

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

In the Matter of	)	
	)	
Federal-State Joint Board	)	CC Docket No. 96-45
on Universal Service	)	
	)	
Choice Communications LLC	)	
	)	
Petition for Designation as an Eligible	)	
Telecommunications Carrier in the United States	)	
Virgin Islands	)	
	)	
Protective Order	)	

**ORDER**

**Adopted: September 20, 2007**

**Released: September 20, 2007**

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. On January 13, 2005, Choice Communications LLC (Choice or the Applicant) filed a petition seeking designation as an eligible telecommunications carrier (ETC) in the United States Virgin Islands pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).<sup>1</sup> Choice also requested that the Commission treat as confidential and withhold from public disclosure Choice’s maps identifying its current coverage area, maps illustrating in-progress build-out plans, and maps illustrating proposed build-out plans and text describing each of these phases pursuant to sections 0.457 and 0.459 of the Commission’s rules.<sup>2</sup> On April 12, 2005, Innovative Telephone filed an Opposition to Choice’s Request for Confidential Treatment, urging the Commission to deny Choice’s request for confidential treatment, or in the alternative, releasing the information pursuant to a protective order.<sup>3</sup>

<sup>1</sup> Choice Communications, LLC Petition for Designation as an Eligible Telecommunications Carrier in the United States Virgin Islands, CC Docket No. 96-45 (filed Jan. 13, 2005); Letter from Jennifer M. Kashatus, Counsel for Choice, to Marlene Dortch, Federal Communications Commission, CC Docket No. 96-45 (filed Mar. 16, 2005) (submitting maps of Choice’s coverage area and build-out plans); Letter from Jennifer M. Kashatus, Counsel to Choice, to Marlene Dortch, Federal Communications Commission, CC Docket No. 96-45 (filed May 15, 2007) (submitting additional information) (collectively, Choice Petition); 47 U.S.C. § 214(e)(6).

<sup>2</sup> See Choice Communications LLC Request for Confidential Treatment of Maps Illustrating Coverage and Build-out Plans, CC Docket No. 96-45 (filed Feb. 9, 2005); 47 C.F.R. §§ 0.457, 0.459.

<sup>3</sup> Letter from Rebekah P. Goodheart, Counsel for Innovative Telephone, to Marlene H. Dortch, Federal Communications Commission, CC Docket No. 96-45 (filed April 12, 2005) (Opposition of Innovative Telephone to Choice’s Request for Confidential Treatment). Innovative also filed an opposition to the Choice Petition. See Opposition of the Virgin Islands Telephone Company d/b/a Innovative Telephone, CC Docket No. 96-45 (filed Feb. 23, 2005).

2. We hereby grant Choice's request and adopt this order (Protective Order) to ensure that the confidential and/or competitively sensitive information submitted is afforded adequate protection, but is available to other parties to the proceeding, subject to the Protective Order. Because of the nature of this proceeding, we find it appropriate to grant access to the application in its entirety, subject to the terms of this Protective Order. Only by providing parties with the ability to fully comment on the Choice Petition in its entirety will we develop the complete record necessary to fully analyze the merits of the petition. By restricting access pursuant to the Protective Order, we provide sufficient safeguards to protect the confidential information contained in the Choice Petition.

3. Under the Protective Order, we will grant limited access to the unredacted version of the Choice Petition to Outside Counsel, certain of their employees, and outside consultants and experts whom they retain to assist them in this proceeding. We find that granting access to the confidential information is necessary to develop a complete record on which to base the Commission's decision in this proceeding. We are mindful of the sensitive nature of the information at issue, but we must also protect the rights of the public to participate in this proceeding in a meaningful way. We conclude that the protections adopted in this Protective Order will give appropriate access to the public, while protecting the sensitive information, and will thereby serve the public interest.

4. Any party seeking access to confidential documents subject to the Protective Order shall request access pursuant to the terms of the Protective Order and each person that accesses these confidential documents must sign the Acknowledgement of Confidentiality, attached as Appendix A (Acknowledgement), and follow the procedures set forth herein.

5. *Definitions.* As used herein, capitalized terms, not otherwise defined herein, shall have the following meanings:

"Submitting Party" means the Applicant and any person who files documents covered by this Protective Order in this proceeding.

"Stamped Highly Confidential Document" means the unredacted version of the Choice Petition and any document filed with the Commission in CC Docket No. 96-45, or any part thereof, 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 IN CC DOCKET NO. 96-45, DA 07-3978 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION," unless the Commission determines, *sua sponte* or by request pursuant to sections 0.459 or 0.461 of its rules, that any such document is not entitled to such confidential treatment. The term "document" means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. By designating a document a "Stamped Highly Confidential Document," a Submitting Party signifies that it contains information that the Submitting Party believes should be subject to protection under FOIA, the Commission's implementing rules and this Protective Order.

"Highly Confidential Information" means information contained in Stamped Highly Confidential Documents or derived therefrom that is not otherwise available from publicly available sources, including the information contained in the unredacted version of the Choice Petition. To the extent that a Submitting Party believes that future submissions are entitled to be covered by this Protective Order, the Submitting Party must file a letter explaining such claim, and the Submitting Party may file under this Protective Order only those documents specifically authorized by the Bureau.

