

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
Washington, D.C.



In the Matter of:

RagingWire Data Centers, Inc.,

a corporation.

DOCKET NO. 9386

**RESPONDENT RAGINGWIRE DATA CENTERS, INC.'S
OPPOSITION TO COMPLAINT COUNSEL'S MOTION FOR RECONSIDERATION**

Pursuant to Rule 3.38 of the Commission's Rules of Practice for Adjudicative Proceedings (16 CFR § 3.38), Respondent RagingWire Data Centers, Inc. submits this opposition to Complaint Counsel's Motion for Reconsideration of the Court's February 7, 2020 order on Complaint Counsel's motion to compel. In their original motion to compel, Complaint Counsel argued that information related to the General Data Protection Regulation ("GDPR") unrelated to Privacy Shield is relevant to this case despite that fact that there is no allegation that Respondent made any claims (deceptive or otherwise) to anyone regarding the GDPR. This Court considered the relevance issue and ruled that GDPR references in documents unrelated to Privacy Shield were not relevant. Complaint Counsel now ask the Court to reconsider its

relevance decision. However, Complaint Counsel have not met the high bar for reconsideration, and even if they had, this Court's previous relevance decision was correct and should stand.

I. RECONSIDERATION IS NOT APPROPRIATE HERE

Motions for reconsideration are disfavored and should be granted only sparingly. *In re Daniel Chapter One*, Dkt. No. 9329, 2009 WL 569722, at *2 (Feb. 23, 2009); *In re Basic Research*, Dkt. No. 9318, 2006 FTC LEXIS 7, at *4 (January 10, 2006); *In re Rambus*, Dkt. No. 9302, 2003 FTC LEXIS 49, at *11 (March 26, 2003). A motion for reconsideration can be used neither "to rehash rejected arguments," nor to raise new ones. *In re Daniel Chapter One*, 2009 WL 569722, at *2.¹ Motions for reconsideration should be denied unless the movant meets the "heavy burden" of demonstrating a change in law, new evidence, or a need to correct clear error or manifest injustice. *See In re Basic Research*, 2006 FTC LEXIS 7, at *5-6.

Complaint Counsel contends that, notwithstanding the general rule disfavoring reconsideration, such a motion may be granted upon a showing of "a material difference of fact or law from that presented to the Administrative Law Judge before such decision, that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of the decision" Motion at 1, *citing In re McWane*, Dkt. No. 9352 (F.T.C. Jul. 12, 2012), *available at* <https://www.ftc.gov/sites/default/files/documents/cases/2012/07/120711aljorderrespmoreconsid.pdf>. This exception does not apply here, however. First, there is no material difference of fact or law from what was presented in the motion to compel. Second, and significantly, Complaint

¹ Despite acknowledging this standard, in an apparent effort to bolster their motion for reconsideration Complaint Counsel take the opportunity to recite the arguments they raised unsuccessfully in their motion to compel. *See* Motion at 2-3. A motion for reconsideration "shall not in any manner repeat any oral or written argument made in support of or in opposition to the original motion." *In Re Int'l Ass'n of Conference Interpreters*, Dkt. No. 9270, 1996 FTC LEXIS 126, at *2 (April 12, 1996).

Counsel *admit* that they were aware of the facts that form the basis for the current motion at the time they filed their original motion. Motion at 5.

Rather than assert a situation that actually fits within the referenced exception, Complaint Counsel argue that they did not know that the facts concerning timing would be relevant to consideration of the GDPR issue. However, Complaint Counsel cite no law supporting reconsideration under those circumstances.²

Complaint Counsel also ignore that the language they cite from the Court's Order as supporting reconsideration does not, in fact, cite to or reference the one sentence in RagingWire's briefing concerning GDPR timing. Instead, the Order references language in the Complaint. *See* Motion at 4, *citing* Order at 4-5. Contrary to Complaint Counsel's latest arguments, they apparently not only did not view the GDPR's date of enactment as sufficiently material to include in the motion to compel, they did not even see fit to include it in the Complaint. Instead, they chose to emphasize the date the statute went into effect. *See* Comp. ¶6. Under these circumstances, there is no basis for reconsideration of the Court's well-reasoned decision.

II. THE COURT'S ORIGINAL DETERMINATION REGARDING GDPR INFORMATION WAS CORRECT

Even if the Court were to reconsider Complaint Counsel's request that RagingWire produce additional information regarding the GDPR, the request should be denied.

As noted in RagingWire's opposition to the motion to compel, the Complaint does not allege a violation of the GDPR, nor does it allege that RagingWire made any misrepresentations

² Complaint Counsel also reference the word limitations on discovery motions imposed by Commission rules. Motion at 5. However, if Complaint Counsel believed that obtaining documents referencing the GDPR untethered from Privacy Shield was so important, they easily could have expanded the GDPR argument and spent less space insisting that RagingWire should be ordered to produce all responsive documents immediately.

about the GDPR. The Complaint is about alleged misstatements concerning Privacy Shield and, as the Court recognized (Order at 5), Complaint Counsel will receive any documents that reference the GDPR in the context of Privacy Shield.

