

## **AGREEMENT ON SUBMISSION OF CONFIDENTIAL AND PROPRIETARY NETWORK OUTAGE INFORMATION**

This AGREEMENT is made and entered into by and between the National Reliability and Interoperability Council V ("NRIC V"), a Federal Advisory Committee created under the Federal Advisory Committee Act, 5 U.S.C. App. 2, which meets through January 2002 and the National Communications System ("NCS") ("the RECIPIENT"), acting on behalf of itself and the National Coordinating Center for Telecommunications ("NCC");

WHEREAS NRIC and the RECIPIENT wish to ensure that proprietary information provided under this Agreement is protected against unauthorized use or disclosure; and

WHEREAS NRIC IV recommended that the Federal Communications Commission ("FCC") adopt a voluntary reporting program, administered by the NCS to gather outage data for those telecommunications and information service providers not currently required to report outages under FCC regulations; and

WHEREAS the current NRIC has undertaken to monitor this process, analyze the data obtained from the voluntary trial, and report on the efficacy of that process, as well as the on-going reliability of such services, and

WHEREAS the Freedom of Information Act, 5 U.S.C. Section 552(b)(4) provides for an exemption from disclosure to third-parties by U.S. Government Agencies of information that is confidential or proprietary; and

WHEREAS the Trade Secrets Act, 18 U.S.C. Section 1905 prohibits publication, divulgence or release of commercial or financial information of private parties by U.S. Government agencies,

NOW THEREFORE the parties hereby agree as follows:

1. Definitions:
  - A. NRIC V means the NRIC that is chaired by Chief Executive Officer of Level 3 Communications, James Q. Crowe, and meets from January 2000 to January 2002.
  - B. "PROPRIETARY INFORMATION" means any data or information provided by a communications provider to NCS relating to a network outage submitted during the voluntary trial and not now required to be provided to the FCC under Section 63.100 of its Rules.

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- C. "ORIGINATOR" means, as to a given item of PROPRIETARY INFORMATION, the communications provider who submitted that information.
- D. "DATABASE" means the database developed and operated by NCS and its authorized contractors for use in collecting and analyzing network outage information submitted by ORIGINATORS. The DATABASE may include variously accessible sets and subsets of PROPRIETARY INFORMATION.
- E. "U.S. GOVERNMENT ENTITY" means any agency, entity or authority of the United States Government.
2. RECIPIENT agrees that retention or use of PROPRIETARY INFORMATION shall be undertaken only in accordance with the terms of this AGREEMENT, which shall supercede any other Agreements of collateral materials.
3. RECIPIENT agrees that NCC shall be the sole custodian of the DATABASE. RECIPIENT further agrees that except as otherwise provided herein, or in any addendum hereto, access to and use of PROPRIETARY INFORMATION by or on behalf of RECIPIENT shall be limited as follows: (a) internal access and use, by technical personnel of or retained by NCC, for the purpose of proper administration of the DATABASE; (b) internal access to and use of PROPRIETARY INFORMATION by the NCC for the purposes of monitoring the status of the United States telecommunications infrastructure, including the provision of analysis, advice and counsel regarding the prevention of network outages, but without disclosing PROPRIETARY INFORMATION other than as provided in the AGREEMENT; and (c) for the purpose of addressing actual or potential network outages, in systems, software of equipment owned by a U.S. Government Entity.
4. In addition to the confidentiality obligations imposed by the AGREEMENT, any party who is a U.S. Government ENTITY acknowledges and agrees that to the maximum extent permitted by law PROPRIETARY INFORMATION received hereunder shall be deemed by RECIPIENT to be confidential trade secrets and commercial or financial information, exempt from mandatory agency disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(4), and from publication, divulgence or release in any other manner pursuant to the prohibitions of the Trade Secrets Act, 18 U.S.C. Section 1905.
5. For the purposes of providing analysis, advice or counsel to a United States Government Entity and communications providers and of facilitating the exchange of information between and among communications providers regarding actual or potential outages, the NCC may summarize PROPRIETARY INFORMATION, without disclosing the identity of either the ORIGINATOR or any manufacturer/vendor of any equipment/software included in PROPRIETARY

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INFORMATION or any other ORIGINATOR/manufacturer/vendor identifying information. Only outage information from which provider-identifiable information has been removed, in accordance with the procedures established by NRIC's Focus Group on Network Reliability, may be provided by NCS to the FCC or the National Infrastructure Protection Center of the Federal Bureau of Investigations, Department of Justice or the NRIC Focus Group on Network Reliability Subgroups. If NCS wishes to provide PROPRIETARY INFORMATION to the FCC or NIPC without first removing provider-identifiable information, it must first obtain the written consent of the ORIGINATOR.

