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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

SECOND SUPPLEMENTAL PROTECTIVE ORDER

Adopted: February 10, 2012 **Released: February 10, 2012**

By the Chief, Wireline Competition Bureau:

1. On November 18, 2011, the Federal Communications Commission (Commission) released the *USF/ICC Transformation Order*.[1] In that Order, the Commission adopted a methodology for distributing universal service support under the newly created Connect America Fund (CAF) in areas served by price cap carriers. The methodology will use a forward-looking cost model to estimate the costs of deployment of broadband-capable networks in high-cost areas and identify at a granular level the areas where support will be made available. The Commission delegated to the Wireline Competition Bureau (Bureau) "the task of selecting a specific engineering cost model and associated inputs" that meet criteria specified in the *USF/ICC Transformation Order*.[2] To begin the selection process, the Bureau released a Public Notice on December 15, 2011, inviting parties to submit forward-looking cost models with certain specific capabilities by February 1, 2012.[3] The Bureau asked parties interested in submitting a forward-looking cost model to notify us in advance so that we could "craft the terms of any protective order(s) necessary to resolve any issues related to licensing of third party data and making appropriate arrangements for providing access to the public."[4]

2. In response to the Public Notice, US Telecom notified us that it plans to submit a cost model developed by CostQuest Associates, Inc. (CostQuest). To ensure that the proprietary features of the cost model are afforded adequate protection in these dockets, the Bureau, on its own motion, adopts this Second Supplemental Protective Order to govern the terms and conditions of access to the cost model.[5]

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[1] *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 a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GC Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*); *pets. for review pending sub nom. Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 8, 2011) (and consolidated cases).

[2] *Id.* para. 157.

[3] *Request for Connect America Fund Cost Models*, Public Notice, DA 11-2026, WC Docket Nos. 10-90, 05-337 (Wireline Comp. Bur. rel. Dec. 15, 2011).

[4] *Id.* at 2, para. 2.

[5] This Second Supplemental Protective Order does not constitute a determination whether any materials would be released publicly by the Commission upon a proper request under the Freedom of Information Act or otherwise.

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

"CQBAT" means CostQuest Associates Broadband Analysis Tool, a proprietary software application owned by CostQuest.

"Full Access User" is a person who has obtained Full Access (described below).

"Licensed Materials" means all materials available through Reports Only Access, Full Access, and System Evaluator Access.

"Licensing Agreement" means the Licensing Agreement attached as Appendix B hereto.

"Non-Disclosure Agreement for Source Code" means the Non-Disclosure Agreement attached as Appendix C hereto.

"Protected Materials" means the Licensed Materials, underlying source code, and the Code File.

"Reports Only User" means a person who has obtained Reports Only Access (described below).

"Reviewing Party" means a person who has obtained access to any Protected Materials pursuant to this Second Supplemental Protective Order.

"System Evaluator" means a person who has obtained System Evaluator Access (described below).

6. *Levels of Access.* CostQuest is making different types of access available:

- "Reports Only Access." Reports Only Access is similar to the access that CostQuest made available in September 2011 in this proceeding pursuant to the Supplemental Protective Order. Under Reports Only Access, CostQuest shall provide a Reviewing Party a login and a password that will enable access to CQBAT results over the Internet, using Internet Explorer version 8 or version 9. Specifically, CostQuest will provide (i) access to CQBAT, (ii) the output of CQBAT, and (iii) supporting inputs. CostQuest shall grant sufficient access to enable the Reviewing Party to be able to generate reports based on available model runs. These runs include all those filed in this proceeding in addition to those runs made public by parties with Full Access who choose to do so. CostQuest shall grant the Reviewing Party the capability to test the sensitivities of various parameters, including, at a minimum: Total Max Funding, Target Benchmark, Alternative Technology Cost Cutoff, FCC Portion, Monthly Support Funding Cap, Mark with Provider, and Cable Unserved. CostQuest shall also grant the Reviewing Party the capability to generate reports at the following levels of geography: Census Designated Place, Census Block Group, Census Tract, service area, Company, County, OCN-Operating Company, and SAC-Study Area Code. No Reviewing Party shall be charged any fee by CostQuest for access in this manner to the above-described materials.

- "Full Access." Full Access includes all features and capabilities of Reports Only Access. A Full Access User shall also be able to provide his own inputs to CostQuest to run through

7. *Persons Eligible To Obtain Access to Protected Materials.* Access to Protected Information is limited to persons not engaged in Competitive Decision Making.