Complaint Counsel assert that this is insufficient because “RagingWire customers that included questions about GDPR compliance . . . may have reviewed Respondent’s privacy policy” (Emphasis supplied.) This is pure speculation and is not a reasonable basis on which to order additional discovery.³ See, e.g., *Collens v. City of New York*, 222 F.R.D. 249, 253 (S.D.N.Y. 2004) (“While Rule 26(b)(1) still provides for broad discovery, courts should not grant discovery requests on pure speculation that amount to nothing more than a ‘fishing expedition’ into actions or past wrongdoing not related to the alleged claims or defenses.”); *Tolliver v. Fed. Republic of Nigeria*, 265 F. Supp. 2d 873, 880 (W.D. Mich. 2003) (“The mere hope that additional discovery may give rise to winning evidence does not warrant the authorization of wide-ranging fishing expeditions.”). Discovery sought in a proceeding before the Commission must be “reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defense of any respondent.” 16 C.F.R. 3.31(c)(1); *Federal Trade Commission v. Anderson* 631 F.2d 741, 745 (D.C. Cir. 1979).

The reasons for Complaint Counsel’s desperation to search every nook and cranny has recently become clearer to RagingWire. Last week, Complaint Counsel served their responses to RagingWire’s initial discovery requests. Spillman Dec. Ex. 1 (interrogatory responses) and Ex. 2 (written responses to requests for production). For the most part, Complaint Counsel declined to provide substantive responses.⁴ For example, Complaint Counsel’s only substantive response

³ Similarly, Complaint Counsel’s statement regarding the alleged misrepresentations being directed to a “specific, targeted group” (Motion at 6) is not supported by any allegation in the Complaint, let alone any evidence.

⁴ As appropriate following a meet and confer process, RagingWire may move to compel further responses.

to RagingWire's interrogatory concerning whether RagingWire processes personal data (Interrogatory No. 2), was to reference RagingWire's privacy policy and RagingWire's response to one of Complaint Counsel's interrogatories.

However, Complaint Counsel's responses, such as they are, confirm that, despite the months-long investigation, Complaint Counsel apparently had no evidence whatsoever of "the main disputed issue in this case, materiality" (Motion at 7) when the Complaint was filed. *See, e.g.,* Spillman Dec. Ex. 2 at 10 (response to Request for Production No. 6, referencing Complaint Counsel's initial disclosures.) The responses further show that the only information Complaint Counsel has since developed to support their claims are two weak declarations, only one of which is from a RagingWire customer (submitted with Complaint Counsel's motion to compel as Wetherill Dec. Ex. 9) and one ambiguous document produced by RagingWire. *See* Spillman Dec. Ex. 1 at 9 (response to Interrogatory No. 6.)

Complaint Counsel's failure to develop evidence supporting a required element of the claim before filing the Complaint is not justification for wide-ranging discovery based on speculative theories. The Court properly considered the GDPR issue raised in Complaint Counsel's motion to compel and correctly concluded that RagingWire should not be compelled to produce GDPR information untethered from Privacy Shield. No "manifest injustice" could possibly result from that eminently reasonable decision.

WHEREFORE, Respondent requests that Complaint Counsel's Motion for Reconsideration be denied.

Dated: February 18, 2020

Respectfully submitted,

/s/ Corey W. Roush _____

Corey W. Roush

C. Fairley Spillman

Diana E. Schaffner

AKIN GUMP STRAUSS HAUER & FELD LLP

2001 K. Street, N.W.

Washington, DC 20006

(202) 887-4000

Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 18, 2020, a copy of the foregoing was electronically filed using the Commission's Electronic Filing System and was sent by that system and by certified mail to the following:

April J. Tabor, Acting Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

I HEREBY CERTIFY that that a copy of the foregoing has been served upon all parties to this cause by electronic mail as follows:

Linda Kopp
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Washington, D.C. 20580
lkopp@ftc.gov

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Counsel for Plaintiff Federal Trade Commission

February 18, 2020:

By: /s/ Corey W. Roush

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Counsel for Respondent

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
Washington, D.C.**

In the Matter of:

RagingWire Data Centers, Inc.,

a corporation.

DOCKET NO. 9386

**[PROPOSED] ORDER DENYING COMPLAINT COUNSEL'S
MOTION FOR RECONSIDERATION**

Upon consideration of Complaint Counsel's Motion for Reconsideration:

IT IS HEREBY ORDERED that Complaint Counsel's Motion is DENIED. The Court's February 7, 2020 order stands as written, and Respondent shall not be required to produce the additional documents requested by Complaint Counsel.

