documents and information that is eligible for Highly Confidential Treatment.

APPENDIX B

Acknowledgment of Confidentiality

IB Docket No. 11-78

I hereby acknowledge that I have received and read a copy of the foregoing Second Level Protective Order in the above-captioned proceeding, and I understand it.

I agree that I am bound by the Second Level Protective Order and that I shall not disclose or use Stamped Highly Confidential Documents or Highly Confidential Information except as allowed by the Second Level Protective Order.

I acknowledge that a violation of the Second Level Protective Order is a violation of an order of the Federal Communications Commission.

I certify that I am not involved in Competitive Decision-Making.

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 Second Level Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as a person described in paragraph 10 of the foregoing Second Level Protective Order and agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Second Level 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 Highly Confidential Documents and Highly Confidential Information.

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

Executed this ___ day of _____, 2011.

_____

[Name]

[Position]

[Address]

[Telephone]