8. *Procedures for Obtaining Different Levels of Access.* Any person seeking any access shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of the Second Supplemental Protective Order. In addition:

- Any person seeking Reports Only Access, Full User Access, or System Evaluator Access shall sign and date the Licensing Agreement and indicate which level of access he or she is seeking.

- Any person seeking Code File Access shall sign and date the Non-Disclosure Agreement for Source Code.

The person seeking access shall then file all executed documents with the Bureau, on behalf of the Commission. Such person shall also serve[12] a copy of all executed documents to CostQuest through its Counsel of Record so that they are received at least five business days prior to such person's reviewing or having access to CostQuest's Protected Materials, except that, where the person seeking access is one described in either clause 1 or clause 2 of paragraph 10, the executed documents shall be delivered promptly prior to the person's obtaining access. CostQuest shall have an opportunity to object to granting access to Protected Materials to any such person. CostQuest must file any such objection at the Commission and serve it on counsel representing, retaining or employing such person (or on such person directly if counsel is not indicated) within three business days after receiving copies of that person's executed documents (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 relevant executed documents). 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 CostQuest shall not have access to Protected Materials. Unless CostQuest has filed an objection to granting access to Protected Materials to a person seeking such access, and that objection remains pending at the Commission, CostQuest shall execute the Licensing Agreement and/or Non-Disclosure Agreement for Source Code on or before the fourth business day after receiving the Licensing Agreement and/or Non-Disclosure Agreement for Source Code (or where the person seeking access is one described in clause 1 or 2 of paragraph 10, as promptly as practicable after receipt of the relevant Acknowledgment and Licensing Agreement and/or Non-Disclosure Agreement for Source Code) and return a copy of the Licensing Agreement and/or Non-Disclosure Agreement for Source Code to the Reviewing Party.

9. *Use of Protected Materials.* A Reviewing Party shall use the Protected Materials 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 Protected Materials for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. A Reviewing Party also shall not disassemble, decompile, reverse engineer, or otherwise recreate the Protected Materials, or allow any other person to do so. Should the Commission rely upon or otherwise make reference to the Protected Materials in its decision in this proceeding, it shall do so by redacting any proprietary 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 Protected Materials under this Second Supplemental Protective Order.

[12] Service by electronic mail is acceptable.

request that the Protected Materials not be made routinely available for public inspection under the Commission's rules.[13]

15. *Client Consultation.* Nothing in this Second Supplemental Protective Order shall prevent or otherwise restrict Reviewing Parties from rendering advice to their employers and 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 Protected Materials; provided, however, that in rendering such advice and otherwise communicating with such employer or client, Reviewing Parties shall not disclose Protected Materials to anyone who is not a Reviewing Party.

16. *No Waiver of Confidentiality.* Disclosure of Protected Materials as provided herein by any person shall not be deemed a waiver by CostQuest of any privilege, trade secret claim or entitlement to confidential treatment of such Protected Materials. Reviewing Parties, by accessing this material, agree: (1) not to assert any such waiver; (2) not to use Protected Materials to seek disclosure in any other proceeding; and (3) that accidental disclosure of Protected Materials by CostQuest shall not be deemed a waiver of any privilege, trade secret claim or entitlement as long as CostQuest 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 Protected Materials that a party has obtained under terms of this Second Supplemental Protective Order, such party shall promptly notify CostQuest 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 CostQuest has a full opportunity to oppose such production prior to the production or disclosure of any Protected Materials.

18. *Violations of Second Supplemental Protective Order.* Should a Reviewing Party violate any of the terms of this Second Supplemental Protective Order, such Reviewing Party shall immediately convey that fact to the Commission and to CostQuest. Further, should such violation consist of improper access to or disclosure of Protected Materials, the violating person shall take all necessary steps to remedy the improper access or disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Second Supplemental Protective Order, including but not limited to suspension or disbarment from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Protected Materials in this or any other Commission proceeding. Nothing in this Second Supplemental Protective Order shall limit any other rights and remedies available to CostQuest at law or in equity against any person using Protected Materials in a manner not authorized by this Second Supplemental Protective Order.

19. *Termination of Proceeding.* The provisions of this Second Supplemental 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 CostQuest Protected Materials and all copies of the same. No material whatsoever derived from Protected Materials may be retained by any person having access thereto, except parties may retain, under the continuing strictures of this Second Supplemental 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 Protected Materials, and one copy of orders issued by the Commission or Bureau that contain Protected Materials. All Reviewing Parties shall certify compliance with these terms and shall deliver the same to counsel for CostQuest not more than three weeks after conclusion of this proceeding. The provisions of this

[13] *See* 47 C.F.R. §§ 0.459(a), 0.459(a)(3).

