



Public Knowledge

April 8, 2014

Accepted/Filed

APR - 8 2014

FCC Office of the Secretary

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

Re: GN Docket No. 13-5, Technology Transitions, GN Docket No. 12-353, AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition

Dear Ms. Dortch:

Pursuant to the Protective Orders in this proceeding, please find enclosed one redacted copy of Public Knowledge and the National Consumer Law Center's Challenge to Confidentiality Designation.

Respectfully submitted,

/s Jodie Griffin
Senior Staff Attorney
 PUBLIC KNOWLEDGE

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

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APR - 8 2014

FCC Office of the Secretary

In the Matter of

Technology Transitions

AT&T Petition to Launch a Proceeding
Concerning the TDM-to-IP Transition

GN Docket No. 13-5

GN Docket No. 12-353

**CHALLENGE TO CONFIDENTIALITY DESIGNATION
OF PUBLIC KNOWLEDGE AND THE NATIONAL CONSUMER LAW CENTER,
ON BEHALF OF ITS LOW-INCOME CLIENTS**

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April 8, 2014

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INTRODUCTION

Pursuant to the Commission's Protective Order¹ and Second Protective Order² in the current proceeding, Public Knowledge and the National Consumer Law Center (NCLC), on behalf of its low-income clients, hereby challenge AT&T's designation of certain portions of its trial proposal as confidential or highly confidential.³ Specifically, Public Knowledge and NCLC challenge AT&T's claims to confidentiality over the timeline of its proposed trials, and over the percentages of Carbon Hill's population that will have access to wireline and/or wireless services under AT&T's proposed trial. The trials' timeline is neither highly confidential nor confidential, but is critical to assessing the public interest impacts of the proposed trials. The percentages of Carbon Hill's population that will have access to a wireline broadband alternative and/or LTE wireless service should not be treated confidentially because AT&T has already disclosed this information to the press outlet TR Daily. This information must therefore be made available for public review and discourse.

ARGUMENT

The technical trials are an important part of the Commission's efforts to collect data about the technologies that may become the basic service for millions of people in the United States for years to come. These trials are a critical part of the overall network transition, and

¹ *Technology Transitions*, GN Docket No. 13-5, *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket No. 12-353, Protective Order (rel. Feb. 27, 2014) ("Protective Order").

² *Technology Transitions*, GN Docket No. 13-5, *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket No. 12-353, Second Protective Order (rel. Feb. 27, 2014) ("Second Protective Order").

³ AT&T Proposal for Wire Center Trials, *Technology Transitions*, GN Docket No. 13-5, *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket No. 12-353 (Feb. 27, 2014).

must be done right to successfully gather detailed, useful information while protecting consumers. Of course, since these trials will be conducted in the real world, with real people using the new technologies, the public must have the opportunity to be engaged in the development, implementation, and evaluation of the trials. The Commission has therefore recognized the public's right to access information about the proposed trials, while protecting carriers' legitimate need to prevent competitors from accessing certain commercially-sensitive information. Unfortunately, AT&T has upset this balance by violating the Commission's Protective Orders and taking advantage of the Protective Orders to hide non-confidential information from the public eye. This conduct undermines the Commission's purpose of respecting "the right of the public to participate in this proceeding in a meaningful way."⁴

AT&T has unjustifiably designated portions of its Trial Proposal as confidential and highly confidential.⁵ Those portions are neither highly confidential nor even confidential, and so they must be resubmitted in this proceeding with non-confidential portions unredacted and available for public inspection.⁶ The Commission has established that the burden falls upon a

⁴ Protective Order at ¶ 1; Second Protective Order at ¶ 1.

⁵ See AT&T Proposal for Wire Center Trials, *Technology Transitions*, GN Docket No. 13-5, *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket No. 12-353, at 14 (Feb. 27, 2014) (hereinafter *AT&T Wire Center Trial Proposal*); *AT&T Wire Center Trial Proposal Operating Plan* § 6.2.3, Exhibit D, Exhibit E. **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

⁶ AT&T may clearly designate information that is in fact confidential or highly confidential as such, and redact such information as appropriate in the resubmitted version of the Trial Proposal and Operating Plan.

submitting party to justify treating its information as confidential or highly confidential.⁷ Here, AT&T has failed to make the requisite showing, and therefore must stop attempting to hide this relevant and important information from public review.

