



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

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WIRELINE COMPETITION BUREAU ISSUES SUBPOENA FOR PROVIDERS IN SPECIAL ACCESS DATA COLLECTION

WC Docket No. 05-25
RM-10593

By this Public Notice, the Wireline Competition Bureau (Bureau) issues the attached administrative subpoena ordering providers of special access service to submit the customer-related information sought in the special access data collection.¹ This subpoena addresses the concerns raised by the National Cable and Telecommunications Association (NCTA) and United States Telecom Association (USTelecom) about the applicability of federal privacy statutes when responding to the collection with customer information.² The data sought are necessary for an analysis of the special access market to better target regulatory relief where warranted, promote competition, and increase consumer welfare through competitive rates and increased service offerings. The Bureau appreciates the privacy interests of consumers in their information and will protect reported information from unauthorized disclosure in accordance with the protective order previously issued for this collection.³ The Bureau issues this

¹ See *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order on Reconsideration, 29 FCC Rcd 10899, 10911, Appx. A (Wireline Comp. Bur. 2014) (*Reconsideration Order*); 79 Fed. Reg. 57811 (Sept. 26, 2014); see also *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order, 28 FCC Rcd 13189, 13197-98, paras. 16-18 (Wireline Comp. Bur. 2013) (*Data Collection Implementation Order*); *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012) (*Data Collection Order*).

² Letter from Jennifer K. McKee, Vice President and Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 (filed Nov. 26, 2014) (NCTA Nov. 26 *Ex Parte* Letter); Letter from Robert H. Mayer, Vice President, Industry and State Affairs, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 (filed Nov. 25, 2014) (USTelecom Nov. 25 *Ex Parte* Letter); Letter from Steven F. Morris, Vice President and Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, at 1 (filed Nov. 3, 2014) (NCTA Nov. 3 *Ex Parte* Letter).

³ See *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Data Collection Protective Order, 29 FCC Rcd 11657 (Wireline Comp. Bur. 2014)

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subpoena without prejudice to the Commission's position that providers are obligated to comply with the Commission's mandatory data collection, and data can be requested, and must be produced, pursuant to the Commission's prior orders and its investigative authority under the Communications Act of 1934, as amended (the Act).⁴

The Commission is investigating whether the rates for special access service by incumbent local exchange carriers in price cap areas are just and reasonable under the Act and the Commission's orders and rules, and what regulatory framework to apply to these carriers.⁵ In December 2012, in the *Data Collection Order*, the Commission adopted a one-time, mandatory data collection requiring parties, including providers of special access service, to submit certain data necessary to enable the Commission to conduct a comprehensive analysis of the special access market and determine how its rules may be revised.⁶ The Commission delegated authority to the Bureau to implement the data collection consistent with the terms of the *Data Collection Order*.⁷ On September 18, 2013, the Bureau released the *Data Collection Implementation Order* clarifying the scope of the collection, providing instructions and record format specifications for submitting data and information, and amending the collection questions and definitions.⁸ The Bureau further amended the collection on September 15, 2014 to reflect approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act, and set a December 15, 2014 deadline for the collection.⁹ On November 26, 2014, the Bureau extended the deadline for large

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(*Protective Order*); see also *Wireline Competition Bureau Seeks Comment on Protective Order for Special Access Data Collection*, WC Docket No. 05-25, RM-10593, Public Notice, 28 FCC Rcd 9170 (Wireline Comp. Bur. 2013).

⁴ See 47 U.S.C. §§ 151, 154(i), 154(j), 155, 215, 218, 220, 403, 409; 47 C.F.R. § 0.291(f) (Bureau's authority concerning the issuance of subpoenas); *Data Collection Order*, 27 FCC Rcd at 16340, para. 52 (delegating authority to the Bureau to implement the collection).

⁵ See 47 U.S.C. § 201; *Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994, 1995, paras. 1-2 (2005).

⁶ See generally *Data Collection Order*. Earlier in 2012, the Commission found that the pricing flexibility rules adopted in 1999 for special access service were not working as intended, and suspended these rules pending this data collection and subsequent action on its rules. *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order, 27 FCC Rcd 10557 (2012).

⁷ *Data Collection Order*, 27 FCC Rcd at 16340, para. 52. The Commission's delegation gave the Bureau authority to: "(a) draft instructions to the data collection and modify the data collection based on public feedback; (b) amend the data collection based on feedback received through the [Paperwork Reduction Act] process; (c) make corrections to the data collection to ensure it reflects the Commission's needs as expressed in [the *Data Collection Order*]; . . . (d) issue Bureau-level orders and Public Notices specifying the production of specific types of data, specifying a collection mechanism (including necessary forms or formats), and setting deadlines for response to ensure that data collections are complied with in a timely manner; and (e) take other such actions as are necessary to implement [the *Data Collection Order*]. . . consistent with [its] terms." *Id.*; see *id.* at 16364-82, Appx. A (listing initial data collection questions).

