

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

In the Matter of)	
)	
AT&T Corporation,)	
)	
Complainant,)	
)	File No. E-98-05
v.)	
)	
Bell Atlantic Corporation,)	
)	
Defendant.)	

ORDER

Adopted: January 28, 1998; Released: January 28, 1998

By the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau:

1. The parties have executed a negotiated Protective Agreement regarding treatment of confidential material in the above-captioned proceeding. Pursuant to Sections 0.459 and 1.727(a) of the Commission's rules, 47 C.F.R. §§ 0.459, 1.727(a), the parties have requested that the Commission enter an order accepting their agreement.

2. We have reviewed the terms of the Protective Agreement, and are persuaded that the public interest would be served by adopting the Protective Agreement, a copy of which is appended hereto. The Protective Agreement is consistent with Section 1.731 of the Commission's rules, 47 C.F.R. § 1.731, and should facilitate the orderly exchange of relevant information in this proceeding.

3. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and the authority delegated under Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the parties' joint request for acceptance of the Protective Agreement appended hereto IS GRANTED. Nothing in this Order, or the Protective Agreement appended hereto, shall restrict the Commission's authority to use information or materials obtained in the course of this proceeding.

4. IT IS FURTHER ORDERED that this Order shall be effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION



Kurt A. Schroeder
Chief, Formal Complaints and Investigations Branch
Enforcement Division
Common Carrier Bureau

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PROTECTIVE AGREEMENT

1. Documents submitted to the Commission in the course of this complaint proceeding may represent or contain confidential or proprietary information. To ensure that documents and materials in the above-referenced proceeding considered by the parties to be confidential and proprietary are afforded protection, the parties hereby enter into this Protective Agreement:

2. *Confidential Information From Third Parties.* For purposes of this Protective Agreement "Third Party Confidential Information" shall mean information held by any party subject to existing nondisclosure obligations to a third party ("Third Party"). Third parties include entities such as Northern Telecom Inc.; Lucent Technologies, Siemens, Stromberg-Carlson and Bell Communications Research ("Bellcore"); PNR Associates and Business Location Research; and persons (other than AT&T, MCI, Bell Atlantic, Sprint, or their corporate affiliates) who have supplied price quotations and similar material to the developers of the Bellcore Models, Hatfield Model, the BCPM2 model, or successor models. Third Party Confidential information also includes price quotations or similar information supplied by third parties to the developers of the Bellcore Models, Hatfield Model, the BCPM2 model, or successor models; the names and identities of the suppliers of such information; and proprietary algorithms and software developed by PNR Associates, BLR, or Bellcore. Any Third Party Confidential Information that is produced pursuant to the conduct of discovery or filed in this proceeding may be produced or filed as "Confidential Information" pursuant to paragraph 3 below.

3. *Confidential Information.* Any materials generated or provided by a party in response to discovery or filed in this proceeding may be designated as "Confidential Information" by that party if the party believes in good faith that the materials are confidential or proprietary, fall within an exemption to disclosure contained in the Freedom of Information Act ("FOIA"), 5 U.S.C. §552(b)(1)-(9), are entitled to protection from disclosure under any other provision of Federal law, or are subject to existing non-disclosure obligations to a Third Party. Any party asserting confidentiality for such materials shall so indicate by clearly marking on its page, or portion thereof, for which a Confidential Information designation is claimed by marking such "Confidential--Subject To Protective Conditions In File No. E-98-05 Before The Federal Communications Commission" or other markings that are reasonably calculated to alert custodians of the material to its confidential or proprietary nature. Except with the prior written consent of the party or other person who has designated a document to be stamped as Confidential Information, or as hereinafter provided, no Confidential Information may be disclosed to any person. For purposes of this Protective Agreement, the term "document" means all written, recorded or graphic material, and non-paginated items such as computer tapes, diskettes, and CD ROMs, whether produced or created by a party or another person, whether produced pursuant to the Commission's rules, subpoena, by agreement, or otherwise. Interrogatory answers, responses to requests for admission, deposition transcripts and exhibits, pleadings, motions, affidavits, and briefs that quote, summarize, or contain materials entitled to protection are accorded status as a stamped confidential document, and to the extent feasible, shall be prepared in such a manner that the Confidential Information is bound separately from that not entitled to protection.

