

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Special Access for Price Cap Local Exchange Carriers)	WC Docket No. 05-25
)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services)	RM-10593
)	
Protective Order for Special Access Data Collection)	
)	

COMMENTS OF COX COMMUNICATIONS, INC.

Pursuant to the Wireline Competition Bureau’s June 28, 2013, Public Notice, Cox Communications, Inc. (“Cox”), by its attorneys, files these comments on the proposed protective order for the collection of special access data.¹ As Cox explained in the declaration of its Senior Director for Operations appended to Comments of the National Cable & Telecommunications Association (“NCTA”), the proposed data collection would be extraordinarily burdensome and would require time and resources far in excess of that predicted by the Commission.² Cox thus continues to urge the Commission carefully to review its data request and to appropriately curtail that request in light of the requirements of the Paperwork Reduction Act.

¹ *Wireline Competition Bureau Seeks Comment on Protective Order for Special Access Data Collection*, Public Notice, 28 FCC Rcd 9170 (Wir. Comp. Bur. 2013) (“*Public Notice*”). The *Public Notice* attaches a proposed Data Collection Protective Order.

² Comments of the National Cable & Telecommunications Association, WC Docket No. 05-25, OMB Control No. 3060-XXX (filed Apr. 15, 2013) at Exhibit A (Declaration of Robert Hattori, Senior Director of Operations, Cox Communications).

Of equal concern is that the data request would require companies to place in the public domain their most competitively sensitive business information. It is therefore vital that the Commission take every precaution to protect this information from inadvertent disclosure to those who could utilize it for competitive advantage.

Cox urges the Commission to take additional precautionary measures on two fronts. First, the Commission should expand the definition of presumptively highly confidential information to include certain additional data requests as identified below. Second, Cox believes additional actions should be taken to protect confidential information once it has been submitted. It joins in the comments of NCTA urging the Commission to restrict to Commission staff access to highly confidential data and other highly confidential information until the Commission has determined to rely on that information to develop new rules.

Additionally, the Commission should permit access to highly confidential information only in a physically secure environment. Should the Commission decide, however, to permit virtual access, the Commission should adopt an appropriate tracking mechanism to identify who accesses data and when. Finally, Cox is concerned that the data would remain with the Commission indefinitely, creating a lingering potential for inadvertent disclosure or a data breach. Cox thus respectfully requests that the Commission agree to destroy or return confidential information once the proceeding terminates.

I. The Commission Should Include Additional Data Collection Responses to the List of Presumptively Highly Confidential Information

The proposed protective order defines highly confidential data as “information that meets the definition of Highly Confidential Information and is described as Highly Confidential Data in Appendix A to this Data Collection Protective Order.” Highly confidential information, in turn, is defined as that which 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 is described in Appendix A.”³ The proposed protective order provides that “only information set forth in this Appendix [A] and that otherwise meets the definition of Highly Confidential Information may be designated as Highly Confidential.”⁴ Appendix A then identifies a number of data requests as either highly confidential data or highly confidential information.

Cox has identified additional data collection requests that fall within the definition of highly confidential information but that are not included in Appendix A as proposed. Cox is concerned that it may be hampered in its ability to claim highly confidential treatment for this information if it is not included among those items considered presumptively highly confidential in Appendix A. Cox thus urges the Commission to revise Appendix A to include the following additional data requests:

1. Provide the business justification for the *Term* or *Volume Commitments* associated with any *Tariff* or agreement you offer for the sale of *Dedicated Services*. (Question II.A.15).⁵
2. Detailed information on the length of time it takes to complete the process of connecting *End User Channel Terminations* to a new *Transport Provider*, including limitations on the number of circuits that can be moved within a given period of time. (Questions II.D.3(b), D.3(d), II.F.9(b)).
3. Information on how connecting to a new *Transport Provider* impacts the company’s prices, including the rates that apply before and after the requested change. (Questions II.D.3(e), D.3(f)).

³ Data Collection Protective Order, ¶ 1.

⁴ Data Collection Protective Order, Appendix A.

⁵ The proposed Data Collection Protective Order provides presumptively Highly Confidential Information treatment for other data requests that seek information on a company’s business rules and its justification for such rules. *See, e.g.*, Data Collection Protective Order, Appendix A, Other Highly Confidential Information, item 2 (business rules for deciding whether to self-deploy as requested by Question II.A.8); item 11 (business rules for purchasing circuits on a month-by-month basis as requested by Question II.F.12).

4. Detailed information on the terms and conditions of contracts by which a company obtains special access services for its own use or as an input to its retail services. (Question II.F.8).⁶
5. Information on whether a company either offers to negotiate time lines on a case-by-case basis or whether vendors offer it such negotiating opportunities. Provide detail on how long it took for an *ILEC* or *Competitive Provider* to connect your *End-user Channel Terminations* to another *Transport Provider* and whether you had an opportunity to negotiate time lines on a case-by-case basis. (Question II.D.3(c), F.9(c).).
6. Information on the purchase of circuits under a volume commitment, including the provider, the precise nature of the volume commitment, and a description of the specific terms and conditions under the applicable tariff sections. (Questions II.F.10(b), F.10(c), F.10(d)).