The Commission's rules effectively grant confidential treatment to trade secrets and commercially confidential information exempted from mandatory disclosure by Exemption 4 of the Freedom of Information Act ("FOIA")⁸ or protected by the Trade Secrets Act.⁹ Any information that does not qualify as a trade secret or commercially confidential information therefore may not receive confidential treatment and be kept secret from the public. In its protective orders for this proceeding, the Commission has allowed parties to claim confidentiality for "information that is not otherwise available from publicly available sources and that is subject to protection under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Commission's implementing rules."¹⁰ A party claiming highly confidential treatment must show that the information at issue "is not otherwise available from publicly available sources; that the Submitting Party has kept strictly confidential; that is subject to protection under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, 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

⁷ Protective Order at ¶ 3 (citing 47 C.F.R. § 0.459); Second Protective Order at ¶ 4 (citing 47 C.F.R. § 0.459).

⁸ See 5 U.S.C. § 552(b)(4).

⁹ See 18 U.S.C. § 1905.

¹⁰ Protective Order at ¶ 2.

negotiations; and that it is described in Appendix A to this Second Protective Order, as the same may be amended from time to time.”¹¹

I. THE INFORMATION AT ISSUE PERTAINS TO THE BASIC OPERATION OF THE PROPOSED TRIALS AND IS CRITICAL TO PUBLIC DISCOURSE ABOUT THE TRIALS.

AT&T has claimed confidentiality for the timeline of its proposed network transition trials.¹² This information is not commercially confidential and offers no competitive advantage to other companies, but is critical to public review and input in this proceeding. Outside entities and members of the public cannot fully understand how the trials will operate without having access to basic information like when the trials would start and when they would stop. For these reasons, Public Knowledge challenges AT&T’s claim of confidentiality over the timeline of its proposed trials.

When The Commission issued the Order that launched the process for a variety of technical trials in the network transition, the Commission emphasized “[t]hese data will fuel the ongoing public dialogue about the technology transitions, ensuring that it is fact-based and data-driven. Having a robust and factually-informed public discussion will help guide the Commission as we make legal and policy choices that advance and accelerate the technology transitions while ensuring that consumers and the enduring values established by Congress are not adversely affected.”¹³ It is, of course, impossible to have a “robust and factually-informed

¹¹ Second Protective Order at ¶ 2.

¹² See *AT&T Wire Center Trial Proposal Operating Plan* Exhibits D, E.

¹³ *Technology Transitions*, GN Docket No. 13-5, *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket No. 12-353, *Connect America Fund*, WC Docket No. 10-90, *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Numbering Policies for Modern Communications*, WC Docket No. 13-97, Order, Report and Order and Further Notice of

public discussion”¹⁴ about the trials if AT&T is allowed to withhold some of the most basic information about the trials, like when they will be happening, from the public. Indeed, it is difficult to imagine how AT&T has or will have a meaningful dialogue during its planned events to explain the trials to the relevant communities without at least telling Carbon Hill and Kings Point residents when the trials would actually happen.¹⁵

The trials have the potential to help the Commission gather essential data about the new services carriers wish to deploy in place of the traditional phone network infrastructure people have been relying on for decades. In addition to fueling a much larger debate about the phone network transition, the trials themselves must be conducted responsibly and transparently to ensure the real people in the trial wire centers are not harmed or left behind. To this end, the Commission wisely established that proposed experiments should first be open for public comment before approving or rejecting carriers’ proposals.¹⁶

But the entire effort of engaging in a public dialogue to ensure effective, responsible trials is undermined if the carrier proposing the trials can withhold critical basic information about the trials themselves. After all, how can stakeholders evaluate the efficacy of trials without knowing when they will start or how long they will last? When an applicant unjustifiably hides information behind a shroud of confidentiality, members of the public and their advocates have to undergo significant burdens just to access and comment on information that should be available anyway. The press cannot report on that information, and other companies in the

Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative at ¶ 8 (rel. Jan. 31, 2014) (hereinafter *Technology Transitions Trials Order*).

