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November 7, 2011

FILED/ACCEPTED

Marlene Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

NOV - 7 2011

Federal Communications Commission
Office of the Secretary

Re: REQUEST FOR CONFIDENTIAL TREATMENT; Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42

Dear Ms. Dortch:

Pursuant to the Commission's decision in *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55 (FCC 98-184), released Aug. 4, 1998 ("Confidential Information Order") and in accordance with the Freedom of Information Act ("FOIA"), the Commission's Rules related to public information and inspection of records, e.g. 47 C.F.R. §§ 0.457 and 0.459, and the protective order issued in the above-referenced docket (DA 11-1459), AT&T Inc. ("AT&T"), on behalf of itself and its affiliates, hereby submits this request for confidential treatment of information submitted to the Commission in response to data requests from Jonathan Lechter and Beau Finley, both attorneys in the Telecommunications Access Policy Division, Wireline Competition Bureau. This request for confidential treatment applies to the information contained in **Exhibits A and D**.

Attached as **Confidential Exhibit A** is a chart containing the total number of Lifeline lines reported on AT&T's incumbent local exchange carriers' (ILECs') July 2011 FCC Form 497 filings. This chart provides the information by state, together with the number of lines that are resold Lifeline lines and, where readily available, the dollar amount associated with those reported resold Lifeline lines. Staff also requested that we provide them with a "Top Ten" list of AT&T's ILECs' largest Lifeline resellers. We have masked the identity of the individual resellers and provide this information by region in **Exhibit B**. Additionally, staff requested that we provide the wholesale toll restriction rates that AT&T's ILECs charge requesting competitive local exchange carriers. We provide that information by state in **Exhibit C**. Finally, we provide AT&T's ILECs' incremental costs of providing toll limitation service in **Confidential Exhibit D**.

Statement pursuant to 47 C.F.R. § 0.459(b)

(1) Identification of the specific information for which confidential treatment is sought.

The information contained in Exhibits A and D (which are stamped with the legend "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 11-42 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION")

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contain confidential commercial information under Exemption 4 of the FOIA, 47 U.S.C. § 552(b)(4). Accordingly, pursuant to Commission Rule 0.459(a), AT&T requests that such information not be made routinely available for public inspection. The information includes, *inter alia*, AT&T's number of Lifeline subscribers by state and its ILECs' costs of providing toll restriction service.

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.

The information is being provided to the Commission in response to data requests by Commission staff in furtherance of the Commission's *Lifeline and Link Up Reform and Modernization* proceeding.

(4) Explanation of the degree to which the information concerns a service that is subject to competition; and

The information being provided to the Commission involves telecommunications services provided by AT&T in competition with other carriers. Telecommunications is a highly competitive industry, and AT&T's services are subject to significant competition throughout the country. The presence of such competition and the likelihood of competitive injury threatened by release of the information provided to the Commission by AT&T should compel the Commission to withhold the information from public disclosure. *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987); *Frazee v. U.S. Forest Service*, 97 F.3d 367, 371 (9th Cir. 1996); *Gulf & Western Indus. v. U.S.*, 615 F.2d 527, 530 (D.C. Cir. 1979).

- (3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged; and**
- (5) Explanation of how disclosure of the information could result in substantial competitive harm.**

Exemption 4 requires a federal agency to withhold from public disclosure confidential or privileged commercial and financial information of a person unless there is an overriding public interest requiring disclosure, and the Commission has a longstanding policy of protecting the confidential commercial information of its regulatees under FOIA Exemption 4.

Two lines of cases have evolved for determining whether agency records fall within Exemption 4. Under *Critical Mass*, commercial information that is voluntarily submitted to the Commission must be withheld from public disclosure if such information is not customarily disclosed to the public by the submitter.¹ For materials not subject to *Critical Mass*, *National Parks* establishes a two part test for determining if information qualifies for withholding under Exemption 4.² The first prong asks whether disclosing the information would impair the government's ability to obtain necessary information in the future. The second prong asks whether the competitive position of the person from whom the information was obtained would be impaired or substantially harmed. If the information meets the requirements of either prong, it is exempted

¹ *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

² *National Parks & Conservation Assoc. v. Morton*, 498 F.2d 765 D.C. Cir. (1974) ("*National Parks*").

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from disclosure under Exemption 4. Whether under *Critical Mass* or *National Parks*, the information provided by AT&T falls within Exemption 4.

The materials being provided to the Commission in response to its data requests are not customarily released to the public, are maintained on a confidential basis, and are not ordinarily disclosed to parties outside the company. Disclosure would subject AT&T to substantial competitive harm.