"Outside Counsel" means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing a party in these proceedings, provided that such persons are not involved in competitive

decision-making, i.e., Outside Counsel's activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or of any competitor of a Submitting Party nor the analysis underlying the business decisions. Outside Counsel includes any attorney representing a non-commercial party in these proceedings, provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party.

"Outside Consultants" means consultants or experts retained for the purpose of assisting Outside Counsel or a party in this proceeding, provided that the Outside Consultants are not involved in competitive decision-making, i.e., Outside Consultants' activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or any competitor of a Submitting Party nor the analysis underlying the business decisions. Outside Consultants include any expert employed by a non-commercial party in these proceedings, provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party.

"Reviewing Party" means a person who has obtained access to Highly Confidential Information (including Stamped Highly Confidential Documents) pursuant to paragraphs 8 and 11 of this Protective Order.

6. *Use of Highly Confidential Information.* Persons obtaining access to Highly Confidential Information (including Stamped Highly Confidential Documents) under this Protective Order shall use the information solely for the preparation and conduct of this proceeding before the Commission as delimited in this and subsequent paragraphs, and any judicial proceeding arising directly from this proceeding 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 other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to the contents of any of the Stamped Highly Confidential Documents or Highly Confidential Information in its decision in this proceeding, it will do so by redacting any Highly Confidential Information from the public version of the decision and by making the unredacted version of the decision available only to a court and to those persons entitled to access to Highly Confidential Information under this Protective Order.

7. *Non-Disclosure of Stamped Highly Confidential Information.* Except with the prior written consent of the Submitting Party, or as hereinafter provided under this Protective Order, neither a Stamped Highly Confidential Document nor any Highly Confidential Information may be disclosed further.

8. *Permissible Disclosure.* Subject to the requirements of paragraph 11, Stamped Highly Confidential Documents may be reviewed by Outside Counsel and Outside Consultants. Outside Counsel and Outside Consultants may disclose Stamped Highly Confidential Documents and other Highly Confidential Information to: (1) paralegals or other employees of such Outside Counsel not described in clause 3 of this paragraph assisting Outside Counsel in this proceeding; (2) employees of such Outside Counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding; and (3) employees of third-party contractors performing one or more of the functions set forth in clause 3 of this paragraph. Reviewing Parties may discuss and share the contents of the Stamped Highly Confidential Documents and Highly Confidential Information with any other Reviewing Party and with the Commission and its staff. A Submitting Party's Stamped Highly Confidential Documents and Highly Confidential Information may also be disclosed to employees and counsel of the Submitting Party.

9. *Protection of Stamped Highly Confidential Documents and Highly Confidential Information.* Persons described in paragraph 8 shall have the obligation to ensure that access to Stamped Highly

Confidential Documents and Highly Confidential Information is strictly limited as prescribed in this Protective Order. Such persons shall further have the obligation to ensure that Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in this Protective Order.

10. *Prohibited Copying.* If, in the judgment of the Submitting Party, a document contains information so sensitive (even given its Highly Confidential designation) that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited" and no copies of such document, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to Outside Counsel for the Submitting Party.

11. *Procedures for Obtaining Access to Stamped Highly Confidential Documents and Highly Confidential Information.* In all cases where access to Stamped Highly Confidential Documents and Highly Confidential Information is permitted pursuant to paragraph 8, before reviewing or having access to any Stamped Highly Confidential Documents or Highly Confidential Information, each person seeking such access shall execute the attached Acknowledgment of Confidentiality ("Acknowledgment") and file it with the Bureau, on behalf of the Commission, and serve it upon each Submitting Party through its Outside Counsel so that the Acknowledgment is received by each Submitting Party at least five business days prior to such person's reviewing or having access to such Submitting Party's Stamped Highly Confidential Documents or Highly Confidential Information, except that, where the person seeking access is one described in either clause 2 or 3 of paragraph 8, the Acknowledgment shall be delivered promptly prior to the person obtaining access. Each Submitting Party shall have an opportunity to object to the disclosure of Stamped Highly Confidential Documents to any such persons. Any objection must be filed at the Commission and served on Outside Counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment (or where the person seeking access is one described in either clause 2 or 3 of paragraph 8, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Stamped Highly Confidential Documents or Highly Confidential Information. The Submitting Party shall make available for review the Stamped Highly Confidential Documents of such party at the offices of such party's Outside Counsel, or, if the Submitting Party does not have Outside Counsel, at the offices of such party's in-house counsel; *provided, however,* that the Applicant shall make available for review all of its Stamped Highly Confidential Documents at the offices of one of Applicant's Outside Counsel (the Applicant's Custodian Counsel).

12. *Information in Electronic Format.* If a party's Outside Counsel or Outside Consultant has been granted access to Stamped Highly Confidential Documents and Highly Confidential Information pursuant to paragraphs 8 and 11, that Outside Counsel or Outside Consultant may request one copy of information contained, recorded, or electronically stored on a CD-ROM, DVD, flash drive, portable hard drive or similar electronic storage device. The disk or other medium containing Highly Confidential Information in electronic format shall be physically sent to the Outside Counsel or Outside Consultant; it shall not be transmitted electronically.