¹⁴ *Id.*

¹⁵ See *AT&T Wire Center Trial Proposal Operating Plan* § 5.1, pp. 17-20.

¹⁶ *Technology Transitions Trials Order* at ¶ 80.

relevant markets (particularly smaller companies with lower budget allocations for legal fees) can be hard pressed to even understand where their interests lie in the proceeding.¹⁷

Confidentiality protections impose a substantial burden on the public discourse surrounding the trials, and they should therefore only be granted when secrecy is legally justified.

The timeline for the trials is not a trade secret or commercially confidential information. The trials are a public set of experiments with government oversight. Any carrier that wishes to participate in the trials must therefore do so transparently and with input from the public. The trials' timeline does not reveal any proprietary information about AT&T's products or services—it only reveals the basic temporal parameters of these narrow, controlled public experiments. The time frame for these FCC-established trials holds no competitive value for AT&T, and contains no information that is privileged or confidential, or would give competitors an advantage over AT&T. The trials' timeline also does not fall within any of the enumerated categories in the Commission's rules, like financial reports, programming contracts, or international traffic rates and conditions.¹⁸

The timeline of AT&T's proposed trials is fundamental to outside parties' ability to understand how these trials will operate and what information we can expect them to produce. Especially when information this important has no legally defensible claim to confidentiality, the Commission should require AT&T to make the trials' timeline publicly available to further the public discourse on the transition trials and the overall network transition.

¹⁷ See Letter from Bobbi-Sue Doyle-Hazard, Associate Corporate Counsel, Granite Telecommunications, LLC, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5, Presentation at 12 (Mar. 14, 2014).

¹⁸ See 47 C.F.R. § 0.457(d).

II. THE TRIALS' TIMELINE DOES NOT FALL WITHIN EXEMPTIONS FROM THE DISCLOSURE MANDATE OF THE FREEDOM OF INFORMATION ACT.

The Freedom of Information Act was enacted as “an attempt to meet the demand for open government while preserving workable confidentiality in governmental decision-making,” and its “basic objective . . . is disclosure.”¹⁹ The limited exceptions to FOIA’s disclosure mandate are tailored to serve the efficient operation of the government and protect the legitimate interests of persons in protecting specific kinds of information.²⁰

To be clear, FOIA, standing alone, does not *forbid* the release of any information. To the contrary, FOIA imposes upon agencies “a general obligation . . . to make information available to the public.”²¹ FOIA then creates certain enumerated exceptions, to which the agency disclosure mandate does not apply.²² Under Exemption 4, agencies are not required by FOIA to publicly disclose “trade secrets and commercial or financial information obtained from a person and privileged or confidential.”²³ While FOIA does not require the Commission to disclose trade secrets or confidential commercial information, it also does not, on its own, prohibit such disclosure. Indeed, FOIA’s basic purpose of openness means that a party opposing disclosure bears the burden of proving that an exemption applies.²⁴ “Conclusory and generalized allegations are . . . unacceptable” to “sustain[] the burden of nondisclosure under the FOIA.”²⁵

¹⁹ *Chrysler Corp. v. Brown*, 441 U.S. 281, 290–92 (1979).

²⁰ *Nat’l Parks & Conserv. Ass’n v. Morton*, 498 F.2d 765, 767 (D.C. Cir. 1974) (“*Nat’l Parks I*”).

²¹ *Chrysler*, 441 U.S. at 291–92; see 5 U.S.C. § 552(a).

²² 5 U.S.C. § 552(b). See also *Chrysler*, 441 U.S. at 292 (“By its terms, subsection (b) demarcates the agency’s obligation to disclose; it does not foreclose disclosure.”).

²³ 5 U.S.C. § 552(b)(4).

²⁴ See *Nat’l Parks & Conserv. Ass’n v. Kleppe*, 547 F.2d 673, 679 n.20 (D.C. Cir. 1976) (“*Nat’l Parks II*”).

²⁵ *Nat’l Parks II*, 547 F.2d at 680.

