

**PUBLIC**

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

Intercontinental Exchange, Inc.,  
a corporation, and

Black Knight, Inc.,  
a corporation,

Respondents.

Docket No. 9413

**MOTION OF CALYX TECHNOLOGY, INC. TO QUASH OR LIMIT  
SECOND FTC SUBPOENA**

Michael L. Riddle  
State Bar No. 16890500  
Emil Lippe, Jr.  
State Bar No. 12398300  
MIDDLEBERG RIDDLE GROUP  
Park Place at Turtle Creek  
2911 Turtle Creek Blvd., Suite 1250  
Dallas, Texas 75219  
Phone: 214-220-6301  
[mriddle@midrid.com](mailto:mriddle@midrid.com)  
[elippe@midrid.com](mailto:elippe@midrid.com)

ATTORNEYS FOR CALYX TECHNOLOGY, INC.

**PUBLIC**

**TABLE OF CONTENTS**

INCORPORATION OF PRIOR MOTIONS TO QUASH OR LIMIT. . . . . 1

BACKGROUND FACTS. . . . . 2

ARGUMENT . . . . . 2

I. THE SUBPOENA IS OVERWHELMINGLY BURDENSOME  
AND OPPRESSIVE . . . . . 2

    A. The time period for compliance is impossible to satisfy . . . . . 2

    B. The definitions and instructions of the subpoena  
    create additional unreasonable practicality burdens . . . . . 4

    C. The economic burden of compliance with the subpoena  
    would be crushing. . . . . 5

II. THE SUBPOENA SEEKS PRODUCTION OF HIGHLY  
CONFIDENTIAL AND PROPRIETARY DOCUMENTS . . . . . 9

CONCLUSION. . . . . 9

CERTIFICATE OF COMPLIANCE . . . . . 11

STATEMENT OF CONFERENCE . . . . . 12

CERTIFICATE OF SERVICE . . . . . 13

**PUBLIC**

**LIST OF AUTHORITIES**

| <b>Cases:</b>  | <b>Page(s)</b> |
|--|----------------|
| <i>Gamache v. Hogue</i> ,<br>2022 U.S. Dist. LEXIS 99880, *5-7, 2022 WL 1624109 (M.D.Ga.2022) . . . . .  | 7              |
| <i>Hernandez v. Hendrix Produce, Inc.</i> ,<br>No. CV613-053, 2014 U.S. Dist. LEXIS 30861,<br>2014 WL 953503, at *2 n.5 (S.D. Ga. Mar. 10, 2014) . . . . .                       | 7              |
| <i>High Rock Westminster St., LLC v. Bank of America, N.A.</i> ,<br>2014 U.S. Dist. LEXIS 200880, *6, 2014 WL 12782611 (D.R.I. 2014) . . . . .                                   | 7              |
| <i>In re Crush Int 'l</i> ,<br>1972 FTC LEXIS 255, *5-6 (March 23, 1972). . . . .  | 6              |
| <i>In re LabMD, Inc.</i> ,<br>2014 FTC LEXIS 20, *12 (F.T.C. January 10, 2014) . . . . .   | 6              |
| <i>In re Louisiana Real Estate Appraisers Board</i> ,<br>2018 FTC LEXIS 36, Docket No. 9374 . . . . .  | 6              |
| <i>In the Matter of Exxon Corporation</i> ,<br>1976 FTC LEXIS 70, Docket No.8934. . . . .  | 5              |
| <i>Monitronics Int'l, Inc. v. Hall, Booth, Smith, P.C.</i> ,<br>No. 1:15-cv-3927-WSD, 2016 U.S. Dist. LEXIS 166402,<br>2016 WL 7030324, at *13 (N.D. Ga. Dec. 2, 2016) . . . . . | 7              |
| <i>Perez v. DirecTV Grp. Holdings, LLC</i> ,<br>2021 U.S. Dist. LEXIS 44984, *11-12 2021 WL 840437 (C.D.Calif.2021) . . . . .  | 8              |
| <i>Rowe Entm't, Inc. v. William Morris Agency, Inc.</i> ,<br>205 F.R.D. 421, 429 (S.D.N.Y.2002) . . . . .  | 8              |
| <i>S.E.C. v. Avent</i> ,<br>No. 1:16-CV-2459-SCJ, 2018 U.S. Dist. LEXIS 233477,<br>2018 WL 8996272, at *1 (N.D. Ga. Apr. 26, 2018) . . . . .                                     | 7              |

**PUBLIC**

*United States ex rel. Carter v. Bridgepoint Educ., Inc.*,  
305 F.R.D. 225, 234 (S.D.Calif.2015) ..... 3, 4, 8

*Wyeth v. Impax Laboratories, Inc.*,  
248 F.R.D. 169, 171 (D. Del. 2006) ..... 4

*Younes v. 7-Eleven, Inc.*,  
2015 U.S. Dist. LEXIS 33793, \*12 , 2015 WL 12683313 (D.N.J.2015) ..... 4

*Zubulake v. UBS Warburg LLC*,  
217 F.R.D. 309, 320 (S.D.N.Y.2003) ..... 8

**Rules and Statutes:**

16 CFR 3.34 (c), Rules of Practice for Adjudicative Proceedings ..... 1, 9

Rule 45(d), Federal Rules of Civil Procedure ..... 7

Rule 45(d)(2)(B)(ii), Federal Rules of Civil Procedure ..... 7

**PUBLIC**

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**In the Matter of**

**Intercontinental Exchange, Inc.,  
a corporation, and**

**Black Knight, Inc.,  
a corporation,**

**Respondents.**

**Docket No. 9413**

**MOTION OF CALYX TECHNOLOGY, INC. TO QUASH OR LIMIT  
SECOND FTC SUBPOENA**

Calyx Technology, Inc., (“Calyx”), a non-party to this proceeding and recipient of a Subpoena issued by Complaint Counsel for the Commission, a copy of which is attached hereto as Exhibit “A,” hereby files, pursuant to §3.34(c) of the Rules of Practice for Adjudicative Proceedings, 16 CFR 3.34 (c), this its Motion to Quash or Limit Second FTC Subpoena, and states the following. This Motion is supported by the Declaration of Nicholas Dizer, attached hereto as Exhibit “B.”

**INCORPORATION OF PRIOR MOTIONS TO QUASH OR LIMIT**

Calyx has previously filed its Motion to Quash or Limit Subpoena served by the FTC on April 5, 2023, and its Motion to Quash or Limit Respondent’s Subpoena on April 6, 2023. Because of the overlap and similarity of the current subpoena, and to avoid unnecessary duplication, Calyx incorporates by reference such motions as if the same were fully set forth herein *in haec verba*. The most recent subpoena served by Complaint Counsel essentially duplicates the subpoena served by ICE.

