

NONDISCLOSURE AGREEMENT

THIS NONDISCLOSURE AGREEMENT (“Agreement”), effective October 30, 2009, is between _____, a _____ company doing business as _____ (“Company”) and the California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, 94102 (“CPUC”). The Company and the CPUC, collectively, are herein referred to as the Parties.

WHEREAS, the CPUC has been designated as the single entity in California eligible to receive a grant pursuant to §106(c) of the Broadband Data Improvement Act, 47 U.S.C. § 1303; Pub. L. No.110-385 (S. 1492) (2008) (“BDIA”);

WHEREAS, the CPUC has received a grant from the National Telecommunications and Information Administration (“NTIA”), pursuant to NTIA’s State Broadband Data and Development Program (“Program”) that effects the joint purposes of the American Recovery and Reinvestment Act and the BDIA by funding projects that collect comprehensive and accurate state-level broadband mapping data, develop state-level broadband maps, aid in the development and maintenance of a national broadband map, and fund statewide initiatives directed at broadband planning (“Grant”);

WHEREAS, the details of and guidelines for the Program are set forth in the NTIA’s Notice of Funds Availability (“NOFA”), Docket No. 0660-ZA29 (dated July 1, 2009), including the NOFA’s Technical Appendix, the Notice of Clarification (dated August 7, 2009) and the Notice of Clarification of Period of Performance (dated September 4, 2009) (collectively the “Program Documents”);

WHEREAS, pursuant to the Grant, the CPUC is obligated to collect certain data from all facilities-based providers of broadband service in California two times per year for an initial period of two years and use such data to carry out the provisions of the Grant and the Program Documents (“Broadband Data”);

WHEREAS, the CPUC has requested that the Company provide Broadband Data, and will do so twice yearly for at least the initial period of two years as required by the Grant (“Data Requests”);

WHEREAS, the Program Documents set forth the obligation of the CPUC, as a Grant recipient, to maintain the confidentiality of certain Broadband Data collected from the Company (“Confidential Information”);

WHEREAS, the Company intends to provide the CPUC with the Broadband Data, so long as the CPUC protects the confidentiality of the Confidential Information;

ACCORDINGLY, the Parties agree that the following terms and conditions shall govern the use of the Broadband Data the Company provides to the CPUC in the context of the Grant and the Program:

1. The CPUC may use the Broadband Data provided by the Company for any lawful use consistent with the requirements of the Grant and the Program, subject to the confidentiality restrictions contained therein and subject to the terms of this Agreement. The Company retains all other rights, title, or interest in Broadband Data it provides the CPUC.
2. Confidential Information, as used in this Agreement, means any Broadband Data, including trade secrets, or commercial or financial information, the Company provides to the CPUC that identifies the type, technical specification, and/or location of infrastructure owned, leased, or used by the Company and any Broadband Data that provides street address level broadband availability and/or subscribership information;

3. Notwithstanding the foregoing paragraph, Broadband Data the Company provides the CPUC shall not be considered Confidential Information if it:
 - a. was already known to the CPUC free of any obligation to keep it confidential at the time of its disclosure by the Company, as evidenced by written records prepared prior to such disclosure; or,
 - b. is or becomes publicly known through no unlawful act of the CPUC or a third party; or,
 - c. is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation with respect to such data; or,
 - d. is independently developed by an employee, agent or contractor of the CPUC, not associated with the Grant or the Program and who did not have any direct or indirect access to Company Confidential Information; or,
 - e. is disclosed to a third person by the Company without similar restrictions on such third person's rights; or,
 - f. is approved for release by the Company's written authorization.

4. Broadband Data the Company provides to the CPUC that the Company considers to be Confidential Information shall be clearly marked and identified as such. In the event the CPUC disagrees with the identification of any Broadband Data as Confidential Information, the CPUC shall notify the Company that the CPUC does not consider such Broadband Data to be Confidential Information. The CPUC shall nonetheless treat such Broadband Data as Confidential Information until the Parties reach agreement on whether the Broadband Data at issue should be considered Confidential Information.

5. The CPUC may disclose Broadband Data received from the Company, including Confidential Information, to CPUC employees, agents, and consultants who have a bona fide need to receive the Broadband Data in order to perform work pursuant to the Grant and the Program. The CPUC shall inform all such persons and entities of

- the confidentiality requirements of this Agreement prior to disclosure of any Confidential Information to them, and shall secure written agreement of all such persons or entities, except CPUC employees, to comply with its provisions prior to disclosure of the Broadband Data to them.
6. The CPUC may identify the Company's "service area" and/or "footprint," as those terms are defined in the Program Documents, including without limitation the maximum advertised and/or typical speeds of the Company's broadband service in such footprint or service area, on any maps or other documents containing Broadband Data that are made publicly available. Any publicly available maps or interactive websites displaying broadband coverage using Broadband Data the Company provides to the CPUC will be portrayed in a comparable manner as other participating providers of the same platform (e.g. wireline or wireless) in a given area.
 7. The CPUC may provide any and all Broadband Data, including without limitation any and all Confidential Information, to the NTIA and the Federal Communications Commission ("FCC"). The CPUC shall not be responsible for the NTIA's or FCC's use of such Broadband Data. In the absence of a mutual agreement to the contrary, and to the extent the Company gives the CPUC address-specific Broadband Data, (a) the CPUC will not provide that address-specific Broadband Data to the NTIA or the FCC, and (b) any information derived from such address-specific Broadband Data that the CPUC provides to the NTIA or the FCC will be provided in the alternative aggregated census block format described in the Technical Appendix Clarification published August 12, 2009 (74 C.F.R. 50469).
 8. Confidential Information will not be disclosed to third parties or otherwise made publicly available, pursuant to the limitations set forth in the BDIA, except as set forth herein or required by applicable law or judicial or administrative action or proceeding. The Parties agree that Company Confidential Information is exempt

- from public disclosure under the California Public Records Act, §§ 6250 et seq. of the California Government Code.
9. Notwithstanding the Parties' agreement that Confidential Information is exempt from disclosure under the California Public Records Act, in the event the CPUC receives a request for Confidential Information the Company has provided the CPUC, including a request under the California Public Records Act, or becomes aware of an action at law or in equity or an administrative proceeding which seeks the disclosure of Confidential Information the Company has provided the CPUC, the CPUC shall provide prompt written notice to the Company in order to permit the Company the opportunity to seek a protective order or other appropriate relief. If the CPUC is ultimately required by law, regulation, or court order to disclose any Confidential Information provided by the Company, the CPUC shall provide prompt written notice of such requirement or court order to the Company prior to disclosure.
 10. Nothing in this Agreement shall constitute a waiver of any legal rights and remedies the Parties may have in law or in equity.
 11. This Agreement shall govern any and all Broadband Data, including Confidential Information, the Company gives the CPUC in connection with the Grant and the Program, as may be extended from time to time. The duties described in this Agreement shall continue as long as the CPUC holds the Confidential Information.
 12. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior discussions and agreements, written or oral, regarding the treatment of Broadband Data the Company provides the CPUC.
 13. This Agreement may only be changed or supplemented by a written amendment signed by authorized representatives of the Parties.

14. This Agreement shall be governed by and construed in accordance with the laws of the State of California, irrespective of its choice of law principles.

COMPANY

By: _____

Print Name: _____

Title: _____

Telephone: _____

Address: _____

Date Signed: _____

CPUC

By: Jack Leutza

Print Name: Jack Leutza

Title: Director, Communic. Division

Telephone: 415-703-1060

Address: 505 Van Ness Ave. SF CA 94102

Date Signed: November 10, 2009