When combined with the Trade Secrets Act (“TSA”), Exemption 4 of FOIA generally delineates the contours of what the Commission will automatically disclose of the information it receives from companies. The TSA prohibits the Commission from making known “in any manner or to any extent not authorized by law” information it receives from companies that “concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association”²⁶ The Trade Secrets Act therefore “limit[s] an agency’s ability to make a discretionary release of otherwise exempt material.”²⁷ The scope of information covered by the TSA is “at least coextensive with . . . Exemption 4 of FOIA,”²⁸ which means that “unless another statute or a regulation authorizes disclosure of the information, the Trade Secrets Act requires each agency to withhold any information it may withhold under Exemption 4 of the FOIA.”²⁹

However, the TSA’s prohibition does not include disclosures that are “authorized by law.”³⁰ FOIA, for example, authorizes certain disclosures because it “provide[s] legal

²⁶ 18 U.S.C. § 1905 (punishing anyone who “publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law”).

²⁷ *Department of Justice Guide to the Freedom of Information Act*, UNITED STATES DEP’T OF JUSTICE, at 355 (2009), available at http://www.justice.gov/oip/foia_guide09/exemption4.pdf.

²⁸ *CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1151 (D.C. Cir.1987).

²⁹ *Canadian Commercial Corp. v. Dep’t of the Air Force*, 514 F.3d 37, 39 (D.C. Cir. 2008).

³⁰ 18 U.S.C. § 1905.

authorization for and compel[s] disclosure of financial or commercial material that falls outside of Exemption 4.”³¹ Additionally, “properly promulgated, substantive agency regulations [with] the ‘force and effect of law’” may qualify as “authoriz[at]ions] by law” for the purposes of the TSA’s disclosure prohibition.³² Accordingly, the Commission’s rules have in fact provided for the public inspection of documents that fall under Exemption 4, following a “persuasive showing as to the reasons for inspection.”³³ The Commission has confirmed that these provisions “constitute the requisite legal authorization for disclosure of competitively sensitive information under the Trade Secrets Act.”³⁴

Here, the timeline of the proposed trials is neither a trade secret nor confidential commercial information. As a result, this information cannot be hidden behind claims of confidentiality and must be released to the public in this proceeding.

A. THE INFORMATION AT ISSUE DOES NOT QUALIFY AS A TRADE SECRET FOR PURPOSES OF FOIA EXEMPTION 4.

FOIA itself does not define the term “trade secret.”³⁵ The U.S. Court of Appeals for the District of Columbia Circuit defines a “trade secret” for purposes of FOIA Exemption 4 as “a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort,” with “a direct relationship between the

³¹ *CNA Fin. Corp. v. Donovan*, 830 F.2d at 1151–52 & n.139.

³² *See Chrysler Corp. v. Brown*, 441 U.S. 281, 295–302 (1979).

³³ 47 C.F.R. §§ 0.457(d)(1), (d)(2).

³⁴ *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Notice of Inquiry & Notice of Proposed Rulemaking, 11 FCC Rcd. 12,406, ¶ 12 (1996).

³⁵ *See* 5 U.S.C. § 552.

information at issue and the productive process.”³⁶ Trade secrets have thus been defined very narrowly for purposes of FOIA Exemption 4. For example, in past cases computer models of the costs of providing telecommunications services have been given confidential treatment only as confidential commercial information, rather than as trade secrets.³⁷

Here, the information at issue does not even come close to qualifying under the narrow definition of a trade secret. As described above,³⁸ Public Knowledge and NCLC are challenging confidential treatment of the timeline of AT&T’s proposed trials.³⁹ These trials are government-supervised, public endeavors to gather information to contribute to the discussion among all interested stakeholders about new network technologies. The entire purpose of these trials would be undermined if a carrier could run an entire trial under a shroud of secrecy, and if AT&T ever expected to be able to do so, it deserves to be disappointed.

The timeline of the trials is information that pertains to public, government-supervised experiments, not to any proprietary process or product. It does not qualify as a trade secret, and should therefore be made publicly available in the Commission’s docket.

B. THE INFORMATION AT ISSUE DOES NOT QUALIFY AS CONFIDENTIAL COMMERCIAL INFORMATION FOR PURPOSES OF FOIA EXEMPTION 4.

To qualify under the second prong of the FOIA Exemption 4, “information must be (1) commercial or financial, (2) obtained from a person outside the government, and (3) privileged

³⁶ *Pub. Citizen Health Research Grp. v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983).