The information requested by the additional data collections listed above can provide competitors or customers with detailed information on Cox's price and cost structure, enable them to determine the geographic limitations of Cox's network, and make assessments of the limitations of Cox's network capabilities in particular areas. The response to these data requests include information regarding the intervals by which Cox is able to groom circuits or otherwise deliver services, including the intervals to which Cox itself may be subject when it purchases special access services from other carriers. This information can enable Cox's competitors to undermine Cox's offerings and can provide Cox's customers with information that they can use to gain valuable negotiating leverage with Cox or with competitors of Cox. The questions identified above provide competitors and customers with detailed information on the precise parameters under which Cox obtains critical inputs to its business. It is particularly important in the context of this proceeding to ensure that such information is not disclosed to

⁶ In commentary to this data request, the Commission asks for substantial detail for "particularly onerous constraints" in contracts that includes descriptions of terms and conditions and the geographic areas covered by those restrictions, as well as disclosing specific vendors. *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318, 16378 (2012), Appendix A at II.F.8.

competitors. The Commission is seeking this information in order to assess the competitiveness of the market and may conclude, as it has in the past, that there is sufficient competition that no changes are necessary to the current special access regulatory regime or that further de-regulation would be warranted. Or it may determine that the information simply is not important to its analysis. In the meantime, however, detailed information regarding how Cox buys and sells special access services could become publicly available if not accorded substantial protection. Such disclosure would cause competitive harm, without any countervailing competitive benefit, that cannot be undone. In short, the information called for by the above-listed data request entails some of Cox's "most sensitive business data" and should be accorded the protections established for highly confidential information.

The exclusion of the above-listed requests from Appendix A is unwarranted for another reason. The proposed protective order excludes from the lists in Appendix A some data requests that call for the same kind of information that is accorded presumptively highly confidential treatment. There is no explanation for this disparity. For example, the proposed protective order would accord highly confidential treatment for information that would be produced by purchasers regarding the impact on rates paid by them when changing transport providers, such as that requested by question II.F.9(d) (requesting information on how moving to a new transport provider "impact[s] the rate you paid"),⁷ yet the proposed order would exclude virtually the same rate information when required of sellers at questions II.D.3(e) (requesting of sellers information on how moving a customer to a different transport provider "impact[s] the rate a customer pays" for channel terminations it continues to use") and II.D.3(f) (requesting information on what rates

⁷ See Data Collection Protective Order, Appendix A, Other Highly Confidential Information, item 8 at p. 13.

would apply before and after a request to change transport providers). This is sensitive pricing information that should be subject to consistent highly confidential treatment.

In addition to adding the above data requests to the list of presumptively highly confidential information in Appendix A, the Commission also should clarify that the failure of information to be included in Appendix A does not preclude a company from asserting highly confidential information status when it submits such information. As companies compile information and prepare it for submission, it may become evident that the information warrants designation as highly confidential information, and there should be no presumption *against* such designation simply because it was not identified in Appendix A originally.

II. The Commission Should Take Additional Steps to Protect Highly Confidential Information

Given the highly sensitive nature of the data and information being requested, the Commission should take every precaution to prevent inadvertent disclosure. Cox's comments here are informed by its experience with providing highly sensitive business information, at the Commission's request, to aid the Commission's review of incumbent local exchange carrier requests for forbearance from unbundling and other statutory obligations. That experience demonstrated that the risk of inadvertent disclosure is not merely theoretical. Confidential information that Cox submitted pursuant to the protective order in the *Omaha Forbearance Proceeding*, for example, was included in a publicly filed appellate brief.⁸ Moreover, the Commission later modified protective orders in those proceedings, including closed proceedings, to allow use of Cox's confidential information in appellate briefs in another forbearance

⁸ See Cox Communications, Inc., Opposition to Motion to Modify Protective Order, WC Docket 07-97 *et al.*, (filed Sept. 28, 2010), at 8 (describing inadvertent disclosure that occurred during the appeal of the *Omaha Forbearance Order*.)

proceeding, over Cox's objections.⁹ It has thus been Cox's experience that representations that material would only be used in the particular proceeding in which the information is submitted may be subsequently reversed. This experience heightens Cox's concerns.

Cox thus supports the NCTA's comments urging the Commission to make data available only to Commission staff until the Commission determines that it may rely on that data in developing rules. There is no sound reason to permit access and risk inadvertent disclosure to highly sensitive business information if it is not likely to inform the Commission's decision making. Only after the Commission has made a determination to use the information should highly confidential information be made available to outside counsel and their consultants pursuant to the requirements of the protective order.

The *Public Notice* seeks comment on methods of allowing restricted access to highly confidential data in a secure environment, either through a secure, specific physical location or by accessing a virtual private network using "thin" clients. Cox supports NCTA in urging the Commission to permit access to highly confidential data only in a secure physical location at Commission headquarters with no opportunity to print or download the data. The same restricted access should apply not just to highly confidential data but to other highly confidential information. Cox has concerns with the proposal to provide electronic copies of highly confidential information upon request to the Wireline Bureau by those who have signed the protective order acknowledgement.¹⁰ At a minimum, the Commission should adopt a tracking system that would record who has accessed the data, what data was accessed, and when the access occurred. Such a tracking system should also be employed should the Commission

⁹ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Modified Protective Orders, 25 FCC Rcd 14234 (Wir. Comp. Bur. 2010).

¹⁰ Data Collection Protective Order, ¶ 7.

permit access to highly confidential data through a virtual private network. Robust tracking systems that log the actions of users, including user identification, the time and date of access, and the information accessed, are commonly employed and should be adopted by the Commission to further enhance the protection of highly confidential information.

Finally, Cox respectfully requests that the Commission agree to either return or destroy confidential information in its possession once the proceeding has terminated. As proposed, the protective order exempts the Commission or its staff from this requirement.¹¹ There is simply no reasonable basis to retain this highly sensitive business information and risk inadvertent disclosure once this proceeding culminates, including administrative and judicial review.

III. Conclusion

For the reasons set forth, Cox requests that the Commission adopt the additional protections described above.

Respectfully submitted,

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¹¹ *Id.* at ¶ 18.