6. RECIPIENT agrees to restrict access to and disclosure of any PROPRIETARY INFORMATION to authorized persons acting as part of the NCC, including but not limited to officers or employees of NCC who:
  - (a) have a "need-to-know" as provided in this AGREEMENT;
  - (b) have been advised of, and have agreed to, the obligations and restrictions relating to the treatment of PROPRIETARY INFORMATION; and
  - (c) are bound by written agreements (with the principal that the employee or officer is authorized to represent) or U.S. Government regulations sufficient to give effect to the obligations of this AGREEMENT (including without limitation restrictions on use and disclosure).

RECIPIENT agrees to protect PROPRIETARY INFORMATION with the same degree of care it uses to protect its own PROPRIETARY INFORMATION, but in any case with not less than a reasonable degree of care, taking into account the nature of the PROPRIETARY INFORMATION.

7. Nothing contained in this AGREEMENT, nor any act or omission by either party in contravention of the terms of this AGREEMENT, shall be construed as granting to, or conferring upon, the RECIPIENT, NRIC or any of its members, any rights, by license or otherwise, in any other past, present or future information, data, ideas, plans, inventions, discoveries, improvements methods, procedures, products, patents, copyrights, trade secrets, trademarks or trade names of any ORIGINATOR acquired or developed prior to, on, or after the date of this AGREEMENT.
8. Each party acknowledges and agrees that a remedy at law for any unauthorized disclosure of PROPRIETARY INFORMATION may be inadequate and agrees that the ORIGINATOR may be entitled to seek injunctive relief without bond (except as otherwise specifically required by statute or law) upon the occurrence of such unauthorized disclosure. If RECIPIENT deems injunctive relief is appropriate, RECIPIENT agrees to recommend to the Department of Justice that such relief be entered.

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9. All information or material furnished hereunder is provided "AS IS," and nothing contained in this AGREEMENT, nor any information or material furnished hereunder, shall constitute any representation or warranty by the ORIGINATOR with respect to: (1) the legitimate, or non-infringing, ownership of the information by the ORIGINATOR (as against the patent, copyright, or other property rights or third parties); or (2) the accuracy, timeliness, completeness or usefulness of any PROPRIETARY INFORMATION.
10. Unless the ORIGINATOR requests earlier permanent erasure or destruction of its PROPRIETARY INFORMATION as provided below, or unless the ORIGINATOR provides written direction to RECIPIENT to retain PROPRIETARY INFORMATION for a longer period, each ORIGINATOR retains the rights to have its PROPRIETARY INFORMATION permanently erased or destroyed as described above upon seven (7) days written notice. Such notice shall identify the PROPRIETARY INFORMATION to be permanently erased or destroyed. Following such erasure or destruction of PROPRIETARY INFORMATION, the RECIPIENT and the NCC shall provide written certification to the ORIGINATOR that the applicable PROPRIETARY INFORMATION has been permanently erased or destroyed.
11. No provision of this AGREEMENT shall be deemed to be waived nor any breach excused, unless such waiver or consent is received in writing and signed by a duly authorized representative of the party claimed to have waived or consented. No consent to or waiver of a breach by another party shall be construed as consent to or waiver of any other breach. Each ORIGINATOR maintains the several right to enforce this AGREEMENT with respect to its own PROPRIETARY INFORMATION.
12. If any provision of this AGREEMENT or its application in whole or in part to a party shall be found to be unenforceable by a court of competent jurisdiction, such unenforceable provision or part thereof shall be severable, and the remainder of this AGREEMENT shall remain in full force and effect and shall be interpreted in a manner which best reflects the intentions of the parties.
13. Any notice(s) required or permitted under this AGREEMENT shall be made in writing, and shall be deemed to have been properly tendered upon delivery by hand, by facsimile, or by registered mail: to Mr. Bernard Farrell, at National Communications System, (Code N31) 701 South Court House Road, Arlington, Virginia, 22204-2199, or his successor, in the case of RECIPIENT, and for NRIC, the Steering Committee Chair, Patricia Paoletta, of Level 3 Communications, 8270 Greensboro Drive, Suite 900, McLean Virginia 22046, or her successor, with copies to RECIPIENT's legal counsel as provided under Notice to Counsel on the signature page of this AGREEMENT. Each party may change the person authorized to receive notices by notifying the other party of such change in accordance with this Paragraph.