APPENDIX A

Acknowledgment of Confidentiality—WC Docket Nos. 05-337, 10-90

I hereby acknowledge that I have received and read a copy of the foregoing Second Supplemental Protective Order in the above-captioned proceedings. If I am seeking access to Licensed Materials, I also acknowledge that I have received a read a copy of the attached Restricted CQBAT License (the "Licensing Agreement"), and I understand it. If I am seeking access to the Code File, I acknowledge that I have received and read a copy of the attached Non-Disclosure Agreement for Source Code, and I understand it.

I agree that I am bound by the Second Supplemental Protective Order and by one or both of the Licensing Agreement and/or Non-Disclosure Agreement for Source Code, as appropriate, and that I shall not disclose or use Protected Materials except as allowed by the Second Supplemental Protective Order and the Licensing Agreement and/or Non-Disclosure Agreement for Source Code.

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

I acknowledge specifically that my access to any information obtained as a result of the Second Supplemental Protective Order and the Licensing Agreement and/or Non-Disclosure Agreement for Source Code is due solely to my capacity as a party or representative of a party to this proceeding or as a person described in paragraph 10 of the foregoing Second Supplemental Protective Order and agree that I shall not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Protected Materials are not accessed or used except as specifically permitted by the terms of the Second Supplemental Protective Order and the Licensing Agreement and/or Non-Disclosure Agreement for Source Code, as appropriate.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized access to or disclosure of Protected Materials.

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

I hereby request the following access to Licensed Materials (select none or one):

X Reports Only Access ____ Full User Access ____ System Evaluator Access.

I hereby request access to the Code File: ____ Yes X No.

Executed this 29th day of October, 2012.

Kevin G. Hess

[Name] Kevin G. Hess
[Position] Sr. Vice President - Gov't & Regulatory Affairs
[Address] 525 Junction Rd.
Madison, WI 53717
[Telephone] 608-664-4166

that are binding upon it and shall take all reasonable steps to assist CostQuest or any other participant in the Project, or their affiliates, to avoid any violations of any such laws or regulations that are binding upon them.

1.8. Upon reasonable notice to Licensee, and at CostQuest's sole expense, CostQuest's auditors shall have the right to inspect Licensee's records relating to the Project as necessary for CostQuest to verify Licensee's compliance with the terms of this Licensing Agreement. Audits shall be conducted at Licensee's premises during normal business hours and in a manner that does not unreasonably interfere with Licensee's operations.

1.9. If Licensee sells, makes available to a third party, or otherwise disposes of Licensee-owned media on which the Licensed Materials are or were resident, that media must be erased and scrubbed before such sale or disposal.

2. Disclaimer of Warranties

2.1. LICENSEE ACKNOWLEDGES AND AGREES THAT (A) COSTQUEST HAS NOT MADE ANY EXPRESS OR IMPLIED WARRANTIES TO LICENSEE REGARDING THE LICENSED MATERIALS AND (B) THE LICENSED MATERIALS ARE BEING PROVIDED TO LICENSEE "AS IS," WITHOUT WARRANTIES OF ANY KIND. COSTQUEST DOES NOT WARRANT THAT THE LICENSED MATERIALS ARE FREE FROM DEFECTS. COSTQUEST EXPRESSLY EXCLUDES AND DISCLAIMS ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

3. Term and Termination

3.1. The Licensing Agreement shall terminate automatically upon the termination of the above-captioned proceedings and any administrative or judicial review.

3.2. Notwithstanding section 3.1, if Licensee agrees that Licensee does not continue to require Licensed Materials, CostQuest may terminate this Licensing Agreement.

3.3. If CostQuest believes that Licensee is in violation of the Second Supplemental Protective Order or this Licensing Agreement, CostQuest shall so notify the FCC. If the FCC determines that Licensee is in violation of this Second Supplemental Protective Order or this Licensing Agreement, CostQuest may terminate this Licensing Agreement.

3.4. As part of the process, access to the CQBAT may terminate on a periodic basis. Should the Viewer need to maintain access to the CQBAT, CostQuest shall renew the Viewer's access rights.

