

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

In the Matter of)
Connect America Fund) WC Docket No. 10-90
ETC Annual Reports and Certifications) WC Docket No. 14-58

PROTECTIVE ORDER

Adopted: March 22, 2016

Released: March 22, 2016

By the Chief, Wireline Competition Bureau:

1. The Wireline Competition Bureau (Bureau) hereby adopts a revised Protective Order governing the filing of and access to FCC Form 481 financial information filed by privately held rate-of-return carriers pursuant to section 54.313(f)(2) of the Commission’s rules. In the Fifth Order on Reconsideration in these proceedings, the Commission stated that while most reporting information required to be filed by eligible telecommunications carriers (ETCs) would be made publicly available, privately held rate-of-return carriers would be permitted to file the information required by section 54.313(f)(2) of the Commission’s rules pursuant to a protective order.1 In June 2015, the Bureau adopted a revised Protective Order (2015 Protective Order) to reflect the Commission’s newly opened WC Docket No. 14-58, for filing FCC Form 481 annual reports.2

2. This Protective Order is substantially similar to the 2015 Protective Order, but streamlines the procedures for submitting filings with the Commission – thereby significantly reducing burden on filers. It also updates certain other procedures, consistent with more recent Commission protective orders.3 Specifically, privately held rate-of-return ETCs who wish to file confidentially any portion of FCC Form 481 should file one copy of the confidential (unredacted) version of the form with the Secretary’s Office and file a redacted version of the form, including any and all attachments, through the Commission’s electronic comment filing system (ECFS). Filers are no longer required to, and should not, submit two courtesy copies of the confidential (unredacted) version of the form with the Bureau. Finally, this protective order substantially reduces the number of dockets into which submitting parties must file information. This Protective Order supersedes the two earlier protective orders.

1 Connect America Fund et al., Fifth Order on Reconsideration, 27 FCC Rcd 14549, 14554-56, paras. 15-17 (2012) (Fifth Order on Reconsideration); see also Connect America Fund et al., Protective Order, 27 FCC Rcd 14231 (Wireline Comp. Bur. 2012).

2 See Connect America Fund et al., Protective Order, 30 FCC Rcd 6322 (Wireline Comp. Bur. 2015) (2015 Protective Order); see also Connect America Fund et al., Report and Order et al., 29 FCC Rcd 7051, 7069, para. 57 (2013); 47 C.F.R. § 54.313(i).

3 See Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent To Assign or Transfer Control of Licenses and Authorizations, Order, 30 FCC Rcd 10360 (2015) (Charter Order). We also take this opportunity to make conforming changes to the Acknowledgement of Confidentiality in Appendix A to clarify that, consistent with the text of the protective order, In-House counsel may obtain access to confidential information filed pursuant to this protective order.

3. *Definitions.* As used herein, capitalized terms not otherwise defined in this Protective Order shall have the following meanings:

“Acknowledgment” means the Acknowledgment of Confidentiality attached as Appendix A hereto.

“Competitive Decision-Making” means a person’s activities, association, or relationship with any of his clients involving advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party or with a Third-Party Interest Holder.

“Confidential Information” means information that is required to be filed pursuant to section 54.313(f)(2) of the Commission’s regulations, 47 C.F.R. § 54.313(f)(2); that is not otherwise available from publicly available sources; that the Submitting Party has kept strictly confidential and that is subject to protection under FOIA and the Commission’s implementing rules.

“Counsel” means In-House Counsel and Outside Counsel of Record.

“Document” means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person.

“In-House Counsel” means an attorney employed by a Participant in these proceedings or employed by an affiliated entity and who is actively engaged in the conduct of these proceedings, provided that such attorney is not involved in Competitive Decision-Making. In this regard, an In-House Counsel’s employer is considered his or her client.

“Outside Counsel of Record” or “Outside Counsel” means the attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, retained by a Participant in these proceedings, provided that such attorneys are not involved in Competitive Decision-Making. The term “Outside Counsel of Record” includes any attorney employed by a non-commercial Participant in these proceedings, provided that such attorney is not involved in Competitive Decision-Making.

“Outside Consultant” means a consultant or expert retained for the purpose of assisting Outside Counsel or a Participant in these proceedings, provided that such consultant or expert is not involved in Competitive Decision-Making. The term “Outside Consultant” includes any consultant or expert employed by a non-commercial Participant in these proceedings, provided that such consultant or expert is not involved in Competitive Decision-Making.

“Outside Firm” means a firm, whether organized as a partnership, limited partnership, limited liability partnership, limited liability company, corporation or otherwise, of Outside Counsel or Outside Consultants.