⁸ See generally *Data Collection Implementation Order*; see also *Data Collection Order*, 27 FCC Rcd at 16340, para. 52.

⁹ See generally *Reconsideration Order*; see also *Special Access Proceeding; Data Collection Amended to Reflect OMB Approval; Filing Deadline Announced; Petitions for Reconsideration Addressed*, 79 Fed. Reg. 57811 (Sept. 26, 2014); *Special Access Proceeding; Effective Date for Data Collection*, 79 Fed. Reg. 57810 (Sept. 26, 2014).

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businesses with more than 1,500 employees to January 29, 2015 and for small businesses with 1,500 or fewer employees to February 27, 2015, and maintained the December 15, 2014 deadline for entities required to certify they are not a *Provider*, *Purchaser*, or entity providing *Best Efforts Business Broadband Internet Access Service* and thereby not providing data and information in response to the collection.¹⁰

In November 2014 *ex parte* filings, NCTA and USTelecom raised concerns about their members' ability to provide customer information as part of the data collection while still complying with the statutory mandates for service operators to protect customer information from unauthorized disclosure.¹¹ Specifically, NCTA and USTelecom referenced section 222 of the Act pertaining to the customer confidentiality obligations of telecommunications carriers, section 631 of the Act relating to the privacy of cable subscriber information, and the Electronic Communications Privacy Act (ECPA).¹² NCTA and USTelecom asked the Bureau to issue an administrative subpoena requiring *Providers* to produce documents in response to the collection, asserting such a subpoena would remove any uncertainty regarding *Providers*' obligations under those other provisions while providing the Commission with the information requested in the collection.¹³

The Bureau recognizes the importance the Commission has placed on both obtaining the data requested in the collection in a comprehensive and timely manner, and protecting private and proprietary information of respondents and their customers. To that end, the Bureau adopted a protective order with heightened security and privacy measures, intended to protect confidential and sensitive data submitted in response to the collection from unauthorized disclosure.¹⁴ For example, the Bureau will mask the names of customers reported in billing data with a unique, non-descript identification code in the information made available to authorized individuals, to provide maximum assurance of confidentiality and privacy.¹⁵ The Bureau will also host this information in a secure data enclave (SDE) subject to restrictions on the removal of raw data from the SDE.¹⁶ And persons authorized by the Bureau to access data must also agree not to disclose reviewed information, subject to forfeitures and other enforcement actions.¹⁷

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Applications for review and petitions for reconsideration of the *Reconsideration Order* were due on October 27, 2014. See 47 C.F.R. § 1.115(d); 47 C.F.R. § 1.429(d); 47 C.F.R. § 1.4(b).

¹⁰ See *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, DA 14-1706 (Wireline Comp. Bur. rel. Nov. 26, 2014). Unless referring to the term “*ex parte*” or to documents previously released by the Commission or Bureau, capitalized and italicized terms used in this Public Notice refer to the defined terms in the data collection. See *Reconsideration Order*, 29 FCC Rcd at 10908-11, Appx. A.

¹¹ See NCTA Nov. 26 *Ex Parte* Letter; USTelecom Nov. 25 *Ex Parte* Letter; NCTA Nov. 3 *Ex Parte* Letter.

¹² See 47 U.S.C. § 222 (governing the privacy of customer information); 47 C.F.R. § 64.2001 *et seq.* (implementing section 222 of the Act); 47 U.S.C. § 551 (protecting cable operator subscriber privacy); 18 U.S.C. §§ 2701-2712 (ECPA, governing access to stored wire and electronic communications); see also NCTA Nov. 26 *Ex Parte* Letter; USTelecom Nov. 25 *Ex Parte* Letter; NCTA Nov. 3 *Ex Parte* Letter.

¹³ NCTA Nov. 26 *Ex Parte* Letter at 1-2; USTelecom Nov. 25 *Ex Parte* Letter at 1-2.

¹⁴ *Protective Order*, 29 FCC Rcd 11657.

¹⁵ *Id.* at 11663, para. 19.

¹⁶ *Id.* at 11673, Appx. A at para. 6.

¹⁷ *Id.* at 11676, Appx. A at para. 17.

In light of the Commission's authority to require information to assess whether the rates, terms, and conditions for special access service are just and reasonable, and the Commission's adopted rule requiring the mandatory reporting of such information, the Bureau takes the position that it can compel the disclosure of customer information in the data collection.¹⁸ Nevertheless, the Bureau issues this subpoena to remove any uncertainty as to obligations of respondents to produce the customer information sought consistent with ECPA and with sections 222 and 631 of the Act.

Consistent with the Commission's policy goals and directives and the attached subpoena, providers must produce any and all documents providing the customer-related information sought by the Commission in the data collection. We are issuing the attached subpoena with the approval of the Commission's Office of General Counsel pursuant to the authority of the Communications Act, 47 U.S.C. §§ 151, 155, 403, and 409, section 0.291(f) of the Commission rules, 47 C.F.R. § 0.291(f), and the authority delegated to the Bureau in the *Data Collection Order*.¹⁹ We will publish this notice in the Federal Register.