³⁷ *Allnet Commc’n Servs., Inc. v. FCC*, 800 F. Supp. 984, 988–90 (D.D.C. 1992).

³⁸ *See supra* Section I.

³⁹ *See AT&T Wire Center Trial Proposal Operating Plan*, Exhibit D. **[BEGIN HIGHLY CONFIDENTIAL]**

[END

HIGHLY CONFIDENTIAL]

or confidential.”⁴⁰ “Privileged” information is a rare justification for non-disclosure and might only encompass the attorney-client privilege.⁴¹ Information is considered “confidential” if its disclosure would be likely to (1) “impair the Government’s ability to obtain necessary information in the future” or (2) “cause substantial harm to the competitive position of the person from whom the information was obtained.”⁴²

As an initial matter, the trials’ timeline does not even constitute commercial or financial information. Research designs made in a non-commercial setting do not constitute a trade secret or commercial or financial information.⁴³ For example, the U.S Court of Appeals for the D.C. Circuit has held that research design information in project applications to the National Institute of Mental Health did not constitute commercial information.⁴⁴ The trials’ timeline is information about a public exercise to collect information and protect consumers, not a proprietary process within the confines of AT&T’s internal product development endeavors.

Under the first prong for the “confidential” information analysis, when “pursuant to statute, regulation or some less formal mandate,” parties “are *required* to provide . . . information to the government, there is presumably no danger that public disclosure will impair the ability of the Government to obtain this information in the future,” so the first prong generally does not

⁴⁰ *Gulf & W. Indus., Inc. v. United States*, 615 F.2d 527, 529 (D.C. Cir. 1979).

⁴¹ *See Wash. Post Co. v. Dep’t of Health*, 690 F.2d 252, 267–68 & n.50 (D.C. Cir. 1982).

⁴² *Nat’l Parks I*, 498 F.2d at 770; *see Critical Mass Energy Project v. NRC*, 975 F.2d 871, 872 (D.C. Cir. 1992) (en banc), *cert. denied*, 507 U.S. 984 (1993).

⁴³ *Washington Research Project, Inc. v. Dep’t of Health, Educ. & Welfare*, 504 F.2d 238, 244-45 (D.C. Cir. 1974), *cert. denied*, 421 U.S. 963.

⁴⁴ *Id.*

apply to situations where, as here, the government can compel parties to submit the information at issue by statute and regulation.⁴⁵

As the Commission found in its Order, the Commission has ample legal authority to run the trials,⁴⁶ and has established that any carrier wishing to participate within the Commission's trials framework must submit proposals, subject to the docket's two protective orders. And certainly, in the case of any proposal that would require the Commission's permission under § 214(a), the Commission has clear established rules that already require the carrier to submit its proposed timeline.⁴⁷

Nor would making the trials' timeline publicly available likely cause substantial competitive harm to AT&T.⁴⁸ In this context, competitive harm is "limited to harm flowing from the affirmative use of proprietary information *by competitors*."⁴⁹ Here, there is no likelihood that AT&T's competitors will leverage information about the timeline of these trials to competitively harm AT&T. As discussed above, the timeline at issue is the timeline for a publicly conducted trial of technologies that AT&T has already developed. This is not an issue of revealing information regarding AT&T's internal testing,⁵⁰ but simply the parameters of its proposal to

⁴⁵ *Nat'l Parks I*, 498 F.2d at 770. See also *Nat'l Org. of Women v. Social Sec. Admin.*, 736 F.2d 727, 737 n.97 (D.C. Cir. 1984); *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981).

⁴⁶ *Technology Transitions Trials Order* ¶¶ 77-79.

⁴⁷ 47 U.S.C. § 214(a); 47 C.F.R. § 63.71(a).

⁴⁸ *Nat'l Parks I*, 498 F.2d at 770; see *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 872 (D.C. Cir. 1992) (en banc), cert. denied, 507 U.S. 984 (1993).

⁴⁹ *Pub. Citizen Health Research Grp. v. FDA*, 704 F.2d 1280, 1291 n.30 (D.C. Cir. 1983) (quoting Connelly, *Secrets and Smokescreens: A Legal and Economic Analysis of Government Disclosures of Business Data*, 1981 WIS. L. REV. 207, 225-26) (emphasis in original).