“Participant” means a person or entity that has filed, or has a good faith intention to file, material comments in these proceedings.

“Redacted Confidential Document” means a copy of a Stamped Confidential Document where the Confidential Information has been redacted.

“Reviewing Party” means a person who has obtained access to Confidential Information (including Stamped Confidential Documents) pursuant to paragraphs 7 or 11 of this Protective Order.

“Stamped Confidential Document” means any FCC Form 481 annual report, including any attachments, or any part thereof, that contains Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) “CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER BEFORE THE FEDERAL COMMUNICATIONS COMMISSION,” unless the Commission determines,

sua sponte or by request pursuant to paragraph 4 of this Protective Order or sections 0.459 or 0.461 of its rules,⁴ that any such document is not entitled to confidential treatment. By designating a document a “Stamped Confidential Document,” a Submitting Party signifies and represents that it contains Confidential Information.

“Submitting Party” means a person or entity who submits a Stamped Confidential Document.

“Support Personnel” means employees of a Reviewing Party’s Outside Firm and third-party contractors and employees of third-party contractors who are assisting in these proceedings, provided such persons are involved solely in performing clerical or ministerial functions with regard to documents and information connected with these proceedings, including performing one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with these proceedings.

“Third-Party Interest Holder” means a person who is not a Submitting Party who has a confidentiality interest in Confidential Information that is submitted under this Protective Order.

4. *Challenge to Designation.* Any person wishing to challenge the designation of a document, portion of a document or information as confidential must file such a challenge at the Commission and serve it on the Submitting Party and any known Third-Party Interest Holders. The Submitting Party and any Third-Party Interest Holders must file any reply within five business days, and include a justification for treating the information as Confidential. The documents and information challenged will continue to be accorded confidential treatment until the Commission acts on the request and any timely motion for a judicial stay has been acted upon.⁵ Any decision on whether the materials should be accorded confidential treatment does not constitute a resolution of the merits concerning whether such information would be released publicly by the Commission upon an appropriate request under our rules implementing FOIA.⁶

5. *Submission of Stamped Confidential Documents.* A Submitting Party shall submit to the Secretary’s Office one copy of each Stamped Confidential Document it seeks to file and an accompanying cover letter. Before doing so, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in any such Stamped Confidential Document. Each page of the Stamped Confidential Document shall be stamped “CONFIDENTIAL INFORMATION — SUBJECT TO PROTECTIVE ORDER BEFORE THE FEDERAL COMMUNICATIONS COMMISSION.” The cover letter also shall contain this legend. In addition, the Submitting Party shall also file through the Commission’s Electronic Comment Filing System (ECFS) a copy of the respective Redacted Confidential Document and an accompanying cover letter.⁷ Each Redacted Confidential Document shall have the same pagination as the Stamped Confidential Document from which it is derived. Each page of the Redacted Confidential Document and the accompanying cover letter shall be stamped “REDACTED – FOR PUBLIC INSPECTION.” To the extent that any page of the filing contains both Confidential Information and non-confidential information, only the Confidential Information may be redacted and the page of the unredacted filing shall clearly distinguish between the Confidential Information and the non-confidential information.

6. *Copying Sensitive Documents.* If, in the reasonable judgment of the Submitting Party, a

⁴ 47 C.F.R. §§ 0.459, 0.461.

⁵ *Cf.* 47 C.F.R. §§ 0.459(g), 0.461(i).

⁶ *See* 47 C.F.R. §§ 0.459(h), 0.461.

⁷ If a party is not able to submit a copy of the Redacted Confidential Document via ECFS, it must file two copies of the Redacted Confidential Document or Redacted Confidential Document with the Secretary’s Office along with the appropriately stamped cover letter.

Confidential Document contains information so sensitive that copying of it should be restricted, the Submitting Party may mark the document with the legend “Additional Copying Restricted.” Each Outside Firm shall receive only one copy of the document and no more than two additional copies, in any form, shall be made. Application for relief from this restriction against further copying may be made to the Commission, with notice to Counsel of Record for the Submitting Party, which will be granted only for cause.

7. *Procedure for Obtaining Access to Confidential Information.* Any person other than Support Personnel seeking access to Confidential Information subject to this Protective Order shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this Protective Order, and file the Acknowledgment with the Commission. A copy of the Acknowledgment also shall be delivered to the relevant Submitting Party through its Counsel of Record and any known Third-Party Interest Holders through counsel so that it is received at least five business days prior to such person’s reviewing or having access to the Submitting Party’s Confidential Information. Where there are multiple Submitting Parties or Third-Party Interest Holders, a copy of the Acknowledgment must be served on each within the time period stated above.