- a. A person in receipt of Highly Confidential Information in electronic format shall load the information onto a computer solely for the purpose of analysis in connection with this proceeding and for no other purpose. The original disk or other storage medium shall be stored in a secure location and a record kept of any persons given access to the disk. Only persons who have signed the Acknowledgement to this Second Protective Order may be given access to the disk.

b. Once loaded onto a computer, the files containing Highly Confidential Information shall be password protected immediately. The password shall be given only to persons who have signed the Acknowledgement to this Order. The Highly Confidential Information may not be stored on a computer after being analyzed. After the analysis is complete, the results of such analysis may be stored by saving the results (but not the underlying Highly Confidential Information) to a mobile data storage medium. All files containing Highly Confidential Information shall be deleted from the computer as soon as practicable.

13. *Requests for Additional Disclosure.* If any person requests disclosure of Highly 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.

14. *Filings with the Commission.* Persons described in paragraph 8 may, in any documents that they file in this proceeding, reference Highly Confidential Information, but only if they comply with the following procedure:

a. The cover or first page of the filing, and each page of the filing that contains or discloses Highly Confidential Information subject to this order must be clearly marked: "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN CC DOCKET NO. 96-45, DA 07-3978 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION;"

b. One copy of the filing shall be filed with the Secretary's Office. The filing shall be accompanied by a cover letter stating "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN CC DOCKET NO. 96-45, DA 07-3978 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The filing shall be made under seal, and will not be placed in the Commission's public file.

c. Those portions of the filing that constitute Highly Confidential Information shall be clearly identifiable as such, so that those portions that are deemed to be Highly Confidential Information are readily identifiable based on an examination of the filing.

d. Two redacted copies of the filing containing no Highly Confidential Information (the "Redacted Confidential Filing") shall also be filed with the Secretary's Office. Each Redacted Confidential Filing shall have the same pagination as the Highly Confidential Filing from which it is derived. The two copies of the Redacted Confidential Filing and their accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential Filing shall state that the Submitting Party is filing a redacted version of the filing.

e. Two copies of the filing containing Highly Confidential Information and the accompanying cover letter shall be delivered in person to Antoinette Stevens, Wireline Competition Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554. In addition, a person making a filing containing Highly Confidential Information shall serve a copy on the relevant Submitting Party.

f. Parties should not provide courtesy copies of pleadings containing Highly Confidential Information to Commission staff unless the Bureau so requests. Any courtesy copies shall be submitted under seal.

15. *Client Consultation.* Nothing in this Protective Order shall prevent or otherwise restrict Outside Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on

examination of Stamped Highly Confidential Documents or Highly Confidential Information; *provided, however,* that in rendering such advice and otherwise communicating with such client, Outside Counsel shall not disclose Stamped Highly Confidential Documents or Highly Confidential Information.

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

17. *Subpoena by Courts, Departments or Agencies.* If a court, or a federal or state department or agency issues a subpoena or orders production of Stamped Highly Confidential Documents or Highly Confidential Information that a party has obtained under terms of this Protective Order, such party shall promptly notify each Submitting Party 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 the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Highly Confidential Document or Highly Confidential Information.

18. *Violations of Protective Order.* Should a person that has properly obtained access to Highly Confidential Information under this Protective Order violate any of its terms, that person shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Highly 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 Outside Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Highly 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 at law or in equity against any person using Highly Confidential Information in a manner not authorized by this Protective Order.

19. *Termination of Proceeding.* The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, persons described by paragraph 8 shall destroy or return to the Submitting Party Stamped Highly Confidential Documents and all copies of the same. No material whatsoever derived from Stamped Highly Confidential Documents may be retained by any person having access thereto, except Outside Counsel (as described in paragraph 8) may retain, under the continuing strictures of this Protective Order, one copy of the pleading containing Highly Confidential Information prepared on behalf of that party. All Outside Counsel shall make certification of compliance herewith and shall deliver the same to Outside Counsel for the Submitting Party not more than three weeks after conclusion of this proceeding and any administrative or judicial review. The provisions of this paragraph regarding retention of Stamped Highly Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

20. Accordingly, IT IS ORDERED that pursuant to sections 4(i), 4(j) and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 254, and pursuant to authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, the Protective Order IS ADOPTED, effective upon its release.

FEDERAL COMMUNICATIONS COMMISSION

Jeremy D. Marcus  
Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

APPENDIX A

Acknowledgment of Confidentiality

CC Docket No. 96-45

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 Highly Confidential Documents or Highly Confidential Information except as allowed by this Protective Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

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 public interest 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 Outside Counsel or Outside Consultant to a party or other person described in paragraph 9 of the foregoing Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in the Protective Order; and (2) Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of paragraphs 9, 12, 13 and 15 of the Protective Order, and I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Stamped Highly Confidential Documents or Highly Confidential Information.

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

Executed at \_\_\_\_\_ this \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
[Name]  
[Position]  
[Address]  
[Telephone]