⁵⁰ AT&T indicates it had done at least some level of internal testing on the new services it proposes for the trials. See *AT&T Wire Center Trial Proposal* § 6.5.7. This challenge is not here objecting to claims of confidentiality over that information.

publicly prove the technologies it puts forward are adequate to replace the traditional network infrastructure residents rely on. Knowing when the trials will occur does not tell competitors anything confidential about the development of AT&T's U-verse Voice and Wireless Home Phone products because AT&T openly acknowledges it has already developed those products.⁵¹ All the trials' proposed timeline reveals is when the Commission and other parties will be examining and evaluating the new technologies put forth by AT&T on a temporary, reversible basis. This gives competitors no commercial advantage and is not deserving of confidential treatment.

III. AT&T CANNOT CONTINUE TO CLAIM CONFIDENTIAL PROTECTION OVER INFORMATION IT HAS ALREADY PUBLICLY DISCLOSED.

Additionally, as the Commission acknowledges in its protective orders,⁵² information that is already publicly available does not fall within FOIA Exemption 4 and therefore the person submitting that information cannot make any claim to confidentiality.⁵³ Public Knowledge and NCLC therefore also challenge AT&T's claim to confidentiality over the percentages of units in Carbon Hill, Alabama that will receive wireline broadband and/or wireless LTE service during the trials.⁵⁴ A recent TR Daily article indicated that AT&T had disclosed the percentages of its

⁵¹ *AT&T Wire Center Trial Proposal* at 18.

⁵² Protective Order at ¶ 2; Second Protective Order at ¶ 2.

⁵³ *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1154 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 977 (1988); *Occidental Petroleum Corp. v. SEC*, 873 F.2d 325, 332 (D.C. Cir. 1989) (“[I]f the information was already public, of course, the documents could not be withheld from disclosure under the FOIA exemption for confidential business information.”).

⁵⁴ See *AT&T Wire Center Trial Proposal* at 14; *AT&T Wire Center Trial Proposal Operating Plan* § 6.2.3.

proposed wireline and wireless deployment to the trade publication, and that information was included in an article published on February 28, 2014.⁵⁵

Similarly, AT&T also notes in its redacted public filing: “AT&T has identified in the product data sheets in Exhibit E the interstate TDM wholesale services for which 214 applications will be filed, and anticipates submitting an application to grandfather those services in the trial wire centers on July 1, 2015, with the goal of sunseting TDM wholesale services there by March 31, 2017.”⁵⁶ This information [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] As discussed above, the timelines of the trials should not be afforded confidential treatment in any event, but additionally, any timeline information AT&T discloses publicly should not be treated confidentially elsewhere in AT&T’s filings.

AT&T cannot continue to claim confidentiality over information it has already disclosed publicly. The Commission should therefore require AT&T to resubmit its trial proposal and operating plan with this information unredacted.

⁵⁵ See *AT&T Proposes IP Transition Trials for Rural, Suburban Wire Centers*, TR DAILY (Feb. 28, 2014) (“Mr. Hultquist said that only about 20% of the living units in the Carbon Hill wire centers subscribe to AT&T’s POTS service. Of the 5,000 living units in the wire center, 41% would have a choice of either wireline IP service (U-verse Voice-over-IP) or wireless service (Wireless Home Phone) from AT& T under the proposal, while 55% would only have a wireless 4G LTE option.”).

⁵⁶ *AT&T Wire Center Trial Proposal Operating Plan* § 6.3.1 n.96.

⁵⁷ *AT&T Wire Center Trial Proposal Operating Plan*, Exhibits D, E.

CONCLUSION

For these reasons, the Commission should order AT&T to resubmit its trial proposal with information regarding the trials' timeline and wireline and wireless availability in Carbon Hill made publicly available.

Respectfully submitted,

/s Jodie Griffin
Senior Staff Attorney
PUBLIC KNOWLEDGE

/s Olivia Wein
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NATIONAL CONSUMER LAW CENTER

April 8, 2014

CERTIFICATE OF SERVICE

I certify that on April 8, 2014, I caused a copy of the foregoing Challenge to Confidentiality Designation to be served on each of the following:

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