

# JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113  
TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

DIRECT NUMBER: (202) 879-3630  
BOLCOTT@JONESDAY.COM

February 5, 2021

## **REDACTED PUBLIC VERSION**

### **BY ELECTRONIC DELIVERY**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street S.W.  
Washington D.C. 20554

**Re: Supplement to Application of Five9, Inc. for  
Authorization to Obtain Numbering Resources  
WC Docket No. 20-\_\_\_\_\_**

Dear Ms. Dortch:

Five9, Inc. (“Five9”), by its counsel and pursuant to Sections 0.457 and 0.459 of the Commission’s Rules, 47 C.F.R. §§ 0.457, 0.459, hereby requests that the attached contracts included in ***Exhibits A*** and ***B*** be treated as confidential and withheld from public inspection.

Five9 is filing with the Commission the attached Application for Authorization to Obtain Numbering Resources. As required by Section 52.15(g)(3)(i)(D) of the Commission’s rules and paragraph 37 of the Commission’s Order addressing the provision of numbering resources to interconnected VoIP providers, Five9’s application includes copies of agreements between Five9 and its carrier partners.<sup>1</sup> The Commission’s Order on numbering resources acknowledged that applicants for numbering resources may need to file these materials on a confidential basis,<sup>2</sup> which is what Five9 is requesting. In support of this request for confidential treatment, and in accordance with the requirements of Section 0.459(b) of the Commission’s rules, 47 C.F.R. § 0.459(b), Five9 herein provides the following information:

**0.459(b)(1) Identification of the specific information for which confidential treatment is sought.** Five9 seek confidential treatment for its attached agreement with Teliax, Inc. and

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<sup>1</sup> See *Numbering Policies for Modern Communications et al.*, Report and Order, 30 FCC Rcd. 6839, ¶ 37 (2015).

<sup>2</sup> See *id.*, ¶ 38 n.130.

**PUBLIC VERSION**

Marlene H. Dortch  
February 5, 2021  
Page 2

Bandwidth Inc., both addressing the provision of carrier services to support Five9’s interconnected VoIP services, hereinafter referred to together as the “Carrier Agreements.”

**0.459(b)(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.** Five9 is filing the Carrier Agreements in support of its Application for Authorization to Obtain Numbering Resources. The submission of the Carrier Agreements is required by Section 52.15(g)(3)(i)(D) of the Commission’s rules and paragraph 37 of the Commission’s Order addressing the provision of numbering resources to interconnected VoIP providers.<sup>3</sup>

**0.459(b)(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.** The Carrier Agreements include commercial, technical and financial information regarding the contractual arrangements between Five9 and its carrier partners and therefore qualify as information that should be protected from disclosure under the Freedom of Information Act (“FOIA”) as “commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4).

**0.459(b)(4) Explanation of the degree to which the information concerns a service that is subject to competition.** The market for telecommunications services is highly competitive with numerous carriers providing transport services and competition also existing in the market for local exchange services. As a result, the individual terms of the Carrier Agreements are subject to significant negotiation between the parties.

**0.459(b)(5) Explanation of how disclosure of the information could result in substantial competitive harm.** Five9’s carrier partners are subject to significant competition in the telecommunications industry. The prices and terms for the provision of such services are a substantial differentiator between competing carriers. Therefore, disclosure of the Carrier Agreements would result in significant competitive harm to Five9’s carrier partners.

**0.459(b)(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure.** Five9 understands that each of its carrier partners maintain extensive procedures to protect the confidential nature of their commercial agreements. For example, Five9 is prohibited by contract from publicly disclosing the Carrier Agreements, except as expressly authorized by the carriers. Further, Five9 is required by its carrier partners

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<sup>3</sup> See *id.*, ¶ 37

**PUBLIC VERSION**

Marlene H. Dortch  
February 5, 2021  
Page 3

to require the implementation of a non-disclosure agreement or, as in the present case, to request confidential treatment for the Carrier Agreements.

**0.459(b)(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.** Five9 does not believe that the Carrier Agreements, or their substance, is available to the public or that the Carrier Agreements have ever been disclosed to third parties absent the protection of a non-disclosure agreement regarding their contents.

**0.459(b)(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure.** Five9 requests that the Carrier Agreements be withheld from public disclosure indefinitely. Five9 and its carrier partners intend for the Carrier Agreements to remain in effect indefinitely and therefore any disclosure of the Carrier Agreements or their substance would cause competitive harm to Five9's carrier partners regardless of the timing of the disclosure.

For the foregoing reasons, Five9 respectfully request that the Carrier Agreements be granted confidential status and withheld from public inspection. If confidential treatment is not granted for the attached Carrier Agreements, Five9 request that all copies of the Carrier Agreements be returned to Five9.

Please contact the undersigned if you have any questions about this matter.

Sincerely,  
  
Bruce A. Olcott

## **EXHIBIT A**

**[REDACTED]**

## **EXHIBIT B**

**[REDACTED]**