**PUBLIC****BACKGROUND FACTS**

As previously stated, Calyx Technology, Inc., is a non-party recipient of subpoenas issued by Complaint Counsel for the Commission, and Respondent Intercontinental Exchange, Inc., (“ICE”). Although Calyx provides a Loan Origination System (“LOS”) with related Pricing and Eligibility engines (“PPE”) for the mortgage lending industry, it is not a party or third party beneficiary to any of the merger-related agreements involving the Respondents, or the interrelated interests of a third party, Constellation Web Solutions, Inc., (“CWS”), which allegedly is to be the recipient of certain business to be spun off as part of the merger agreement. Instead, Calyx is a competitor of Respondents and CWS, quietly seeking to continue its business independent of the proposed merger and related transactions.

Calyx desires to cooperate to the maximum reasonable extent possible with subpoenas issued by the parties herein, but must have protection from the substantial burdens and expense that such subpoenas would impose absent the limitations sought herein. As explained in its prior Motions to Quash or Limit Subpoenas, the economic impact upon Calyx from being forced to comply literally with the full extent of the subpoenas would be crushing and devastating.

**ARGUMENT****I.****THE SUBPOENA IS OVERWHELMINGLY BURDENSOME AND OPPRESSIVE****A.****The time period for compliance is impossible to satisfy**

As with the first FTC subpoena and the ICE subpoena, the present subpoena seeks information spanning a six (6) year time period, and purports to apply to each and every data

**PUBLIC**

source for not only Calyx, but also parents, subsidiaries, agents, representatives, and employees. It purports to require a “complete search” of all data sources<sup>1</sup> for all persons and entities coming within the scope of its definition of “company,” and requires production of all such documents within fourteen (14) days from service.

As previously explained, Calyx has approximately 120 employees in four separate locations across the country, and an uncertain number of additional “agents and representatives.” The subpoena should be quashed or limited to narrow the scope of persons covered to those whose involvement would be meaningful to these proceedings and whose data would likely be responsive.

Also, given the reality that every person whose data would be searched likely has access to three or four, and perhaps even more, devices on which data may be received, transmitted, or stored, such as smart phones, tablets, etc., this means that the scope of the subpoena is even more far-reaching. A time span of six (6) years would likely encompass numerous cases where a smart phone or was lost or damaged, or simply replaced in an upgrade. There is no reason to suppose that some agent, representative, or employee of Calyx sent or transmitted comments concerning the proposed transaction at issue herein sometime in January, 2017, long before such transaction was contemplated. Sheer practicality concerns mandate a reasonable limitation for the persons searched, the genuinely relevant time frame, and the subject matters of the search.

Further, the definitions and instructions included with the subpoena require that the searches be conducted in a forensically secure manner, preserving metadata, converting the

---

<sup>1</sup> Backup tapes and devices should be excluded. These are generally considered inaccessible and not subject to required review or production. *United States ex rel. Carter v. Bridgepoint Educ., Inc.*, 305 F.R.D. 225, 234 (S.D.Calif.2015).

**PUBLIC**

documents found into a different format and adding, through another conversion, a printout of metadata information, plus narrative explanations relating to sources accessed, technology assisted review software, and more (as noted below, such narratives are really impermissible interrogatories). Calyx does not have any employee capable of performing a search for responsive documents in accordance with such instructions. This will require the involvement of Calyx's legal counsel, and the retention of an outside consulting firm knowledgeable in conducting and collecting documents in this fashion. This process could not possibly be responded to in less than sixty (60) days, even if the scope is limited.

**B.**

**The definitions and instructions of the subpoena  
create additional unreasonable practicality burdens**

The subpoena purports to impose the duty to produce metadata as well as the actual documents requested. Generally, some particularized need must be shown to require production of metadata. *Wyeth v. Impax Laboratories, Inc.*, 248 F.R.D. 169, 171 (D. Del. 2006); *U.S. ex rel. Carter v. Bridgeport Educ., Inc.*, 305 F.R.D. 225, 2015 U.S. Dist. LEXIS 26424, 2015 WL 818032, at \*19 (S.D. Cal. Feb. 20, 2015); *Younes v. 7-Eleven, Inc.*, 2015 U.S. Dist. LEXIS 33793, \*12, 2015 WL 12683313 (D.N.J.2015). No such showing has been made.

As a result, compliance with the subpoena as presently worded will impose the burden upon Calyx of utilizing the professional services of its outside counsel, and of counsel's retention of a consulting firm capable of performing these tasks. It will require converting files from their currently usable and sensible formats to formats designed solely for the benefit of the litigants in this proceeding, utilizing certain document management platforms. This will require,



**PUBLIC**

based upon the outline of expenses set forth below, many tens of thousands of dollars for the cost of counsel and the outside consulting firm.

The economic and practical burden of undertaking such conversion rightfully belongs to the parties to this proceeding, and not to Calyx. For this reason, the document production should be limited to documents in their native formats. Further, additional information as to metadata that is not available from the native documents should be limited to specified documents produced for which there is shown a genuine need for such additional information.

Included in the definitions and instructions accompanying the subpoena are impermissible interrogatories purporting to require assembly of additional information. This includes the manner of producing the metadata as specified, and also includes the explanations required in Definition D12, and in Instructions 2, 5(d), 6 (setting forth extensive “formatting” requirements, explanation of methods utilized to collect documents, and requirements of descriptions), 8, 10, and 13. The Commission has previously ruled that a subpoena duces tecum which includes “specifications” in the instructions that amount to interrogatories, requiring preparation of additional documents not already in existence, is improper. *In the Matter of Exxon Corporation*, 1976 FTC LEXIS 70, Docket No.8934.

**C.**

**The economic burden of compliance with the subpoena would be crushing**

Since Calyx does not maintain files in the format called for in the subpoena, counsel for Calyx has obtained a bid for performing such compliance from an outside consulting firm which specializes in such services. The cost incurred for these services, as required by the subpoena, will entail:

**PUBLIC**

- ★ Payment of \$475.00/hour for consultation to identify and map locations of potentially covered sites. Calyx maintains files in at least seven different platforms requiring separate searching.
- ★ Payment of \$1,495.00 per account for web-based collection, which will require remote searching of each web or cloud account identified as potentially having responsive documents.
- ★ \$1,695.00 **per device** for searching servers, hard drives, smart phones, etc., for every user covered by the subpoena. This cost alone would be devastating.
- ★ \$295 per professional hour, plus additional fees per gigabyte, for ingesting documents into a system for production, processing, and de-duplicating the documents for production. The number of hours for such work will depend upon the breadth of the subpoena, and the number of persons and devices covered, but would almost certainly involve hundreds of hours for such services.
- ★ Additional fees for storage, platform access, and maintenance after creation, of \$1,750 per month

Additionally, production of documents under the subpoena will require involvement of Calyx's outside counsel, the undersigned firm, at an additional expense of \$400.00 per hour for professional time, which will undoubtedly require tens of thousands of dollars of professional time. Based upon such quotation for such services, Calyx estimates that its cost of compliance with the literal terms of the subpoena will be an amount that would be devastating, and economically disastrous for Calyx. There is absolutely no justification for imposing such a horrendous economic burden upon Calyx, a non-party to this litigation.