4. Limitation of Liability

4.1. IN NO EVENT SHALL COSTQUEST HAVE ANY LIABILITY FOR DAMAGES SUSTAINED BY LICENSEE IN CONNECTION WITH THIS LICENSING AGREEMENT, THE PROJECT OR THE POSSESSION OR USE OF LICENSED MATERIALS, INCLUDING, WITHOUT LIMITATION, ANY LOST REVENUES OR PROFITS, OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF COSTQUEST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.7. Governing Law. This Licensing Agreement shall be governed by and construed in accordance with Federal law.

6.8. Entire Agreement. This Licensing Agreement, the Second Supplemental Protective Order, and the Non-Disclosure Agreement for Source Code (if it is executed) constitute the Parties' entire understanding with regard to the matters herein, and there are no other understandings, either written or unwritten, with regard to such matters. Any terms on either Party's web site, product schedule, or contained in any "shrinkwrap" or "clickwrap" agreement shall not have force or effect if the provision conflicts with the terms of this Licensing Agreement. The Licensing Agreement may not be modified, amended, canceled or waived, in whole or in part, except by a written instrument signed by the Parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Licensing Agreement by their duly authorized representatives effective as of the date first set forth above.

COSTQUEST:

CostQuest Associates, Inc.

By: _____
Jim Stegeman, President

Outside Counsel of Record:

Margaret Avril Lawson
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3. Term and Termination

3.1. This Agreement shall terminate automatically upon the termination of the above-captioned proceedings and any administrative or judicial review.

3.2. Notwithstanding section 3.1, if Viewer agrees that Viewer does not continue to require the Code File, CostQuest may terminate this Agreement.

3.3. If CostQuest believes that Viewer is in violation of the Second Supplemental Protective Order or this Non-Disclosure Agreement for Source Code, CostQuest shall so notify the FCC. If the FCC determines that Viewer is in violation of this Second Supplemental Protective Order or this Non-Disclosure Agreement for Source Code, CostQuest may terminate this Agreement.

3.4. As part of the digital rights management process, access to the Code File may terminate on a periodic basis. Should the Viewer need to maintain access to the document, CostQuest shall renew the Viewer's access rights.

4. Limitation of Liability

4.1. IN NO EVENT SHALL COSTQUEST HAVE ANY LIABILITY FOR DAMAGES SUSTAINED BY THE VIEWER IN CONNECTION WITH THIS AGREEMENT, THE PROJECT OR THE POSSESSION OR USE OF THE CODE FILE, INCLUDING, WITHOUT LIMITATION, ANY LOST REVENUES OR PROFITS, OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF COSTQUEST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5. Ownership of Intellectual Property

5.1. Viewer acknowledges that the Code File, including without limitation all output and derivatives of, as well as all modifications and customizations to the Code File, are proprietary to CostQuest and that CostQuest retains exclusive ownership of the Code File and all proprietary rights associated therewith. Viewer shall, at the direction of CostQuest, take all commercially reasonable measures to protect CostQuest's rights in the Code File.

5.2. Except as expressly provided herein, Viewer is not granted any other rights or license to patents, copyrights, trade secrets, data or trademarks with respect to the Code File. Viewer shall promptly notify CostQuest in writing upon its discovery of any unauthorized use or infringement of the Code File.

6. Additional Terms

6.1. Compliance with FCC Requirements and Other Laws. This Non-Disclosure Agreement for Source Code is expressly made subject to any United States government laws, regulations, orders or other restrictions regarding the Project or use of software, data, output or products thereof. Notwithstanding anything to the contrary in this Non-Disclosure Agreement for Source Code, Viewer shall not directly or indirectly export, or permit the transfer of, any software, data, output or products (a) to any country or destination for which the United States government or a United States governmental agency requires an export license or other approval for export

6.8. Entire Agreement. This Non-Disclosure Agreement for Source Code, the License Agreement (if executed), and the Second Supplemental Protective Order constitute the Parties' entire understanding with regard to the matters herein, and there are no other understandings, either written or unwritten, with regard to such matters. Any terms on either Party's web site, product schedule, or contained in any "shrinkwrap" or "clickwrap" agreement shall not have force or effect if the provision conflicts with the terms of this Non-Disclosure Agreement for Source Code. The Non-Disclosure Agreement for Source Code may not be modified, amended, canceled or waived, in whole or in part, except by a written instrument signed by the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Non-Disclosure Agreement for Source Code through their authorized representatives.

CostQuest Associates, Inc.

By: _____
Jim Stegeman, President

Outside Counsel of Record:

Margaret Avril Lawson
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