4. *Permissible Disclosure of Confidential Information.*

(a) Notwithstanding paragraph 3, Confidential Information provided pursuant to this Protective Agreement may be disclosed without prior consent only to the following persons, only in prosecuting this proceeding, including any appeals or reconsideration thereof, and only to the extent necessary to assist in prosecuting this proceeding or any appeals or reconsideration thereof:

(1) Counsel of record representing a party in this proceeding, and any legal support personnel (*e.g.*, paralegals and clerical employees) employed by such attorneys.

(2) Other employees, officers, or directors of a party, or consultants or experts retained by a party, who have not been and who are not currently involved in the marketing, procurement, manufacturing, pricing, or development of telecommunications equipment or software, including switch hardware and software, for which price data are disclosed, or equipment and software that may be substituted for such equipment or software, or the development of computerized telecommunications costing models that are not designed primarily for litigation support, including arbitration and rulemaking proceedings. Individuals who become reviewing representatives under this paragraph may not engage or consult

in any of the activities proscribed in the previous sentence for three years after reviewing the Confidential Information under this Protective Agreement.¹

(3) The Commission, reviewing courts, or their staffs.

(4) Court reporters, stenographers, or persons operating audio or video recording equipment for such court reporters or stenographers at hearings or depositions.

(5) Any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

(6) Persons designated as witnesses, to the extent reasonably necessary in preparing to testify or for the purpose of examination in this proceeding.

(b) Persons obtaining access to Confidential Information under this Protective Agreement shall not disclose information designated as Confidential Information to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than in prosecuting this proceeding before this Commission or any Commission staff member, or before any reviewing court. This limitation, however, shall not be read as limiting any party seeking access to Confidential Information under this Protective Agreement from separately seeking access to Confidential Information for use in another proceeding. Each individual who is

¹ The following footnote applies only to reviewing representatives who review the information specified in the footnote, and is not intended to modify the restrictions set forth in the main text of Paragraph 4(a)(2) with respect to the information described in that paragraph: The following restrictions govern disclosure of price quotations or similar information supplied by Third Parties to the developers of the Hatfield Model, the BCPM2 model, or successor models; the names and identities of the suppliers of such information; and proprietary algorithms and software developed by PNR Associates or BLR. Such information may not be disclosed to any employees, officers, or directors of a party, or any consultants or experts retained by a party:

- (a) who have been involved within the last three years, or are currently involved, in the marketing, manufacturing, pricing or development of telecommunications equipment (including outside plant and switching equipment) or software, or equipment or software that could substitute for such telecommunications equipment or software;
- (b) who have been involved within the last three years, or are currently involved, in the procurement of telecommunications equipment (including outside plant and switching equipment), software or services, or equipment, software or services that could substitute for such telecommunications equipment, software or services; or
- (c) who have been involved within the last three years, or are currently involved, in the marketing, manufacturing or development of demographic data mapping software.

Individuals who review such information produced in this proceeding may not engage or consult in any of the foregoing activities for three years after reviewing the Third Party Confidential Information, unless the reviewing individuals are otherwise authorized by the appropriate Third Party to review its confidential information without being subject to the foregoing restrictions.

provided access to Confidential Information pursuant to paragraphs 4(a)(1), (2), (5), or (6), must first sign a notarized statement affirmatively stating that the individual has personally reviewed this Protective Agreement and understands and agrees to be bound by the limitations it imposes on the signing party. The form of the notarized statement to be used is Attachment A to this Protective Agreement. The party making disclosure under Section (a)(1), (a)(2), (a)(5), or (a)(6) shall notify the party producing the Confidential Information and any Third Party whose Confidential Information is being disclosed (or counsel for that Third Party) of such disclosure and, upon request, provide the notarized statement referenced above.

(c) No copies or notes of materials marked Confidential may be made except copies or notes to be used by persons designated in paragraph (a) of this section. Each party shall maintain a log recording the number of copies made of all Confidential materials and the persons to whom the copies have been provided.

(d) Within 90 days of termination of this proceeding, including all appeals and petitions, all originals and reproductions of any Confidential materials, along with the log recording persons who received copies of such materials, shall be returned to the producing party. In addition, upon such termination, any notes or other work product derived in whole or in part from the Confidential materials shall be destroyed, and counsel of record for the receiving party shall notify counsel for the party who produced the materials that this has been completed.