Although proceedings before the Federal Trade Commission are governed by the FTC's Rules of Practice, the Federal Rules of Civil Procedure governing discovery disputes do provide an analytical framework to assist in an FTC proceeding. *In re Louisiana Real Estate Appraisers Board*, 2018 FTC LEXIS 36, Docket No.9374, *citing*, *In re LabMD, Inc* , 2014 FTC LEXIS 20, \*12 (F.T.C. January 10, 2014) (*citing In re Crush Int '1*, 1972 FTC LEXIS 255, \*5-6 (March 23, 1972)).

**PUBLIC**

Rule 45(d) of the Federal Rules of Civil Procedure provides for cost-shifting of compliance with a subpoena from a non-party to the party issuing the subpoena. The Court in *High Rock Westminster St., LLC v. Bank of America, N.A.*, 2014 U.S. Dist. LEXIS 200880, \*6, 2014 WL 12782611 (D.R.I. 2014), held that:

Pursuant to Rule 45(d)(2)(B)(ii), if the Court orders production by an objecting non-party, "the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance."

As the Court held in *Gamache v. Hogue*, 2022 U.S. Dist. LEXIS 99880, \*5-7, 2022 WL 1624109 (M.D.Ga.2022):

"When discovery is sought from a non[-]party, . . . **[t]he Court has an obligation to protect the non[-]party 'from significant expense resulting from compliance.'**" *S.E.C. v. Avent*, No. 1:16-CV-2459-SCJ, 2018 U.S. Dist. LEXIS 233477, 2018 WL 8996272, at \*1 (N.D. Ga. Apr. 26, 2018) (quoting Fed. R. Civ. P. 45(d)(2)(B)(ii)). **Courts must shift costs to the party seeking production if a "non-party's subpoena compliance costs . . . are significant."** *Hernandez v. Hendrix Produce, Inc.*, No. CV613-053, 2014 U.S. Dist. LEXIS 30861, 2014 WL 953503, at \*2 n.5 (S.D. Ga. Mar. 10, 2014)

Furthermore,

[w]hen discovery is ordered against a non-party, the only question before the court in considering whether to shift costs is whether the subpoena imposes significant expense on the non-party. If so, the district court must order the party seeking discovery to bear at least enough of the cost of compliance to render the remainder non-significant.

*Monitronics Int'l, Inc. v. Hall, Booth, Smith, P.C.*, No. 1:15-cv-3927-WSD, 2016 U.S. Dist. LEXIS 166402, 2016 WL 7030324, at \*13 (N.D. Ga. Dec. 2, 2016) (emphasis added) (citation omitted).

(Emphasis added).

The historical disinclination to shift costs of discovery to the requesting party has been turned in the opposite direction due to the prevalence of discovery seeking ESI. In what has been deemed the "gold standard" for weighing the question of shifting the economic burden of

**PUBLIC**

responding to discovery seeking ESI, one court has summarized the following factors:

[C]ourts have adopted a balancing approach taking into consideration such factors as: (1) the specificity of the discovery requests; (2) the likelihood of discovering critical information; (3) the availability of such information from other sources; (4) the purposes for which the responding party maintains the requested data (5) the relative benefit to the parties of obtaining the information; (6) the total cost associated with production; (7) the relative ability of each party to control costs and its incentive to do so; and (8) the resources available to each party. Each of these factors is relevant in determining whether discovery costs should be shifted in this case.

*Rowe Entm't, Inc. v. William Morris Agency, Inc.*, 205 F.R.D. 421, 429 (S.D.N.Y.2002).

Later, in the landmark decision in *Zubulake v. UBS Warburg LLC*, 217 F.R.D. 309, 320 (S.D.N.Y.2003), the court noted that the *Rowe* factors generally will favor cost-shifting to the requesting party. Since then, the general trend appears to be that the requesting party must demonstrate need and relevance that outweigh the costs and burden of retrieving and processing information. *U.S. ex rel. Carter v. Bridgepoint Educ., Inc.*, 305 F.R.D. 225, 239 (S.D. Cal. 2015); *Perez v. DirecTV Grp. Holdings, LLC*, 2021 U.S. Dist. LEXIS 44984, \*11-12 2021 WL 840437 (C.D.Calif.2021). Calyx's counsel has found no cases where a non-party responding to ESI discovery was not granted cost-shifting to the requesting party.

Since Calyx is not a party to this proceeding, there is no justification whatsoever for seeking to impose upon Calyx the enormous and crushing cost that compliance with the literal terms of the subpoena would require. After limiting the scope of the subpoena to a reasonable category of persons, and devices, and providing additional time for searching and providing production in native format only, a reasonable cost deposit must be required in advance of the document production.

**PUBLIC****II.****THE SUBPOENA SEEKS PRODUCTION OF HIGHLY CONFIDENTIAL AND PROPRIETARY DOCUMENTS**

The subpoena further requires production of documents subpoenaed by ICE, which constitute highly confidential and proprietary information. These categories of documents to be produced would go to the very heart of Calyx's development of its products and services, definition of its customers, determination of its pricing and profits, and identification of all of its customers who are most profitable. Such information is highly confidential and proprietary, and deserves the highest protection from competitors.

Calyx fully realizes and acknowledges the existence of a protective order entered herein by the Chief Administrative Law Judge. In order to provide full and complete security and confidentiality of the documents covered by the subpoena, however, Calyx requests that such protective order be entered by a United States District Judge to assure the ability to enforce the same through contempt proceedings if necessary.

**CONCLUSION**

For the reasons set forth above, Calyx Technology, Inc., prays that, pursuant to §3.34(c) of the Rules of Practice for Adjudicative Proceedings, 16 CFR 3.34 (c), the subpoena directed to it be quashed in its entirety, or, alternatively, modified and limited to cure the above stated objections, that the Commission be ordered to deposit an amount deemed sufficient to cover the costs of compliance with the subpoena, as modified pursuant to this Motion, and that it recover general relief.

**PUBLIC**

Respectfully submitted,

MIDDLEBERG RIDDLE GROUP

/s/ Michael L. Riddle

Michael L. Riddle  
State Bar No. 16890500

/s/ Emil Lippe, Jr.

Emil Lippe, Jr.  
State Bar No. 12398300  
Park Place at Turtle Creek  
2911 Turtle Creek Blvd., Suite 1250

Dallas, Texas 75219

Phone: 214-220-6301

[mriddle@midrid.com](mailto:mriddle@midrid.com)

[elippe@midrid.com](mailto:elippe@midrid.com)

ATTORNEYS FOR CALYX TECHNOLOGY,  
INC.