Competitors could use the confidential information to assist in targeting their service offerings and enhancing their competitive positions, to the detriment of the competitive position of AT&T. See, e.g., *GC Micro Corp. v. Defense Logistics Agency*, 33 F.3d 1109 (9th Cir. 1994). AT&T's competitors could use this confidential and proprietary data to assist them in revising their marketing strategies, thereby enhancing their competitive positions, to the detriment of the competitive position of AT&T.

Commission precedent has clearly found this type of information to be competitively sensitive and withholdable under Exemption 4.³ Specifically, the Commission has recognized that competitive harm can result from the disclosure of confidential business information that gives competitors insight into a company's costs, pricing plans, market strategies, and customer identities. See *Pan American Satellite Corporation*, FOIA Control Nos. 85-219, 86-38, 86-41, (May 2, 1986).⁴ The protective procedures established by the Commission and other governmental agencies recognize the need to keep such information confidential to the maximum extent possible. The Commission has provided the assurances that it is "sensitive to ensuring that the fulfillment of its regulatory responsibilities does not result in the unnecessary disclosure of information that might put its regulatees at a competitive disadvantage."⁵

Disclosure also will impair the Commission's ability to obtain similar information in the future. Compelled public disclosure of the records compiled by the Commission in this instance would plainly impair the Commission's ability to obtain similar information in the future. It would chill

³ See, e.g., *Pacific Bell Telephone Company Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD No. 00-23, DA 00-2618 (2000) (supporting confidentiality for collocation data); *Local Exchange Carrier's Rates, Terms and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport*; *Southwestern Bell Telephone Company*, 13 FCC Rcd 13615 (1998) (keeping administrative operating expenses confidential because it would provide insight into business strategies); *AT&T/McCaw Merger Applications* 9 FCC Rcd 2610 (1994) (keeping confidential accounting records showing account balance information); *NAACP Legal Defense Fund on Request for Inspection of Records* 45 RR 2d 1705 (1979) (keeping confidential records that contained employee salary information); *Mercury PCS II, LLC (Request for Inspection of Records)* *Omnipoint Corporation (Request for Confidential Treatment of Documents)*, FCC 00-241 (2000) (keeping confidential marketing plans and strategy information).

⁴ Further, the Commission has ruled that not only should such data be protected, but also that information must be protected through which the competitively sensitive information can be determined. *Allnet Communications Services, Inc. Freedom of Information Act Request*, FOIA Control No. 92-149, Memorandum Opinion and Order (1993) at p. 3. The Commission's decision was upheld in a memorandum opinion of the U.S. Court of Appeals for the D.C. Circuit, which affirmed a U.S. District Court decision protecting the information. *Allnet Communications Services, Inc. v. FCC*, Case No. 92-5351 (memorandum opinion issued May 27, 1994, D.C. Cir.).

⁵ *Confidential Information Order* at ¶ 8.

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industry incentives to participate fully in future Commission rulemaking proceedings. It would thus hamper the general ability of the Commission to rely on the cooperation of parties involved in those proceedings, which would necessarily impair the Commission's ability to obtain documents and information that would lead to a robust and complete record. It would, in short, undermine the agency's "effective execution of its statutory responsibilities." *9 to 5 Org. for Women Office Workers v. Board of Governors*, 721 F.2d 1, 11 (1st Cir. 1983). See also *Africa Fund v. Mosbacher*, No. 92-289, 1993 WL 183736 at *7 (S.D.N.Y. May 26, 1993) (disclosure would impinge upon agency's receipt of substantial information that potential exporters voluntarily submit when seeking export licenses and that the agency finds invaluable in making policy and maintaining effective export controls).

- (6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure; and**
- (7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.**

This information has been maintained on a confidential basis within AT&T and would not ordinarily be disclosed to parties outside the company. Company practices instruct employees not to disclose such information outside the company and restrict access to this information on a need-to-know basis.

- (8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure.**

The material must be kept confidential for an indefinite period. Confidential treatment must be afforded these materials as long as they would provide a basis for AT&T's competitors to gain insight into AT&T's business operations. AT&T cannot determine at this time any date on which the information would become "stale" for such a purpose.

- (9) Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.**

For all the foregoing reasons AT&T requests that the Commission withhold from public disclosure pursuant to Section 0.459 of the Commission's Rules the proprietary commercial and financial information contained in AT&T's responses to the Commission's data requests. If the Commission is unable for any reason to keep this information confidential, AT&T respectfully requests that the Commission return the information to AT&T pursuant to Section 0.459(e) of the Rules.