(e) Before disclosing a stamped Confidential document to any person listed in subparagraph (a)(5) or (a)(6) who is a competitor (or an employee or officer of a competitor) of the party, including a Third Party, that so designated the document, the party wishing to make such disclosure shall give at least ten days advance notice in writing to the counsel who designated such information as confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. If, within the ten day period, a motion is filed objecting to the proposed disclosure, a disclosure is not permissible unless and until the Commission has denied such motion.

(f) The following individuals may serve as reviewing representatives for AT&T under paragraphs 4(a)(1) and 4(a)(2) if they satisfy the applicable requirements of those paragraphs:

Roy E. Hoffinger (General Attorney, AT&T)
Dina Mack (Senior Attorney, AT&T)
James F. Bendernagel (partner, Sidley & Austin)
David M. Levy (partner, Sidley & Austin)
Robert Fisher (associate, Sidley & Austin)
C. Frederick Beckner III (associate, Sidley & Austin)
Edward McNicholas (associate, Sidley & Austin)
John C. Klick (principal, Klick, Kent & Allen)
Michael R. Baranowski (principal, Klick, Kent & Allen)

Brian Pitkin (consultant, Klick, Kent & Allen)
Mike Boyles (consultant, Klick, Kent & Allen)
John Donovan (independent consultant)
Joseph P. Riolo (independent consultant)

The following individuals may serve as reviewing representatives for Bell Atlantic under paragraphs 4(a)(1) and 4(a)(2) if they satisfy the applicable requirements of those paragraphs:

Michael E. Glover (Assistant General Counsel, Bell Atlantic)
Michael D. Lowe (Assistant General Counsel, Bell Atlantic)
James G. Pachulski (Regulatory Counsel, Bell Atlantic)
Lydia R. Pulley (Regulatory Counsel, Bell Atlantic)
Edward M. Wylonis (Director-Economic Costs, Bell Atlantic)
Elizabeth R. Beard (Cost Support, Bell Atlantic)
Gary E. Sanford (Cost Support, Bell Atlantic)
Donald E. Albert (Operations - Bell Atlantic)
William E. Taylor (Senior Vice President, National Economic Research Associates-"NERA")
Timothy Tardiff (NERA)
Harold Ware (NERA)
Jonathan Falk (NERA)
Chienyo Fung (NERA)
Anirudda Banerjee (NERA)
Charles Zarkadas (NERA).

Additional reviewing representatives designated by a party to review confidential information under paragraphs 4(a)(1) and 4(a)(2) may serve if (i) the party producing the Confidential Information, and any Third party whose Confidential Information is being disclosed, consent to additional reviewing representatives, or (ii) the Commission or a Commission staff member denies a motion to bar disclosure of the Confidential Information to additional reviewing representatives. Failure to file such a motion within ten days after receiving written Notice that a reviewing party intends to designate additional reviewing representative(s) shall constitute consent to the designation. The written Notice shall (a) identify the additional reviewing representative(s), (b) identify the Confidential Information that is proposed to be disclosed, and (c) provide a copy of the resume of the proposed additional reviewing representative(s) containing the individual's up-to-date employment history. Notwithstanding the foregoing, no more than 30 individuals (other than secretaries, legal assistants, and administrative support staff) may serve at the same time as reviewing representatives for any party under this Protective Agreement. If this cap is reached, a party may not designate additional reviewing representatives without withdrawing an equal number of existing reviewing representatives.

4. *Declassification.* A party may apply to the Commission for a ruling that documents, categories of documents, or deposition transcripts, stamped or designated as

confidential, are not entitled to such status and protection. The party or other person that designed the document or testimony as confidential shall be given notice of the application and an opportunity to respond. To maintain confidential status, the proponent of confidentiality must show by a preponderance of the evidence that the materials fall within an exemption to disclosure contained in the Freedom of Information Act, 5 U.S.C. §552(b)(1)-(9), or are subject to existing nondisclosure obligations to a Third Party.

5. *Confidential Information in Depositions.*² If depositions are taken in this proceeding:

(a) A deponent may during the deposition be shown and examined about Confidential Information if the deponent already knows the Confidential Information contained therein or if the provisions of paragraph 4 above are complied with.