**PUBLIC**

**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 3.22(c) of the FTC Rules of Practice, the undersigned hereby certifies that the above and foregoing Motion contains 2,513 words, including headings, footnotes, and quotations, but not including the cover, table of contents, table of citations or authorities, glossaries, statements with respect to oral argument, any addendums containing statutes, rules or regulations, any certificates of counsel, proposed form of order, and required attachments.

/s/ Emil Lippe, Jr.  
Emil Lippe, Jr.

**PUBLIC**

**STATEMENT OF CONFERENCE**

The undersigned counsel for Calyx Technology, Inc., hereby certifies, pursuant to Rule 3.22(g) of the FTC Rules of Practice, that he has conferred with FTC staff in good faith to resolve by agreement the issues raised by this motion and have been unable to reach such agreement on the issues noted in this motion. The undersigned conferred with FTC Complaint Counsel (Lauren Stillman) on April 5, 2023, in the afternoon, April 11, 2023, and April 12, 2023, at 8:30 a.m., Central time; on phone conferences, for such purpose.

/s/ Michael L. Riddle  
Michael L. Riddle



**PUBLIC**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of April, 2023, I filed the foregoing document electronically using the Federal Trade Commission E-Filing system, which will send notice of such filing to:

April Tobar  
Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, Rm. H-113  
Washington, DC 20580  
[electronicfilings@ftc.gov](mailto:electronicfilings@ftc.gov)

The Honorable D. Michael Chappell  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

I also certify that I caused the foregoing document to be served via email to:

Catherin Bill  
Steven Couper  
Caitlin Cipicchio  
Kurt Herera-Heintz  
Ashley Masters  
Lauren Silman  
Nicolas Stebinger  
Nina Thanawala  
Taylor Weaver  
Abigail Wood  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580  
[adennis@ftc.gov](mailto:adennis@ftc.gov)

Nelson O. Fitts  
Jonathan M. Moses  
Sarah K. Eddy  
Adam L. Goodman

**PUBLIC**

Wachtell, Lipton, Rosen & Katz  
51 West 52<sup>nd</sup> Street  
New York, NY 10019  
(212) 403-1361  
[jmmoses@wlrk.com](mailto:jmmoses@wlrk.com)  
[skeddy@wlrk.com](mailto:skeddy@wlrk.com)  
[algoodman@wlrk.com](mailto:algoodman@wlrk.com)

*Counsel for Respondent Black Knight, Inc.*

Harry T. Robins  
Susan Zhu  
Morgan, Lewis & Bockius LLP  
New York, NY 10178  
(212) 309-6728  
[harry.robins@morganlewis.com](mailto:harry.robins@morganlewis.com)  
[szhu@morganlewis.com](mailto:szhu@morganlewis.com)

Ryan Kantor  
J. Clayton Everett, Jr.  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
(202) 739-5343  
[ryan.kantor@morganlewis.com](mailto:ryan.kantor@morganlewis.com)  
[clay.everett@morganlewis.com](mailto:clay.everett@morganlewis.com)

Kenneth Kliebard  
Morgan, Lewis & Bockius LLP  
110 North Wacker Drive, Suite 2800  
Chicago, IL 60606  
(312) 324-1774  
[kenneth.kliebard@morganlewis.com](mailto:kenneth.kliebard@morganlewis.com)

John C. Dodds  
Zachary M. Johns  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103  
(215) 963-5000  
[john.dodds@morganlewis.com](mailto:john.dodds@morganlewis.com)  
[zachary.johns@morganlewis.com](mailto:zachary.johns@morganlewis.com)

*Counsel for Respondent Intercontinental Exchange, Inc.*

**PUBLIC**

/s/ Emil Lippe, Jr.  
Emil Lippe, Jr.  
Counsel for Calyx Technology, Inc.

**PUBLIC**

**EXHIBIT “A”**

**PUBLIC**



# Subpoena for Production of Documentary Material

Provided by the Secretary of the Federal Trade Commission, and  
 Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

|  |   |
|--|---|
| 1. TO<br>Calyx Technology, Inc.<br>c/o Michael Riddle<br>2911 Turtle Creek Blvd., Suite 1250<br>Dallas, TX 75219 | 2. FROM<br><br><p style="text-align: center;"><b>UNITED STATES OF AMERICA<br/>                 FEDERAL TRADE COMMISSION</b></p> |
|--|---|

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

|   |   |
|---|---|
| 3. PLACE OF PRODUCTION<br><br>Federal Trade Commission<br>600 Pennsylvania Avenue, NW<br>Washington, DC 20580 | 4. MATERIAL WILL BE PRODUCED TO<br>Abby L. Dennis, Esq., or designee<br><br>5. DATE AND TIME OF PRODUCTION<br>April 19, 2023 @ 10:00 a.m. |
|---|---|

6. SUBJECT OF PROCEEDING  
  
 In the Matter of Intercontinental Exchange, Inc. and Black Knight, Inc., corporations; Docket No. 9413

7. MATERIAL TO BE PRODUCED  
  
 See Attached Requests and Specifications

|  |   |
|--|---|
| 8. ADMINISTRATIVE LAW JUDGE<br><br>The Honorable D. Michael Chappell<br><br>Federal Trade Commission<br>Washington, D.C. 20580 | 9. COUNSEL AND PARTY ISSUING SUBPOENA<br>Abby L. Dennis or designee<br>Federal Trade Commission<br>400 7th Street, SW<br>Washington, DC 20024<br>(202) 326-2381 |
|--|---|

|                                |  |
|--------------------------------|--|
| DATE SIGNED<br><br>Apr 5, 2023 | SIGNATURE OF COUNSEL ISSUING SUBPOENA<br><br>s/ Abby L. Dennis |
|--------------------------------|--|

**INSTRUCTIONS AND NOTICES**

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**PETITION TO LIMIT OR QUASH**

The Commission's Rules of Practice require that any petition to limit or quash this subpoena be filed within the earlier of ten days after service thereof or the time for compliance therewith. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 9.

**YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS**

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

**TRAVEL EXPENSES**

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this subpoena should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel. Witness travelers can contact the FTC travel office for guidance at (202) 326-3299 or [travel@ftc.gov](mailto:travel@ftc.gov). PLEASE NOTE: Reimbursement for necessary transportation, lodging, and per diem expenses cannot exceed the maximum allowed for such expenses by an employee of the federal government.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCsRulesofPractice>. Paper copies are available upon request.

**PUBLIC**

**RETURN OF SERVICE**

*I hereby certify that a duplicate original of the within subpoena was duly served:* (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

Via FedEx

---



---



---

*on the person named herein on:*

April 5, 2023

(Month, day, and year)

Abby L. Dennis

(Name of person making service)

Attorney

(Official title)

**PUBLIC**

## **ATTACHMENT A**

### **DEFINITIONS**

1. The definitions set forth in 16 C.F.R. parts 3 and 4 are incorporated herein by reference and are applicable to all Requests contained herein.