For further information, please contact Marvin Sacks, Pricing Policy Division, Wireline Competition Bureau at (202) 418-1520 or Marvin.Sacks@fcc.gov.

¹⁸ See *Data Collection Order*, 27 FCC Rcd at 16338-39, paras. 49-50.

¹⁹ *Id.* at 16340, para. 52.

ATTACHMENT

SUBPOENA

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

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

TO: All Providers as defined in Appendix A of the *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order on Reconsideration, 29 FCC Rcd 10899, 10911, Appx. A (Wireline Comp. Bur. 2014) (*Reconsideration Order*); 79 Fed. Reg. 57811 (Sept. 26, 2014):

Pursuant to Sections 1, 5, 403, and 409 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 155, 403, 409, and section 0.291(f) of the Commission’s rules, 47 C.F.R. § 0.291(f):

YOU ARE HEREBY ORDERED under penalty of law to **PRODUCE** any and all documents providing customer-related information identified in Appendix A of the *Reconsideration Order*, 29 FCC Rcd at 10908-36, available at http://transition.fcc.gov/wcb/Data_Questions091514.pdf, and the Instructions for the Data Collection in the Special Access Proceeding, WC Docket No. 05-25, RM-10593, OMB Control No. 3060-1197, available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db1205/DOC-330865A2.pdf, at the place, date, and time specified below:

- **Place of Production:**
Through the Special Access Web Portal¹ created for the electronic filing of information and certifications in response to the special access data collection, available at <https://specialaccessfiling.fcc.gov/spadc/login> or, in the event the files are too large to deliver via the Special Access Web Portal, by hand delivery to the Federal Communications Commission, ATTN: Craig Glenn, 445 12th Street, SW, Washington, DC 20554.
- **Date and Time:**
The production deadline for businesses required to respond to this Subpoena with more than 1,500 employees is **January 29, 2015**. The production deadline for businesses required to respond to this Subpoena with 1,500 or fewer employees is **February 27, 2015**.²

¹ See *Wireline Competition Bureau Launches Secure Web Portal for Special Access Data Collection*, WC Docket No. 05-25, RM-10593, Public Notice, 29 FCC Rcd 11691 (Wireline Comp. Bur. 2014); 79 Fed. Reg. 61870 (Oct. 15, 2014).

² See *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order, DA 14-1706 (Wireline Comp. Bur. rel. Nov. 26, 2014); 79 Fed. Reg. 74087 (Dec. 15, 2014).

As an alternative to producing the documents described above, you may produce responses containing the customer-related information listed in Appendix A of the *Reconsideration Order*³ in the manner and in the format prescribed in the Instructions for the Data Collection in the Special Access Proceeding,⁴ e.g., using the database container released by the Wireline Competition Bureau to organize, load, and submit the information sought.⁵

In addition to delivering the materials required by this Subpoena, each person or business to which this Subpoena is directed is required to deliver a signed and completed Subpoena Certificate of Compliance certifying that all materials covered by the Subpoena in possession, custody, and control of that person or business have been produced. By electronically executing and submitting through the Special Access Web Portal the Certification described in the *Reconsideration Order*, 29 FCC Rcd at 10936, 10947, Appx. B, you shall be deemed to have submitted a Certificate of Compliance for this Subpoena.

By designating documents, data and information submitted in response to the Subpoena as confidential or highly confidential under the Protective Order for the special access data collection, a party will be deemed to have submitted a request for the material to not be made routinely available for public inspection under the Commission's rules. Parties can obtain copies of the documents submitted in response to this Subpoena pursuant to the Protective Order for the special access data collection.⁶

You are responsible for the review of materials to identify those covered by this Subpoena. Your failure to comply with this Subpoena may lead, *inter alia*, to a contempt citation by a U.S. District Court judge and may subject you to a misdemeanor charge, which, on conviction, may subject you to a fine, imprisonment or both.

BY ORDER OF THE WIRELINE COMPETITION BUREAU, FEDERAL COMMUNICATIONS COMMISSION, this 16th day of January, 2015.

Julie A. Veach
Chief
Wireline Competition Bureau
Federal Communications Commission

³ *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order on Reconsideration, 29 FCC Rcd 10899, 10908-36, Appx. A (Wireline Comp. Bur. 2014) http://transition.fcc.gov/wcb/Data_Questions091514.pdf.

⁴ Instructions for the Data Collection in the Special Access Proceeding, WC Docket No. 05-25, RM-10593, OMB Control No. 3060-1197, *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db1205/DOC-330865A2.pdf.

⁵ See *Wireline Competition Bureau Releases Database Container for Special Access Data Collection*, WC Docket No. 05-25, RM-10593, Public Notice, DA 14-1787 (Wireline Comp. Bur. rel. Dec. 9, 2014).

⁶ *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Data Collection Protective Order, 29 FCC Rcd 11657 (Wireline Comp. Bur. 2014).