(b) Parties (and deponents may, within fifteen (15) days after reviewing a deposition transcript, designate pages of the transcript (and exhibits thereto) as Confidential Information. Confidential Information within the deposition transcript may be designated by marking the portion of the pages that are confidential, and marking the pages with the following legend: "Confidential-Subject To Protective Conditions In File No. E-98-05 Before The Federal Communications Commission." Until expiration of the 15-day period, the entire deposition will be treated as Confidential Information subject to protection against disclosure under this Agreement. If no party or deponent timely designates Confidential Information in a deposition, then none of the transcript or its exhibits shall be filed (to the extent such filing may be required) under seal separately from the portions and exhibits not so marked.

6. *Confidential Information Offered in Evidence or Filed in the Record.* Subject to the Commission's rules, Confidential Information may be offered into evidence or in the record made by the parties and submitted to the Commission, the Common Carrier Bureau or a designated Commission staff member in this proceeding, provided that such Confidential Information is furnished under seal and otherwise complies with this Protective Agreement. The party submitting Confidential documents shall ensure that each page bears the legend "Confidential--Subject To Protective Conditions In File No. E-98-05 Before The Federal Communications Commission" or other markings that are reasonably calculated to alert custodians of the material to its confidential or proprietary nature. Pursuant to this Protective Agreement, any party may move before the Commission or a Commission staff member for any order that the evidence be received in camera or under other conditions to prevent unnecessary disclosure. The Commission, Common Carrier Bureau or Commission staff member will then determine whether the proffered evidence should continue to be treated as Confidential Information and, if so, what protection, if any, may be afforded to such information at any hearing or other proceeding. The Commission may, *sua sponte*, determine that all or part of the information claimed by the producing party to be confidential is not entitled to such treatment. *See generally* 47 C.F.R. § 0.459.

² Inclusion in this Protective Order of provisions dealing with depositions is not intended as an admission or determination that depositions are appropriate or inappropriate in this proceeding.

7. *Subpoena by Courts or Other Agencies.* If a court or other administrative agency subpoenas or orders production of Confidential Information which a party has obtained under the terms of this Protective Agreement, such party shall promptly (within two business days) notify the party (or other person who designated the document as confidential) of the pendency of such subpoena or order to allow that party time to object to that production or seek a protective order.

8. *Commission Treatment of Confidential Information.* If confidential documents are submitted to the Commission in accordance with paragraph 6, the materials shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents.

9. *Client Consultation.* Nothing in this Protective Agreement shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course thereof, relying generally on examination of Confidential Information, provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of or reference to any Confidential Information except under the procedures of paragraph 4 above.

10. *Use.* Persons obtaining access to Confidential Information under this Protective Agreement shall use the information only for preparation of and the conduct of litigation in this proceeding and any related appeals or review proceedings, and shall not use such information for any other purpose, including business or commercial purposes, or governmental or other administrative or judicial proceedings. The prior sentence shall not, however, be read as limiting any party obtaining access to Confidential Information under this Protective Agreement from separately seeking access to Confidential Information for use in another proceeding.

11. *Non-Termination.* The provisions of this Protective Agreement shall not terminate at the conclusion of this proceeding.

12. *Modification Permitted.* Nothing in this Protective Agreement shall prevent any party from objecting to discovery that it believes to be otherwise improper.

13. *Responsibilities of Parties.* The parties are responsible for employing reasonable measures to control, consistent with this Protective Agreement, duplication of, access to, and distribution of Confidential Information.

14. This Protective Agreement shall not apply to information produced by AT&T in the future under another protective order or agreement; provided that switch vendor information and Bellcore information produced by any party shall be governed by this Protective Agreement and not a previous agreement.

15. This Protective Agreement shall not apply to employees of Bell Atlantic with respect to Nortel, Lucent, Siemens, and Bellcore Information provided to Bell Atlantic prior to the effective date of this Protective Agreement. Bell Atlantic shall remain subject to whatever confidentiality obligations apply with respect to such Information without regard to this Protective Agreement.

16. Because this Protective Agreement affects the interests of third parties, it shall not take effect until ratified by order of the Federal Communications Commission.

AT&T CORP.

BELL ATLANTIC CORP.

By: /s/ Dina Mack

By: /s/ Lydia R. Pulley

January 27, 1998

January 27, 1998