2. “Administrative Proceeding” means the proceeding initiated on March 9, 2023, by the Federal Trade Commission under its administrative process, bearing Docket Number 9413, in connection with the Proposed Transaction.

3. “And/or,” “or,” and “and” are used inclusively, not exclusively. As such, “and/or,” “or,” and “and” should be construed so as to require the broadest possible response. If, for example, a request calls for information about “A or B” or “A and B,” You should produce all information about A and all information about B, as well as all information about A and B collectively.

4. “Ancillary Services” has the same definition as that in Paragraph 6 of the Complaint filed in the Administrative Proceeding, and means the services necessary to process, underwrite, fund, and close a loan for a residential real estate mortgage.<sup>1</sup>

5. “Any,” “each” and “all” are to be construed as to be synonymous so as to bring within the scope of the discovery requests the broadest range of Documents.

6. “Bid” or “Bids” should be read to include final, draft, or preliminary bids, proposals, offers, estimates, inquiries, and quotes, whether written or oral.

7. “BK” means Black Knight, Inc.

---

<sup>1</sup> The definitions contained herein of defined terms in the Complaint, such as “Ancillary Services,” “LOS,” “PPE, or any other terms, are used for purposes of these Requests to be consistent with the definitions and uses of those same terms in the Complaint.

**PUBLIC**

8. “Communication(s)” means any and all written, oral, telephonic, or other utterances of any nature whatsoever, shared, shown, and/or transferred between and/or among any person(s), including but not limited to any statements, inquiries, discussions, conversations, dialogues, correspondence, consultations, negotiations, agreements, understandings, meetings, letters, emails, faxes, notations, telegrams, advertisements, interviews, and all other Documents as herein defined. The phrase “communication between” is defined to include instances where one party addresses a communication to the other party but the other party does not respond, as well as instances in which the other party responds.

9. “Company” means Calyx Technology, Inc.; its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures; and all directors, officers, employees, agents, and representatives of the foregoing. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any Person in which there is partial (25 percent or more) or total ownership or control between any other Person and the Company.

10. “Complaint” means the complaint filed by the FTC on March 9, 2023 in the Administrative Proceeding, bearing Docket Number 9413, in connection with the Proposed Transaction.

11. “Complaint Counsel” means the attorneys who are representing the FTC in connection with the Administrative Proceeding.

12. “Concerning” means, without limitation, the following concepts: referring to, regarding, relating, discussing, describing, reflecting, concerning, dealing with, pertaining to, analyzing, evaluating, evidencing, estimating, containing, constituting, studying, surveying, projecting, assessing, recording, summarizing, criticizing, reporting, commenting, or otherwise involving, in whole or in part.



**PUBLIC**

13. “Discuss” means that the Document, in whole or in part, addresses the designated subject matter, regardless of the length of the treatment or detail of analysis, but does not simply refer to the subject matter without elaboration. Further, “discuss” includes any operating or financial data about the designated subject matter where such data are separately set out as in a chart, listing, table, or graph.

14. “Document” includes, by way of clarification to the definition in 16 C.F.R. §§ 3.34 and 3.37, without limitation any written, printed, typed, photocopied, photographed, recorded or otherwise reproduced or stored communication or representation, whether comprised of letters, words, numbers, data, pictures, sounds or symbols, or any combination thereof, correspondence, memoranda, notes, records, letters, envelopes, telegrams, messages, studies, analyses, contracts, agreements, working papers, accounts, analytical records, reports and/or summaries of investigations, press releases, comparisons, books, calendars, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, drawings, diagrams, instructions, notes of minutes of meetings or communications, electronic mail/messages and/or “e-mail,” instant messaging (including the use of applications such as, but not limited to, SMS messages, iMessage, Slack, Confide, Signal, WhatsApp, Teams, or Gchat), questionnaires, surveys, charts, graphs, photographs, films, tapes, disks, data cells, print-outs of information stored or maintained by electronic data processing or word processing equipment, all other data compilations from which information can be obtained (by translation, if necessary, by you through detection devices into usable form), including, without limitation, electromagnetically sensitive storage media such as CDs, DVDs, memory sticks, floppy disks, hard disks and magnetic tapes, and any other tangible things, and any preliminary versions, as well as drafts or revisions of any of the foregoing, whether produced or authored by the Company or anyone else.

**PUBLIC**

15. “Document Family” means a group of related Documents that are considered collectively as a group, including but not limited to an email with attachments (the email being the “parent” and the attachments being “children”). Paper Documents that are physically connected by binding, folders, or other cohesive physical or logical groupings should be deemed a Document Family.

16. “FTC” means the United States Federal Trade Commission, inclusive of any of its Commissioners, attorneys, staff, bureaus, agents, consultants, economists, advisors, or employees.

17. “ICE” means Intercontinental Exchange, Inc.

18. “Including” should be read to mean “including but not limited to” and is used to emphasize certain types of Documents requested and should not be construed as limiting the request in any way.

19. “Investigation” means any review, assessment, or investigation of the Proposed Transaction occurring prior to the filing of the Complaint in the Administrative Proceeding on March 9, 2023.

20. “Investment” means the contribution of any money, equity, or any other form of capital, including but not limited to the undertaking of debt to facilitate such a contribution.

21. “Litigation” means the judicial process in connection with the Proposed Transaction from the filing of the Complaint until the issuance of any final non-appealable judgment (including exhaustion of appeals) by any court.

22. “LOS” means a mortgage loan origination system.

23. “Person” includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

**PUBLIC**

24. “Plans” means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

25. “PPE” has the same definition as that in Paragraph 7 of the Complaint in the Administrative Proceeding, and means a product pricing and eligibility engine or any other solution that allows a lender to identify potential loan rates for a borrower, determine the borrower’s eligibility for a given loan, and lock in the loan’s terms for the borrower.

26. “Proposed Transaction” means the proposed acquisition of BK by ICE, as well as the sale of BK’s Empower LOS business, including its Exchange, LendingSpace and AIVA solutions, to Constellations Web Solutions, Inc.

27. “Proprietary LOS” has the same definition as that in Paragraphs 24 and 25 of the Complaint in the Administrative Proceeding, and means the foundational technology that mortgage lenders use to originate home mortgages and which are developed and maintained in-house by lenders.

28. “Relating to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

29. “You” or “Your” refers to the Company.

30. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa; and the past tense shall include the present tense where the clear meaning is not distorted.

