



**CONFIDENTIALITY POLICY
FOR
800 MHZ TRANSITION ADMINISTRATOR, LLC**

Version 1.1

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I. INTRODUCTION

This Confidentiality Policy establishes the procedures that 800 MHz Transition Administrator, LLC (“TA”) will use to protect from public disclosure Confidential Information that Stakeholders disclose to the TA. This Policy applies to TA Team Members and their employees, as well as to consultants, sub-contractors and advisors retained by the TA. This Policy does not address the ability of Stakeholders to enter into agreements restricting the disclosure of Confidential Information. Such disclosure is subject to negotiation between the parties, to the extent permitted by the Federal Communications Commission (“FCC”).

Any questions regarding the terms and implementation of this Confidentiality Policy should be directed to the TA General Counsel.

II. DEFINITIONS

As used in this Policy:

1. “Confidential Information”:

(a) includes –

commercially sensitive information (such as sales data, financial data, customer lists, technical information, operating procedures, marketing strategies, pricing methods, and future plans);

trade secrets;

privileged information; and

materials containing sensitive information potentially affecting national security;

(b) may be embodied as –

written information;

information transferred orally, visually or electronically; and

copies, abstracts, summaries, or analyses of such information (other than aggregate summaries or analyses produced by the TA pursuant to FCC Order); and

(c) does not include any information that –

becomes published or is in the public domain through other than an unauthorized disclosure by the TA;

is independently developed by the TA;

is received from a third party not under or in breach of an obligation of confidentiality; or

was previously known by the TA free of any obligation to maintain the confidentiality of such information.

2. “Disclosing Party” means a party, typically a Stakeholder, that provides information to the TA.

3. “NDA” means a non-disclosure agreement or similar contractual obligation between the TA and a Disclosing Party.

4. “Outside Party” means any party outside the TA, including the FCC, Stakeholders, and the media.

5. “Protected Confidential Information” means Confidential Information that is subject to an NDA or that the TA has designated as Protected Confidential Information.

6. “Stakeholder” means an Outside Party (other than the FCC) with a direct interest in the 800 MHz reconfiguration process, including Sprint Nextel, incumbent licensees, vendors, and similar interested parties.

7. “Written Material” means any information that is embodied in writing, whether in tangible or electronic format.

III. GENERAL POLICY

The TA recognizes that Disclosing Parties have a legitimate interest in protecting Confidential Information from public disclosure. The TA will not use any information, including Confidential Information, provided by Outside Parties for any purpose other than for fulfilling its responsibilities in connection the reconfiguration process. The TA does not intend to disclose Confidential Information to the public or to individual Stakeholders. The TA, however, will provide Confidential Information to the FCC when requested, when required, or when, in the sole judgment of the TA, such disclosure would facilitate the reconfiguration process. The TA will observe special procedures to protect from public disclosure any Confidential Information that constitutes Protected Confidential Information.

IV. MARKING REQUIREMENT FOR CONFIDENTIAL INFORMATION

Except as expressly provided in this Policy, Disclosing Parties that submit Written Material to the TA that contains Confidential Information should clearly mark the information “CONFIDENTIAL INFORMATION.” Disclosing Parties that provide Confidential Information to the TA orally should indicate that the information is Confidential Information at the time they

disclose it. The TA will assume no responsibility for protecting the confidentiality of any Confidential Information that does not comply with these requirements.

The TA reserves the right to deny confidential treatment to any information, even if marked “CONFIDENTIAL INFORMATION,” that does not satisfy the definition of Confidential Information contained in this Policy.

V. PROCEDURES FOR DESIGNATING CONFIDENTIAL INFORMATION AS PROTECTED CONFIDENTIAL INFORMATION

The TA has established four separate procedures by which it will designate Confidential Information as Protected Confidential Information.

A. Information That Will Always Be Designated as Protected Confidential Information

The TA will treat the following as Protected Confidential Information in all cases: (1) the Record of a TA mediation, as defined in the TA’s Alternative Dispute Resolution (“ADR”) Plan; and (2) any executed Planning Funding Agreement (“PFA”) or Frequency Relocation Agreement (“FRA”). A Disclosing Party need not request that the TA classify such information as Protected Confidential Information, and need not mark it as “CONFIDENTIAL”.

B. Information Submitted Pursuant to a Non-Disclosure Agreement

Throughout the reconfiguration process, the TA will require ongoing access to significant amounts of highly sensitive commercial or financial information from certain Stakeholders. In order to facilitate the free exchange of information, the TA may enter into NDAs with specific Stakeholders. The TA, however, will only enter an NDA when the TA determines that doing so is essential to obtain access to sensitive information that the TA needs to fulfill its obligations. Except where an NDA expressly provides otherwise, a Disclosing Party that has entered an NDA must clearly mark as “PROTECTED CONFIDENTIAL INFORMATION” any Written Material that it requests be classified as Protected Confidential Information.