8. *Procedure for Objecting to the Disclosure of Confidential Information to a Potential Reviewing Party.*⁸ Each Submitting Party and Third-Party Interest Holder shall have an opportunity to object to the disclosure of its Confidential Information or to a person seeking to review that information pursuant to this Protective Order. A Submitting Party or Third-Party Interest Holder must file any such objection at the Commission and serve it on counsel for the person seeking access within three business days after receiving a copy of that person’s Acknowledgment. Persons filing Acknowledgments shall not have access to Confidential Information before the period for filing objections has passed, unless both the Submitting Party and any known Third-Party Interest Holders waive this requirement. If a Submitting Party files additional documents containing Confidential Information, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in the information before filing the additional documents. The Submitting Party shall file any objection to the disclosure of that additional Confidential Information to any Reviewing Party before or contemporaneous with the filing, and any Third-Party Interest Holder shall file such any objection as promptly as practicable. Until any timely objection is resolved by the Commission in favor of the person seeking access and, if a motion for a judicial stay is timely filed, until such a motion is acted upon, a person subject to an objection shall not have access to the relevant Confidential Information.⁹ If an objection is not timely filed with the Commission, the Commission will nonetheless consider the objection and retains its discretion to prohibit further access to Confidential by the Reviewing Party until the objection is resolved.

9. *Review of Stamped Confidential Documents.* A Submitting Party shall make available for review the Stamped Confidential Documents of such party at the offices of the party’s Outside Counsel of

⁸ This paragraph describes the procedure for objecting to a specific individual being permitted to review Confidential Information pursuant to this Protective Order. The procedure for objecting to specific Confidential Information being reviewed by *any* individual pursuant to the Protective Order (in other words, for requesting that certain information be entirely withheld from review under the Protective Order) is set forth in paragraph 26 of the Order adopting the Protective Order in the Charter-Time Warner-Bright House proceeding. See *Charter Order*, 30 FCC Rcd at 10374, para. 26. As stated there, where such an objection is timely made, we will not require that the information at issue be disclosed under the Protective Order until the Commission resolves the objection, and if a timely motion for judicial stay is filed, until the court rules upon the stay motion.

⁹ An objection ordinarily will first be ruled upon by the Bureau. If the Bureau rejects the objection, the objecting party will be provided 10 business days to file an Application for Review with the Commission; if an Application for Review is not filed within that time, the Confidential Information shall be made available to the Reviewing Party. If an Application for Review is timely filed and is denied by the Commission, the objecting party will be provided 10 business days to seek a judicial stay of the Commission’s Order; if a motion for stay is not filed within that time, the Confidential Information shall be made available to the Reviewing Party.

Record. Subject to the provisions of paragraph 6, a Reviewing Party shall be provided the following alternatives: (1) a Reviewing Party shall be provided adequate opportunity to inspect the documents on site; (2) a Reviewing Party may inspect the documents on site with the ability to request copies, at cost, of some or all of the documents; or (3) a Reviewing Party may request a complete set of the documents at cost, allowing two business days after the request is made for receipt of the copies. If a Reviewing Party plans on requesting a complete set of documents, it is encouraged to make such a request at the time it submits the Acknowledgment to allow it the opportunity to begin reviewing the documents at the end of the five-day period referred to in paragraph 7. All copies of documents that are removed from the Submitting Party's office must be returned or destroyed in accordance with the terms of paragraph 20.

10. *Use of Confidential Information.* Persons obtaining access to Confidential Information under this Protective Order shall use the information solely for the preparation and conduct of these proceedings before the Commission and any subsequent judicial proceeding arising directly from these proceedings and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in any other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to any Confidential Information in its orders in these proceedings, it will do so by redacting any Confidential Information from the public version of the order and by making the unredacted version of the order available only to a court and to those persons entitled to access to Confidential Information under this Protective Order, as appropriate.

11. *Permissible Disclosure.* A Reviewing Party may discuss and share the contents of Confidential Information with another Reviewing Party, with Support Personnel, as appropriate, and with the Commission and its staff. A Submitting Party's Confidential Information may be disclosed to employees and Counsel of the Submitting Party, and a Third-Party Interest Holder's Confidential Information may be disclosed to employees and Counsel of the Third-Party Interest Holder.