**PUBLIC****INSTRUCTIONS**

For the purposes of this Subpoena, the following Instructions apply:

1. Unless otherwise specified, each Request calls for Documents received, created, modified, transmitted, or sent from January 1, 2017, to the present.
2. Unless modified by agreement with Complaint Counsel, this subpoena requires a complete search of all the files of the Company. The Company shall produce all responsive Documents, wherever located, that are in the actual or constructive possession, custody, or control of the Company and its representatives, attorneys, and other agents, including, but not limited to, consultants, accountants, lawyers, or any other Person retained by, consulted by, or working on behalf or under the direction of the Company. If any Person is unwilling to have his or her files searched, or is unwilling to produce responsive Documents, the Company must provide Complaint Counsel with the following information as to each such Person: his or her name, address, telephone number, and relationship to the Company. In addition to hard copy Documents, the search must include all of the Company's Electronically Stored Information.
3. The Company need not produce any Document that was previously produced to the Complaint Counsel voluntarily or in response to compulsory process, except for any Document that was provided to any Commissioner, including to any attorney advisor or any other staff of any individual Commissioner, but not provided to Complaint Counsel.
4. This subpoena is continuing in nature and shall be supplemented in the event that additional Documents responsive to this subpoena are created, modified, prepared, or received between the time of the Company's initial response and the date established by the Administrative Law Judge for the evidentiary hearing in the above-captioned proceeding.
5. All Documents responsive to this subpoena, regardless of format or form and regardless of whether submitted in hard copy or electronic format:
  - a. Shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Company's files;
  - b. Shall be marked on each page with corporate identification and consecutive Document control numbers when produced in an image format;
  - c. Shall be produced in color if the original Document was in color;
  - d. Shall be accompanied by an index that identifies: (i) the name of each person from whom responsive Documents are submitted; and (ii) the corresponding consecutive Document control number(s) used to identify that person's Documents, and if submitted in paper form, the box number containing such Documents. The FTC will provide a sample index upon request.
6. Form of Production: The Company shall submit Documents as instructed below absent written consent signed by Complaint Counsel.
  - a. Documents stored in electronic or hard copy formats in the ordinary course of business shall be submitted in the following electronic format provided that such copies are true, correct, and complete copies of the original Documents:

**PUBLIC**

- i. Submit Microsoft Excel, Access, and PowerPoint files in native format with extracted text and metadata and information as described in subparts (a)(ii), (a)(iii), and (a)(iv).
- ii. Submit emails in TIFF (Group IV) format with extracted text and the following metadata and information:

| <b>Metadata/Document Information</b> | <b>Description</b>  |
|--------------------------------------|---|
| Alternative Custodian                | List of custodians where the document has been removed as a duplicate.  |
| Bates Begin                          | Beginning Bates number of the email.                                    |
| Bates End                            | Bates number of the last page of the email.                             |
| Beg Attach                           | First Bates number of attachment range.                                 |
| End Attach                           | Ending Bates number of attachment range.                                |
| Custodian                            | Name of the person from whom the email was obtained.                    |
| Email BCC                            | Names of person(s) blind copied on the email.                           |
| Email CC                             | Names of person(s) copied on the email.                                 |
| Email Date Received                  | Date the email was received. [MM/DD/YYYY]                               |
| Email Date Sent                      | Date the email was sent. [MM/DD/YYYY]                                   |
| Email From                           | Names of the person who authored the email.                             |
| <b>Metadata/Document Information</b> | <b>Description</b>  |
| Email Message ID                     | Microsoft Outlook Message ID or similar value in other message systems. |
| Email Subject                        | Subject line of the email.  |
| Email Time Received                  | Time email was received. [HH:MM:SS AM/PM]                               |
| Email To                             | Recipients(s) of the email.   |
| Email Time Sent                      | Time email was sent. [HH:MM:SS AM/PM]                                   |

**PUBLIC**

|                |  |
|----------------|--|
| Page count     | Number of pages in record.   |
| File size      | Size of document in KB.  |
| File Extension | File extension type (e.g., docx, xlsx).                                    |
| Folder         | File path/folder location of email.  |
| Hash           | Identifying value used for deduplication – typically SHA1 or MD5.          |
| Text Link      | Relative path to submitted text file.<br>Example: \TEXT\001\FTC0003090.txt |

- iii. Submit email attachments other than those described in subpart (a)(i) in TIFF (Group IV) format. For all email attachments, provide extracted text and the following metadata and information as applicable:

| <b>Metadata/Document Information</b> | <b>Description</b>   |
|--------------------------------------|--|
| Alternative Custodian                | List of custodians where the document has been removed as a duplicate. |
| Bates Begin                          | Beginning Bates number of the document.                                |
| Bates End                            | Last Bates number of the document.                                     |
| Beg Attach                           | First Bates number of attachment range.                                |
| <b>Metadata/Document Information</b> | <b>Description</b>   |
| End Attach                           | Ending Bates number of attachment range.                               |
| Custodian                            | Name of person from whom the file was obtained.                        |
| Date Created                         | Date the file was created. [MM/DD/YYYY]                                |
| Date Modified                        | Date the file was last changed and saved.[MM/DD/YYYY]                  |
| Page count                           | Number of pages in record.   |
| File size                            | Size of document in KB.  |
| File Extension                       | File extension type (e.g., docx, xlsx).                                |

**PUBLIC**

|                         |  |
|-------------------------|--|
| Filename with extension | Name of the original native file with file extension.  |
| Hash                    | Identifying value used for deduplication – typically SHA1 or MD5.                                    |
| Native Link             | Relative file path to submitted native or near native files.<br>Example: \NATIVES\001\FTC0003090.xls |
| Parent ID               | Document ID or beginning Bates number of the parent email.   |
| Text Link               | Relative path to submitted text file.<br>Example: \TEXT\001\FTC0003090.txt                           |
| Time Created            | Time file was created. [HH:MM:SS AM/PM]  |
| Time Modified           | Time file was saved. [HH:MM:SS AM/PM]  |

- iv. Submit all other electronic Documents, other than those described in subpart (a)(i), in TIFF (Group IV) format accompanied by extracted text and the following metadata and information:

| <b>Metadata/Document Information</b> | <b>Description</b>   |
|--------------------------------------|--|
| Alternative Custodian                | List of custodians where the document has been removed as a duplicate. |
| Bates Begin                          | Beginning Bates number of the document.                                |
| Bates End                            | Last Bates number of the document.                                     |
| Beg Attach                           | First Bates number of attachment range.                                |
| End Attach                           | Ending Bates number of attachment range.                               |
| Custodian                            | Name of the original custodian of the file.                            |
| Date Created                         | Date the file was created. [MM/DD/YYYY]                                |
| Date Modified                        | Date the file was last changed and saved. [MM/DD/YYYY HH:MM:SS AM/PM]  |
| Page count                           | Number of pages in record.   |
| File size                            | Size of document in KB.  |

**PUBLIC**

|                         |  |
|-------------------------|--|
| File Extension          | File extension type (e.g., docx, xlsx).  |
| Filename with extension | Name of the original native file with file extension.  |
| Hash                    | Identifying value used for deduplication – typically SHA1 or MD5.                            |
| Originating Path        | File path of the file as it resided in its original environment.                             |
| Native Link             | Relative path to submitted native or near native files. Example: \NATIVES\001\FTC0003090.xls |
| Text Link               | Relative path to submitted text file. Example: \TEXT\001\FTC-0003090.txt                     |
| Time Created            | Time file was created. [HH:MM:SS AM/PM]  |
| Time Modified           | Time file was saved. [HH:MM:SS AM/PM]  |

