UNIVERSAL SERVICE AND INTERCARRIER COMPENSATION DATA

NON-DISCLOSURE AGREEMENT

 This Non-Disclosure Agreement (“Agreement”) is made between Rolka, Loube, Saltzer Associates (“RLSA”), with principal offices at 1 South Market Square, 12th floor, Harrisburg, Pennsylvania, 17101 and all Disclosing Parties who have filed with RLSA a copy of Appendix A to this Agreement.

WHEREAS, the Federal State Joint Board on Universal Service (“Joint Board”) is a statutory body with responsibility for evaluating the functioning of the nation’s system of preserving and advancing universal service, and includes four members who are members of state utilities commissions and one member who is a public advocate (“State Members”); and

WHEREAS, in February of 2011 the FCC issued an NPRM proposing various reforms of universal service and intercarrier compensation, and the FCC has given the State Members an opportunity to file comments 14 days after other parties’ comments are due; and

WHEREAS, the State Members have determined that the quality of their comments will depend greatly on their ability to obtain and analyze detailed industry financial, rate, and transaction data; and

WHEREAS, the State Members have requested detailed data from numerous wireline common carriers (“Disclosing Parties”) regarding their costs, revenues, rates and traffic patterns, and

WHEREAS, the State Members have concluded that in order to receive and analyze as much data as possible, all information they receive should be protected from public disclosure; and

WHEREAS, the State Members have retained RLSA, and in particular Dr. Robert Loube and Peter Bluhm, to assist them in analyzing data and preparing comments to the FCC; and

WHEREAS, the Parties desire that Confidential Information provided by Disclosing Parties should be made available to RLSA employees Dr. Robert Loube and Peter Bluhm, but not to State Members, their staffs, or to other persons; and

WHEREAS, the parties intend that RLSA may nevertheless use the Confidential Information to prepare summaries and reports for distribution to the State Members and to the staff members of the Joint Board and, thereafter, for public disclosure (hereafter the “Business Purpose”), subject to limitations described below,