C. Request to Treat Specific Confidential Information as Protected Confidential Information

A Disclosing Party that has not entered into an NDA may ask the TA to classify specific Confidential Information as Protected Confidential Information by filing a Request for Protected Confidential Treatment (“RPCT”) at the time it submits the material. The RPCT must: (1) specifically identify the material that the Disclosing Party requests be classified as Protected Confidential Information; (2) explain why the material falls within the definition of Confidential Information specified in this Policy; and (3) provide a compelling justification why the material should be given special confidentiality protection. The Disclosing Party must clearly mark as “PROTECTED CONFIDENTIAL TREATMENT REQUESTED” any Written Material that it requests be classified as Protected Confidential Information. Where the Disclosing Party seeks Protected Confidential treatment for a limited amount of material within a document, the

Disclosing Party may either place that material in a separate confidential appendix or provide redacted and non-redacted versions of the same document.

The TA generally will not act on requests for treatment of specific information as Protected Confidential Information until such time, if ever, as: (1) the FCC requests access to the material; (2) the TA determines that it must disclose the material to the FCC; or (3) the TA determines that, but for the Disclosing Party's RPCT, it would disclose the material to an Outside Party. If, at that time, the TA determines, in its sole judgment, that the material should be classified as Protected Confidential Information, it will comply with the procedures specified in Section VI of this Policy.

D. TA Classification of Other Confidential Information as Protected Confidential Information

When appropriate, the TA General Counsel may classify other Confidential Information as Protected Confidential Information. In any case in which the TA makes this determination, it will mark (or direct the Disclosing Party to mark) the information as "PROTECTED CONFIDENTIAL INFORMATION."

VI. DISCLOSURE OF CONFIDENTIAL INFORMATION (INCLUDING PROTECTED CONFIDENTIAL INFORMATION)

The following procedures govern the disclosure of Confidential Information (including Protected Confidential Information) by the TA.

A. Requests from Stakeholders, the Media, or Other Members of the Public

Any TA staff member who receives a request from a Stakeholder, the media, or other members of the public to disclose Confidential Information should direct the request to the TA General Counsel. The TA generally will deny any request by Stakeholders, the media, or other members of the public that seeks access to Confidential Information within the TA's possession.

If the TA determines that disclosure would be appropriate, however, the TA will inform the Disclosing Party about the request. The TA will not provide the requested information to a Stakeholder, the media, or other members of the public unless the Disclosing Party provides its prior written consent.

B. Disclosure to the FCC

The TA General Counsel will be responsible for reviewing and approving the disclosure of any Confidential Information to the FCC. This includes both Confidential Information provided by Disclosing Parties and any Confidential Information contained in internal TA documents. Disclosing Parties should be aware that, at the conclusion of reconfiguration, the FCC may

require the TA to deliver to the FCC all of the TA's Official Records, including Confidential Information contained in such records.

1. Disclosure of Confidential Information

The TA will provide Confidential Information to the FCC: (1) as required by the FCC's Orders; (2) when requested by the FCC; and (3) in any other situation in which the TA concludes, in its sole judgment, such disclosure would facilitate the reconfiguration process.

2. Disclosure of Protected Confidential Information

In any case in which the TA discloses Protected Confidential Information to the FCC, the TA will adopt the procedures specified in this Subsection VI.B.2. The TA, however, can make no assurances that the FCC will grant any request for confidential treatment.

a. ADR Record

As noted above, the TA will automatically treat the Record of a TA mediation as Protected Confidential Information. If the parties are not able to reach an agreement by the conclusion of the mediation period, the TA is required to forward the ADR Record to the FCC.¹ The TA will file a request, pursuant to the FCC's Rules, asking that the FCC treat this information as information that is not subject to public disclosure. The TA will further request that, if the FCC determines that this information should be disclosed, it provide advance notice to the TA, and a reasonable opportunity for the TA and/or the Disclosing Party to challenge the FCC's determination and/or negotiate an appropriate protective order.

b. TA Reports

The TA is required to file with the FCC Quarterly Progress Reports and Annual Reports ("TA Reports").² The TA Reports generally will include only aggregated information regarding the reconfiguration process. If the FCC requests or the TA deems it appropriate, the TA Reports may include licensee-specific Protected Confidential Information, such as information regarding the resolution of individual disputes.³ If the TA includes Protected Confidential Information in a TA Report, it will publicly file a version of a report with the Protected Confidential Information in a separate appendix, accompanied by a request that the FCC treat this information as information

¹ See 47 C.F.R. § 90.677(d). In order to facilitate this process, the parties to a mediation must execute a Waiver of Privilege and Confidentiality Form. This waiver is limited to disclosure by the TA to the FCC; it does not apply to disclosures by the TA to any other party. The FCC has made clear that, once the Record has been forwarded to the agency, "all questions of confidentiality, disclosure, and production of information are controlled by Commission and other applicable federal law." See 800 MHz Public Notice, 19 FCC Rcd at 21924.