- v. Submit Documents stored in hard copy in TIFF (Group IV) format accomplished by OCR with the following information:

| <b>Metadata/Document Information</b> | <b>Description</b>                              |
|--------------------------------------|---|
| Bates Begin                          | Beginning Bates number of the document.         |
| Bates End                            | Bates number of the last page of the document.  |
| Custodian                            | Name of person from whom the file was obtained. |

- vi. Submit redacted Documents in TIFF (Group IV) format accompanied by OCR with the metadata and information required by relevant document type in subparts (a)(i) through (a)(v) above. For example, if the redacted file was originally an attachment to an email, provide the metadata and information specified in subpart (a)(iii) above. Additionally, please provide a basis for each privilege claim as detailed in Instruction 10.
- b. Submit data compilations in electronic format, specifically Microsoft Excel spreadsheets or delimited text formats, with all underlying data un-redacted and all underlying formulas and algorithms intact. Submit data separately from document productions.
  - c. If the Company intends to utilize any de-duplication, email threading, or TAR



**PUBLIC**

software or services when collecting or reviewing information that is stored in its computer systems or electronic storage media, or if the Company's computer system contain or utilize such software, the Company must contact the FTC's staff to determine, with the assistance of the appropriate FTC representative, whether and in what manner the Company may use such software or services when producing materials in response to this subpoena.

- d. Produce electronic file and image submissions as follows:
    - i. All documents produced in electronic format shall be scanned for and free of viruses prior to submission. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this subpoena;
    - ii. Encryption of productions using NIST FIPS-Compliant cryptographic hardware or software modules, with passwords sent under separate cover, is strongly encouraged; and
    - iii. Each production shall be submitted with a transmittal letter that includes: the FTC Docket No. 9413; production volume name; encryption method/software used; passwords for any password protected files; list of custodians and document identification number range for each; total number of documents; and a list of load-file fields in the order in which they are organized in the load file.
7. To protect privacy, the Company shall mask any Sensitive Personally Identifiable Information ("PII"). For purposes of this subpoena, PII means an individual's Social Security Number alone; or an individual's name, street address (but not city, county, state, or zip code of residence), or phone number in combination with one or more of the following: date of birth; driver's license number or other state identification number, or a foreign country equivalent; passport number; financial account number; or credit or debit card number.
  8. Provide the names of any electronic production tools or software packages utilized by the Company in responding to this subpoena for: keyword searching, Technology Assisted Review, email threading, de-duplication, and global de-duplication or near deduplication:
    - a. If the Company utilized keyword search terms to identify Documents and information responsive to this subpoena, a list of all of the search terms used for each custodian;
    - b. If the Company utilized Technology Assisted Review software, all statistical analyses utilized or generated by the Company or its agents related to the precision, recall, accuracy, validation, or quality of its Document production in response to this subpoena; and descriptions of all collection methodologies, including (a) how the software was utilized to identify responsive Documents, (b) the process(es) the Company utilized to identify and validate the seed set Documents subject to manual review, (c) the total number of Documents reviewed manually, (d) the total number of Documents determined non-responsive without manual review, (e) the process the Company used to

**PUBLIC**

determine and validate the accuracy of the automatic determinations of responsiveness and non-responsiveness, (f) how the Company handled exceptions (“uncategorized Documents”), and (g) if the Company’s Documents include foreign language Documents, whether reviewed manually or by some technology-assisted method; and

- c. The identity of each individual able to testify on behalf of the Company about information known or reasonably available to the Company relating to its response.
9. If any documents are withheld from production based on a claim of privilege, the Company shall provide, pursuant to 16 C.F.R. § 3.38A, a schedule which describes the nature of documents, communications, or tangible things not produced or disclosed, in a manner that will enable Complaint Counsel to assess the claim of privilege.
  10. If Documents responsive to a particular Request no longer exist for reasons other than the ordinary course of business or the implementation of the Company’s Document retention policy, but the Company has reason to believe such Documents have been in existence, state the circumstances under which they were lost or destroyed, describe the Documents to the fullest extent possible, state the Request(s) to which they are responsive, and identify persons having knowledge of the content of such Documents.
  11. If you object to any part of a Request, set forth the basis for your objection and respond to all parts of the Request to which you do not object. All objections must be made with particularity and must set forth all the information upon which you intend to rely in response to any motion to compel.
  12. All objections must state with particularity whether and in what manner the objection is being relied upon as a basis for limiting the scope of any search for Documents or withholding any responsive Documents. If you are withholding responsive information pursuant to any general objection, you should so expressly indicate. If, in responding to any Request, you claim any ambiguity in interpreting either the Request or a definition or instruction applicably thereto, set forth as part of your response the language deemed to be ambiguous and the interpretation used in responding to the Request, and produce all Documents that are responsive to the Request as you interpret it.
  13. Whenever necessary to bring within the scope of a Request a response that might otherwise be construed to be outside its scope, the following construction should be applied:
    - a. Construing the terms “and” and “or” in the disjunctive or conjunctive, as necessary, to make the Request more inclusive;
    - b. Construing the singular form of any word to include the plural and plural form to include the singular;
    - c. Construing the past tense of the verb to include the present tense and present tense to include the past tense;
    - d. Construing the masculine form to include the feminine form and vice versa; and

**PUBLIC**

- e. Construing the term “date” to mean the exact day, month, and year if ascertainable; if not, the closest approximation that can be made by means of relationship to other events, locations, or matters.
14. Unless otherwise stated, construe each Request independently and without reference to any other purpose or limitation.
15. Any questions you have relating to the scope or meaning of anything in this subpoena or suggestions for possible modifications thereto should be directed to Lauren Sillman at 202-326-2118, [lsillman@ftc.gov](mailto:lsillman@ftc.gov).
16. For productions smaller than 10 GB, the Company shall submit a response to this subpoena to the Commission through email using secure file transfer protocols (“FTP”). For instructions on submitting through FTP, please contact Rebecca Hyman ([rhyman@ftc.gov](mailto:rhyman@ftc.gov)), Samantha Artison ([sartison@ftc.gov](mailto:sartison@ftc.gov)), Terri Martin ([tmartin@ftc.gov](mailto:tmartin@ftc.gov)), Devon Allen ([dallen1@ftc.gov](mailto:dallen1@ftc.gov)), and Corene Wint ([cwint@ftc.gov](mailto:cwint@ftc.gov)). For productions larger than 10 GB, the Company shall contact Rebecca Hyman ([rhyman@ftc.gov](mailto:rhyman@ftc.gov)), Samantha Artison ([sartison@ftc.gov](mailto:sartison@ftc.gov)), Terri Martin ([tmartin@ftc.gov](mailto:tmartin@ftc.gov)), Devon Allen ([dallen1@ftc.gov](mailto:dallen1@ftc.gov)), and Corene Wint ([cwint@ftc.gov](mailto:cwint@ftc.gov)), who will provide further instructions on how to submit a response to this subpoena on physical media. A transmittal cover letter shall still be sent via electronic mail to: Lauren Sillman ([lsillman@ftc.gov](mailto:lsillman@ftc.gov)), Rebecca Hyman ([rhyman@ftc.gov](mailto:rhyman@ftc.gov)), Samantha Artison ([sartison@ftc.gov](mailto:sartison@ftc.gov)), Terri Martin, ([tmartin@ftc.gov](mailto:tmartin@ftc.gov)), Devon Allen ([dallen1@ftc.gov](mailto:dallen1@ftc.gov)), and Corene Wint ([cwint@ftc.gov](mailto:cwint@ftc.gov)).