Please do not hesitate to contact me if you have any questions.

Sincerely,

/s/ Cathy Carpino
Cathy Carpino

Attachments

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EXHIBIT A

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EXHIBIT B

**Southeast
Jul-11**

CLEC No.	Top Lifeline Resellers	Lifeline Lines	Resale Lines	% Lifeline
1	CLEC A	26,076	78,699	33%
2	CLEC B	25,139	28,426	88%
3	CLEC C	9,064	5,988	151%
4	CLEC D	8,540	6,754	126%
5	CLEC E	7,499	13,177	57%
6	CLEC F	7,276	7,643	95%
7	CLEC G	4,036	7,110	57%
8	CLEC H	3,863	16,087	24%
9	CLEC I	3,384	4,104	82%
10	CLEC J	2,708	2,926	93%
TOTAL		97,585	170,914	57%

**Midwest
Jul-11**

CLEC No.	Top Lifeline Resellers	Lifeline Lines	Resale Lines	% Lifeline
1	CLEC A	1,171	1,384	85%
2	CLEC B	788	873	90%
3	CLEC C	365	2,251	16%
4	CLEC D	310	2,686	12%
5	CLEC E	110	337	33%
6	CLEC F	28	53	53%
7	CLEC G	17	617	3%
8	CLEC H	10	1,279	1%
9	CLEC I	1	750	0%
10	CLEC J	1	1	100%
TOTAL		2,801	10,231	27%

**Southwest
Jul-11**

CLEC No.	Top Lifeline Resellers	Lifeline Lines	Resale Lines	% Lifeline
1	CLEC A	8,061	8,811	91%
2	CLEC B	2,400	2,546	94%
3	CLEC C	788	873	90%
4	CLEC D	703	11	6391%
5	CLEC E	665	998	67%
6	CLEC F	392	552	71%
7	CLEC G	310	2,074	15%
8	CLEC H	291	1,270	23%
9	CLEC I	281	476	59%
10	CLEC J	228	7,441	3%
TOTAL		14,119	25,052	56%

EXHIBIT C

State	Monthly Rate	Nonrecurring	Equipment	Service Name
ALABAMA				Customized Code Restriction
Residence-Option 1	\$2.93	na	na	
Residence-Option 2, 3, 7	\$3.77	na	na	
ARKANSAS				Toll Restriction
Residence	\$4.28	\$2.57	\$7.27	
CALIFORNIA				Toll Restriction
Residence	\$0.00	\$0.00		
CONNECTICUT				Toll Restriction
Residence	\$2.78	\$8.90	na	
FLORIDA				Customized Code Restriction
Residence	\$4.69	na	na	
GEORGIA				Customized Code Restriction
Residence, Option 1	\$3.95	na	na	
Residence, Option 2	\$4.78	na	na	
ILLINOIS				Toll Restriction
Residence	\$5.38	na	na	
INDIANA				Toll Restriction
Residence	\$4.67	na	na	
KANSAS				Toll Restriction
Residence	\$2.70	2.352	\$9.41	
KENTUCKY				Customized Code Restriction
Residence, Option 1-3	\$4.12	na	na	
Residence, Option 5	\$1.25	na	na	
Residence, Option 6	\$4.99	na	na	
LOUISIANA				Customized Code Restriction
Residence-Option 1-3	\$4.76	na	na	
Residence-Option 5	\$0.41			
Residence-Option 7	\$3.96	na	na	
MICHIGAN				Toll Restriction
Residence	\$4.96	na	na	

MISSISSIPPI				Customized Code Restriction
Residence	\$5.06	na	na	
MISSOURI				Toll Restriction
Residence	\$2.62	\$2.22	\$3.84	
NEVADA				Call Restriction
Residence	\$0.00	na	na	
NORTH CAROLINA				Customized Code Restriction
Residence	\$2.24	\$7.65	na	
OHIO				Toll Restriction
Residence	\$4.74	\$9.57	na	
OKLAHOMA				Toll Restriction
Residence	\$2.41	\$1.60	\$9.02	
SOUTH CAROLINA				Customized Code Restriction
Residence	\$4.22	na	na	
TENNESSEE				Customized Code Restriction
Residence	\$5.04	na	na	
TEXAS				Toll Restriction
Residence	\$3.92	\$2.35	na	
WISCONSIN				Toll Restriction
Residence	na	\$8.84	na	

Note: In a number of states, we offer several toll restriction options. We provide the rates for those options above.

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EXHIBIT D

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