**Now therefore, the Parties agree as follows:**

1. For purposes of this Agreement, “Confidential Information” means any technical or business information provided by a Disclosing Party to RLSA that:
	1. if in writing is marked “confidential” or “proprietary” at the time of disclosure;
	2. if disclosed orally is identified as “confidential” or “proprietary” at that time and is summarized in a writing sent by the Disclosing Party to RLSA within thirty (30) days after any such disclosure; or
	3. under the totality of the circumstances, would understood to be confidential or proprietary by a person exercising reasonable business judgment.
2. Notwithstanding paragraph 1), Confidential Information will not include information that:
	1. prior to receiving the information from the Disclosing Party was known by RLSA without restriction as to use or disclosure;
	2. is independently developed by RLSA without access to any Confidential Information of any Disclosing Party; or
	3. is rightfully acquired by RLSA from a third party who has the right to disclose it without restriction and who provides it without restriction as to use or disclosure; or
	4. is now or hereafter becomes generally known or available to the public, other than through an act or omission on the part of RLSA.
3. Data Submissions:
	1. Confidential data will be delivered electronically to RLSA at the following e-mail addresses: rloube@r-l-s-a.com and pbluhm@r-l-s-a.com. Confidential Information will be identified or marked as such in all spreadsheet and document files, and in any cover email.
	2. Data submissions will be in a file format that is usable for aggregation and analysis, such as in tables within Microsoft Excel or Microsoft Word documents, or within a Microsoft Access database. Data submissions will not be accepted in Adobe “pdf” format.
	3. If the Disclosing Party has not previously done so, it shall send with the data submission an executed electronic version of Attachment A. A printed version of this electronic submission shall have the same legal effect as a signed paper.
4. Confidential Information Protection.
	1. RLSA undertakes to maintain Confidential Information in strict confidence and prevent disclosure of such Confidential Information to any third parties. Confidential Information will not be released to State Members or their staff, or to the FCC.
	2. RLSA will not use or disclose Confidential Information for any purpose other than the Business Purpose described above.
	3. Confidential Information may be shared with other RLSA employees, including David Rolka and Matthew Saltzer, as may be appropriate to perform a complete data analysis, and particularly for assistance with any database work required for the project.
	4. Robert Loube and Peter Bluhm will each store the Confidential Information on the hard-drives of one personal computer and one local backup device. Each will keep careful track of any hard or electronic copies he generates.
	5. RLSA uses Microsoft Exchange Server for emails. When an email is sent to rloube@r-l-s-a.com and pbluhm@r-l-s-a.com, the email and any attachments will temporarily reside on the RLSA Exchange Server. Peter Bluhm and Robert Loube will then routinely remove those emails and attachments from the Exchange Server and transfer them into local storage on their personal computers. Emails on the exchange server are backed up approximately twice daily to secure offsite facilities. RLSA routinely deletes all backup files two months after they are created.
5. Reports from Confidential Information.
	1. RLSA may use the Confidential Information to prepare reports for distribution to the State Members and to their staff and, thereafter, for general publication by filing in public FCC comments.
	2. Reports under this section will aggregate Confidential Information.
		1. RLSA will exercise reasonable care to aggregate information for reports in a way that maintains the confidentiality of individual companies. Data shall be aggregated at a level of detail that consultants reasonably determine will prevent outside parties from extracting Confidential Information applicable to a single study area. Reports may, however, include aggregated numbers of carriers, lines and states affected in particular ways by specific reform proposals for intercarrier compensation and universal service.
		2. Analytic results may be aggregated in at least the following ways:
			* 1. Reports may describe the behavior of or anticipated effects on all carriers within particular regions of the country containing not less than three states. For example, a report might say that “proposal X would eliminate 10% of the revenues of existing carriers in the 9 Deep South states,” or it might say “proposal Y would produce a negative net cash flow for carriers serving 10% of the access lines among the six New England states.”
				2. The same as (a), except applicable only to rural carriers.
				3. The same as (a), except applicable only to mid-sized carriers (e,g.: Century-Link, Frontier).
				4. The same as (a), except applicable only to large carriers (e.g.: Verizon, AT&T).
6. Records
	1. RLSA will maintain a list of Disclosing Parties who have submitted executed copies of Attachment A.
	2. RLSA will maintain a list of information shared with RLSA, describing the Confidential Information shared and the date the information was provided.
	3. Upon request by any Disclosing Party, RLSA will make available either of the preceding lists.
7. Expiration. This Agreement will commence on the date first set forth above and will remain in effect for five (5) years from the date of last disclosure of Confidential Information by either party, at which time it will terminate.
8. Action Following Expiration. Upon the Disclosing Party's request or upon expiration of this Agreement, RLSA will promptly return to disclosing parties or destroy all tangible items and embodiments containing or consisting of the disclosing party's Confidential Information and all copies thereof (including electronic copies) in its possession. Upon request, RLSA will provide written confirmation of compliance with this requirement.
9. Property. All Confidential Information remains the sole and exclusive property of the Disclosing Party. RLSA agrees that nothing in this Agreement will be construed as granting any rights, by license or otherwise, in or to any Confidential Information of the disclosing Party, or any patent, copyright or other intellectual property or proprietary rights of any Disclosing Party, except as specified in this Agreement.
10. Equitable Relief the Exclusive Remedy. RLSA acknowledges that the unauthorized use or disclosure of the Disclosing Party’s Confidential Information would cause the Disclosing Party to incur irreparable harm and significant damages, the degree of which may be difficult to ascertain.
11. Construction; Waiver.
	1. This Agreement will be construed, interpreted, and applied in accordance with the internal laws of the State of Vermont (excluding its body of law controlling conflicts of law). This Agreement is the complete and exclusive statement regarding the subject matter of this Agreement and supersedes all prior agreements, understandings and communications, oral or written, between the Parties regarding the subject matter of this Agreement. No Party may assign this Agreement, in whole or in part, without the other Party’s prior written consent, and any attempted assignment without such consent will be void.
	2. If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.
	3. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver.

IN WITNESS WHEREOF, this 2nd day of March, 2011, RLSA, by its duly authorized officer, hereby executes this Non-Disclosure Agreement, understanding that one or more Disclosing Parties will execute Attachment A at a later time.



Peter M. Bluhm, Esq.

Agent for RLSA

(end of agreement)

UNIVERSAL SERVICE AND INTERCARRIER COMPENSATION DATA

NON-DISCLOSURE AGREEMENT

ATTACHMENT A - DISCLOSING PARTY’S AGREEMENT PAGE

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Disclosing Party”), being a corporation organized in the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and being a telecommunications carrier, agrees to become a Disclosing Party under the terms of the UNIVERSAL SERVICE AND INTERCARRIER COMPENSATION DATA NON-DISCLOSURE AGREEMENT, executed by Peter Bluhm on behalf of the Rolka, Loube, Saltzer Associates on the \_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_, 2011. The Disclosing Party hereby agrees to be bound by and intends to benefit from that Agreement.

**Executed on behalf of the Disclosing Party this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2011.**

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_