12. *Filings with the Commission.* A party making a filing in these proceedings that contains Confidential Information shall submit to the Secretary's Office one copy of the filing containing the Confidential Information (the "Confidential Filing") and an accompanying cover letter. The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses only Confidential Information shall be clearly marked "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The accompanying cover letter shall also contain the appropriate legend. The Confidential Filing shall be made under seal, and will not be placed in the Commission's public file. The party shall submit a copy of the filing in redacted form, *i.e.*, containing no Confidential Information (the "Redacted Confidential Filing") to the Commission via ECFS.¹⁰ The Redacted Confidential Filing and the accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential Filing shall state that the party is filing a redacted version of the filing. Each Redacted Confidential Filing shall have the same pagination as the Confidential Filing from which it is derived. To the extent that any page of the Confidential Filing contains any Confidential Information, only the Confidential Information may be redacted and the page of the unredacted Confidential Filing shall clearly distinguish among the Confidential Information and the non-confidential information.

13. *Non-Disclosure of Confidential Information.* Except with the prior written consent of the Submitting Party or as provided under this Protective Order, Confidential Information shall not be disclosed further.

14. *Protection of Stamped Confidential Documents.* A Reviewing Party shall have the obligation to ensure that access to Confidential Information (including Stamped Confidential Documents)

¹⁰ If a party is not able to submit a copy of the Redacted Confidential Filing via ECFS, it must file two copies of the Redacted Confidential Filing with the Secretary's Office along with the appropriately stamped cover letter, as described in this paragraph.

is strictly limited as prescribed in this Protective Order. A Reviewing Party shall have the further obligation to ensure that Confidential Information are used only as provided in this Protective Order.

15. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential Information outside the terms of this Protective Order, such a request will be treated in accordance with sections 0.442 and 0.461 of the Commission's rules.

16. *Client Consultation.* Nothing in this Protective Order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of these proceedings and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Confidential Information to which they have access under this Protective Order; *provided, however,* that in rendering such advice and otherwise communicating with such clients, Counsel shall not disclose Confidential Information.

17. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential Information by a Submitting Party to a Reviewing Party shall not be deemed a waiver of any privilege or entitlement provided that the Submitting Party takes prompt remedial action.

18. *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 Stamped Confidential Documents or Confidential Information that a party has obtained under the terms of this Protective Order, such party shall promptly notify each relevant Submitting Party and each known Third-Party Interest Holder 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 each Submitting Party and Third-Party Interest Holder has sufficient opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document or Confidential Information.

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

20. *Termination of Proceeding.* The provisions of this Protective Order shall not terminate at the conclusion of these proceedings. Within two weeks after conclusion of the last of these proceedings and any administrative or judicial review, Reviewing Parties shall destroy or return to the Submitting Party Stamped Confidential Documents and all copies of the same. No material whatsoever containing or derived from Confidential Information may be retained by any person having access thereto, except Outside Counsel and Outside Consultants may retain, under the continuing strictures of this 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 Confidential Information, and one copy of orders issued by the Commission or Bureau that contain Confidential Information. All Reviewing Parties shall certify compliance with these terms and shall deliver such certification to Counsel for the Submitting Party and file such certification with the Commission not more than three weeks after conclusion of the last of these proceedings. Such certification shall be made pursuant to 28 U.S.C. section 1746 and is subject to 18 U.S.C. section 1001. The provisions of this paragraph regarding retention of Stamped Confidential Documents and copies of

the same and Confidential Information shall not be construed to apply to the Commission or its staff.

21. *Questions.* Questions concerning this Protective Order should be addressed to Jonathan Lechter, Jonathan.Lechter@fcc.gov, Wireline Competition Bureau, (202) 418-7387 or Heidi Lankau, Heidi.Lankau@fcc.gov, Wireline Competition Bureau, (202) 418-2876.

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero
Chief
Wireline Competition Bureau

APPENDIX A

Acknowledgment of Confidentiality

WC Docket Nos. 10-90, 14-58

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it.

I agree that I am bound by the Protective Order and that I shall not disclose or use Stamped Confidential Documents or Confidential Information except as allowed by the Protective Order.

I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission (Commission). I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Protective Order limits any other rights and remedies available to a Submitting Party at law or in equity against me if I use Confidential Information in a manner not authorized by this Protective Order.

I certify that I am not involved in Competitive Decision-Making.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as an employee of Counsel, Outside Consultant, or Outside Firm, and I agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Stamped Confidential Documents are not duplicated except as specifically permitted by the terms of the Protective Order and to ensure that there is no disclosure of Confidential Information in my possession, in the possession of those who work for me or in the possession of other Support Personnel, except as provided in the Protective Order.

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

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

Executed this ___ day of _____, 20__.

[Name]
[Position]
[Firm]
[Telephone]
[Party]