**PUBLIC**

**DOCUMENT REQUESTS**

1. All Documents requested in any Subpoena Duces Tecum to produce Documents issued by ICE and/or BK in this Administrative Proceeding.

2. All Documents and Communications concerning the Proposed Transaction, the Investigation, the Administrative Proceeding, or this Litigation, including, but not limited to:

- a. Documents relating to the Company's internal discussions or evaluations of the Proposed Transaction, including any potential or actual risks and benefits of the Proposed Transaction;
- b. Documents discussing the potential effects of the Proposed Transaction on the Company, on competition in any market, or on its customers;
- c. Documents provided to or received from and Communications with media (including, but not limited to, other industry participants or financial companies, newspapers, news publications, magazines, radio, podcasts, trade publications, or blogs) about the Proposed Transaction;
- d. Documents constituting or regarding the Company's Communications with ICE and/or BK about the Proposed Transaction, the Investigation, the Administrative Proceeding, or this Litigation, including, but not limited to all questions asked or requests made by ICE and/or BK to the Company;
- e. Documents provided to ICE and/or BK in connection with the Proposed Transaction, the Investigation, the Administrative Proceeding or this Litigation; and
- f. Documents relating to communications with any third party other than ICE and/or BK in connection with the Proposed Transaction, the Investigation, the Administrative Proceeding or this Litigation.

3. All Documents requested by Specifications 3-9 in the subpoena issued to You by ICE and served on or around March 29, 2023 in this Administrative Proceeding.

**PUBLIC**

**APPENDIX A**

**Protective Order Governing Confidential Materials**

PUBLIC

PUBLIC

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

Docket No. 9413

|                                 |   |
|---------------------------------|---|
| In the Matter of                | ) |
|                                 | ) |
|                                 | ) |
| Intercontinental Exchange, Inc. | ) |
| a corporation, and              | ) |
|                                 | ) |
| Black Knight, Inc.,             | ) |
| a corporation,                  | ) |
|                                 | ) |
| Respondents.                    | ) |
|                                 | ) |

**PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL**

Commission Rule 3.31(d) states: “In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section.” Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

*D M Chappell*

D. Michael Chappell  
Chief Administrative Law Judge

Date: March 9, 2023

**PUBLIC**  
**PUBLIC**

## **ATTACHMENT A**

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

**IT IS HEREBY ORDERED THAT** this Protective Order Governing Confidential Material (“Protective Order”) shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, “confidential material” shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. “Sensitive personal information” shall refer to, but shall not be limited to, an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records. “Document” shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. “Commission” shall refer to the Federal Trade Commission (“FTC”), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

**PUBLIC**  
**PUBLIC**

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation “CONFIDENTIAL – FTC Docket No. 9413” or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation “CONFIDENTIAL – FTC Docket No. 9413” or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in*



**PUBLIC**  
**PUBLIC**

*camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

**PUBLIC**

**CERTIFICATE OF SERVICE**

I hereby certify that on April 5, 2023, I caused the foregoing document to be served via email to:

Harry T. Robins  
Susan Zhu  
Morgan, Lewis & Bockius LLP  
101 Park Avenue  
New York, NY 10178  
(212) 309-6728  
harry.robins@morganlewis.com  
szhu@morganlewis.com

Ryan Kantor  
J. Clayton Everett, Jr.  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
(202) 739-5343  
ryan.kantor@morganlewis.com  
clay.everett@morganlewis.com

Kenneth Kliebard  
Morgan, Lewis & Bockius LLP  
110 North Wacker Drive, Suite 2800  
Chicago, IL 60606  
(312) 324-1774  
kenneth.kliebard@morganlewis.com

John C. Dodds  
Zachary M. Johns  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103  
(215) 963-5000  
john.dodds@morganlewis.com  
zachary.johns@morganlewis.com

*Counsel for Intercontinental Exchange,  
Inc.*

Nelson O. Fitts  
Jonathan M. Moses  
Sarah K. Eddy  
Adam L. Goodman  
Wachtell, Lipton, Rosen & Katz  
51 West 52<sup>nd</sup> Street  
New York, NY 10019  
(212) 403-1361  
NOFitts@WLRK.com  
JMMoses@WLRK.com  
SKEddy@WLRK.com  
ALGoodman@WLRK.com

*Counsel for Black Knight, Inc.*

**PUBLIC**

By: s/ Abby L. Dennis  
Abby L. Dennis

*Counsel Supporting the Complaint*

**PUBLIC**

**EXHIBIT “B”**

**PUBLIC**

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**In the Matter of**

**Intercontinental Exchange, Inc.,  
a corporation, and**

**Black Knight, Inc.,  
a corporation,**

**Respondents.**

**Docket No. 9413**

---

**DECLARATION OF NICHOLAS DIZER  
ON BEHALF OF CALYX TECHNOLOGY, INC.**

---

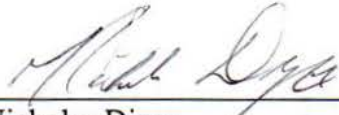
Nicholas Dizer, pursuant to 28 U.S.C. §1746, declares the following under penalty of perjury:

1. “My name is Nicholas Dizer, I am the Associate General Counsel of Calyx Technology, Inc., and am duly authorized to make this Declaration on behalf of Calyx.
2. I have read the attached Motion to Quash or Limit Second FTC Subpoena served upon Calyx Technology, Inc., by the Federal Trade Commission, incorporated by this reference. The factual statements contained therein are, within my personal knowledge, true and correct.
3. Further Declarant sayeth not.”

**PUBLIC**

Pursuant to 28 U.S.C. §1746, I hereby declare, under penalty of perjury that the foregoing  
is true and correct.

Executed on 13<sup>th</sup> day of April, 2023.

  
\_\_\_\_\_  
Nicholas Dizer,  
Calyx Technology, Inc.