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14. This AGREEMENT shall become effective upon execution by RECIPIENT and NRIC's Steering Committee Chair. This AGREEMENT shall remain in effect until terminated in writing by one of the parties' authorized representative upon notice of not less than thirty (30) days. Notwithstanding any such termination, the rights and obligations with respect to the retention and use of ORIGINATORS' PROPRIETARY INFORMATION shall remain in effect for a period of ten (10) years from the date of termination. Unless otherwise agreed in writing, each party shall bear its own costs in relation to this AGREEMENT.
15. This AGREEMENT and the performance hereof shall be governed by, and construed in accordance with, the laws of the State of New York. With respect to the participation of a U.S. Government Entity in this AGREEMENT, United States Federal law shall apply.
16. This AGREEMENT and any and all of the rights and obligations of the parties hereunder shall not be assigned, delegated, sold, transferred, licensed or otherwise disposed of, by operation of law or otherwise, without the prior written consent of all other parties. Except as otherwise provided herein, any attempted assignment, delegation, sale, transfer, license or other disposition, by operation of law or otherwise, of this AGREEMENT or any rights or obligations hereunder contrary of this Paragraph shall constitute a material breach of this AGREEMENT by the attempting party.
17. Nothing in this AGREEMENT shall be construed as obligating an ORIGINATOR to disclose any particular information to the RECIPIENT or to other ORIGINATORS.
18. This AGREEMENT constitutes the entire agreement between the parties with respect to its subject matter. No amendment to this AGREEMENT shall be effective unless it is in writing and signed by a duly authorized representative of the RECIPIENT and NRIC; however, nothing herein shall prevent parties to this AGREEMENT from separately agreeing to other information sharing arrangements, provided such arrangements do not violate the terms or restrictions imposed under this AGREEMENT.
19. Nothing in this AGREEMENT shall be construed as preventing or otherwise modifying the Federal Communications Commission's authority to gather and use information from ORIGINATOR as presently permitted by law.
20. The obligations of the RECIPIENT or the Federal Communications Commission with respect to PROPRIETARY INFORMATION shall not apply to any information which:
  - (a) prior to the date of this AGREEMENT was in the possession of the RECIPIENT free of any nondisclosure obligation.

  
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(b) is or becomes publicly available other than by unauthorized disclosure or is lawfully obtained from a third party by that RECIPIENT without obligation of protection; or that

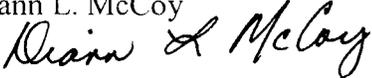
(c) is independently developed by the RECIPIENT without reference to PROPRIETARY INFORMATION received hereunder, or

(d) is identified in writing by the ORIGINATOR as no longer proprietary.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT by the signatures of the duly authorized representatives of the parties on the dates indicated herein.

NATIONAL COMMUNICATIONS SYSTEM  
701 South Courthouse Road  
Arlington, Virginia 22204-2199

Name: Diann L. McCoy

Signature: 

Title: Deputy Manager, National Communications System

Date:

FEB 15 2001

NATIONAL RELIABILITY AND INTEROPERABILITY COUNCIL  
c/o Level 3 Communications, Inc.  
8270 Greensboro Drive  
Suite 900  
McLean, Virginia 22101

Name: Patricia Paoletta

Signature: 

Title: NRIC Steering Committee Chair

Date:

  
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NOTICE TO COUNSEL:

NATIONAL COMMUNICATIONS SYSTEM

Paul R. Schwedler

Code RGC

Defense Information Systems Agency

701 South Courthouse Road

Arlington, VA 22204



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Seen and Approved:

Michael K. Powell

Chairman, Federal Communications Commission

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