² See 47 C.F.R. § 90.677(d).

³ 800 MHz Report and Order, 19 FCC Rcd at 15073 (¶ 196) (Quarterly Reports to include a "description of any disputes that have arisen and the manner in which they were resolved").

that is not subject to public disclosure.⁴ The TA will further request that, if the FCC determines that this information should be disclosed, it provide advance notice to the TA, and a reasonable opportunity for the TA and/or the Disclosing Party to challenge the FCC's determination and/or negotiate an appropriate protective order.

c. Information covered by an NDA

To the extent provided by an NDA, the TA will treat information submitted pursuant to such NDA as Protected Confidential Information. Consistent with its obligations, the TA will provide this information to the FCC when required, when requested, or when the TA determines, in its sole judgment, it is appropriate. To the extent required by the applicable NDA, the TA will notify the Disclosing Party before providing information to the FCC. The TA also will file a request, pursuant to the FCC's Rules, asking that the FCC treat this information as information that is not subject to public disclosure. The TA will further request that, if the FCC determines that this information should be disclosed, it provide advance notice to the TA, and a reasonable opportunity for the TA and/or the Disclosing Party to challenge the FCC's determination and/or negotiate an appropriate protective order.

d. Other Protected Confidential Information

The TA may determine that other Protected Confidential Information must or should be disclosed to the FCC. In such cases, the TA will file a request, pursuant to the FCC's Rules, asking that the FCC treat this information as not subject to public disclosure. The TA will further request that, if the FCC determines that this information should be disclosed, it provide advance notice to the TA, and a reasonable opportunity for the TA and/or the Disclosing Party to challenge the FCC's determination and/or negotiate an appropriate protective order.

C. Disclosure in Connection with Judicial and Other Governmental Proceedings

The TA will comply with any order by a court or other government authority, acting within the scope of its authority, requiring the disclosure of Confidential Information. To the extent feasible, the TA will notify the Disclosing Party of any such order.

VII. PROCEDURES FOR HANDLING CONFIDENTIAL INFORMATION

A. General Procedures

TA staff members should take reasonable precautions to protect Confidential Information from disclosure to other Stakeholders or the public. Each TA Member should apply at least the same standard of care that it routinely applies to protecting its own confidential information and, in any case, no less than a reasonable standard of care.

B. Special Procedures for Protected Confidential Information

⁴ See 47 C.F.R. § 0.459.

When required by an NDA, when dealing with material that is part of an ADR Record, or in any other case in which the TA determines that the application of special procedures are appropriate, the TA will: (1) physically segregate Protected Confidential Information from other material in the TA's possession; (2) restrict access to Protected Confidential Information to authorized TA staff members; (3) adopt special document destruction procedures (such as the use of document shredding) applicable to Protected Confidential Information; or (4) take such other protective measures as the TA deems necessary.

VIII. DURATION OF CONFIDENTIAL TREATMENT

In any case in which a party has provided Protected Confidential Information to the TA pursuant to an NDA, the TA will treat the information as Protected Confidential Information in the manner provided for in this Policy for the period specified by the NDA. In all other cases, the TA will treat Confidential Information (including Protected Confidential Information) in the manner provided for in this Policy until 18 months elapses from the date on which the reconfiguration process concludes.

IX. ENFORCEMENT

TA Member Records Officers are responsible for training TA staff members regarding the appropriate handling and treatment of Confidential Information (including Protected Confidential Information) and should take affirmative measures to ensure compliance.

TA staff members or any other party with information regarding the potential mistreatment of Confidential Information (including Protected Confidential Information) should report such information to the TA General Counsel immediately. In the event that the TA becomes aware of a breach or potential breach of this TA Confidentiality Policy, the TA General Counsel will inform the Disclosing Party of the matter, and the TA will take reasonable action to remedy the breach. TA staff members breaching this TA Confidentiality Policy may be subject to disciplinary action, up to and including termination of employment.

The TA will take appropriate steps to ensure that all of its subcontractors and related entities are aware of and comply with this TA Confidentiality Policy as a condition of their performing work for the TA.