ORDERED:

D. Michael Chappell

Chief Administrative Law Judge

Date:

DECLARATION OF C. FAIRLEY SPILLMAN

1. I am an attorney at Akin Gump Strauss Hauer & Feld, LLP, counsel for Respondent RagingWire Data Centers, Inc. and have personal knowledge of the matters set forth herein. This declaration is submitted in support of RagingWire's opposition to Complaint Counsel's February 11, 2020, motion to for reconsideration.
1. The document attached hereto as Exhibit 1 is a true and correct copy of a document served by Complaint Counsel on February 12, 2020, entitled "Complaint Counsel's Objections and Responses to RagingWire Data Centers, Inc.'s First Set of Interrogatories."
2. The document attached hereto as Exhibit 2 is a true and correct copy of a document served by Complaint Counsel on February 12, 2020, entitled "Complaint Counsel's Objections and Responses to RagingWire Data Centers, Inc.'s First Set of Requests for Production."
3. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 2/18/2020


C. Fairley Spillman

Exhibit 1

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
RagingWire Data Centers, Inc.,)	DOCKET NO. 9386
a corporation,)	
)	
Respondent.)	
)	

**COMPLAINT COUNSEL’S OBJECTIONS AND RESPONSES
TO RAGINGWIRE DATA CENTERS, INC.’S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 3.35 of the Federal Trade Commission’s (“FTC’s”) Rules of Practice, Complaint Counsel submit these Objections and Responses to Respondent RagingWire Data Centers, Inc.’s (“RagingWire’s”) First Set of Interrogatories (“Interrogatories”). The provision of a response to any interrogatory shall not constitute a waiver of any applicable objection, privilege, or other right.

GENERAL OBJECTIONS

The following General Objections apply to all of Respondent’s Interrogatories and are hereby incorporated by reference into each of the following responses. The assertion of the same, similar, or additional objections or the provision of partial answers in response to an individual interrogatory does not waive any of Complaint Counsel’s general objections as to the other interrogatories.

- A. Complaint Counsel object to Respondent’s Interrogatories to the extent the interrogatories are directed to the Federal Trade Commission rather than to Complaint Counsel.

- B. Complaint Counsel object to the Interrogatories, definitions, and instructions to the extent that they seek to impose obligations beyond those required or authorized by the Federal Trade Commission Rules of Practice or any applicable order or rule of this court. Complaint Counsel's responses will comply with the Commission's Rules of Practice for Adjudicative Proceedings.
- C. Complaint Counsel object to the Interrogatories to the extent that they seek information protected from disclosure by privilege, including, but not limited to: the work product doctrine; government deliberative process privilege; investigative files privilege; government informant privilege; or common interest privilege. The inadvertent disclosure of any privileged information shall not constitute a waiver of the applicable privilege.
- D. Complaint Counsel object to the Interrogatories to the extent they are overly broad, vague, ambiguous, unduly burdensome, oppressive, and are not reasonably calculated to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of Respondent.
- E. Complaint Counsel object to the Interrogatories as overly broad, unduly burdensome and oppressive to the extent that they seek information that can be ascertained from sources that are more convenient, less burdensome, or less expensive for Respondent than for Complaint Counsel, or where the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served.
- F. Complaint Counsel object to the Interrogatories as overly broad, unduly burdensome and oppressive to the extent that they ask Complaint Counsel to disclose information that is

already in Respondent's possession or control, or is a matter of public record. Complaint Counsel will not undertake to catalogue and organize these materials for Respondent.

- G. Complaint Counsel object to Respondent's Interrogatories as overly burdensome and premature to the extent they seek information that relate to topics that may be the subject of expert testimony prior to the dates for expert discovery prescribed by the December 5, 2019, Scheduling Order.
- H. Complaint Counsel object to the Interrogatories as unduly burdensome to the extent that, as framed, they purport to obligate Complaint Counsel to conduct an extensive and complete investigation of detailed facts within the thirty (30) days allotted for its responses and objections when fact discovery is ongoing. Complaint Counsel's investigation of the facts relating to this case, formal discovery, and preparation for trial are ongoing. Complaint Counsel reserve the right to amend or supplement these objections and responses as necessary.
- I. Complaint Counsel reserve all of its evidentiary objections or other objections to the introduction or use of any response herein at the hearing in this action, and does not, by any response to any interrogatory, waive any objection to that interrogatory, stated or unstated.
- J. The failure of Complaint Counsel to object to any specific interrogatory on a particular ground is not a waiver of the right to object on any additional ground(s). Complaint Counsel reserve the right to amend or supplement the objections and responses to these interrogatories consistent with further investigation and discovery.
- K. Complaint Counsel's responses to the Interrogatories should not be construed as: (1) an admission that the information called for by an interrogatory is relevant; (2) a waiver of

the general or specific objections asserted herein; or (3) an agreement that requests for similar information will be treated in a similar manner. Complaint Counsel specifically reserve: all objections as to the competency, relevance and admissibility of the information provided; all objections as to burden, vagueness, unintelligibility, overbreadth, and ambiguity; and all rights to object to the use of any information in any proceeding.

- L. Complaint Counsel respond to these Interrogatories as they interpret and understand them. If Respondent subsequently asserts an interpretation of any interrogatory that differs from Complaint Counsel's understanding, Complaint Counsel reserve the right to amend, modify, supplement, clarify, correct, withdraw or further explain their objections and responses herein.

OBJECTIONS TO SPECIFIC DEFINITIONS

1. Complaint Counsel object to the definition of "Customer" as overly broad and unduly burdensome to the extent it includes Persons that purchased services from providers of "data colocation services" other than Respondent.
2. Complaint Counsel object to the definition of "Potential Customer" as vague, ambiguous, overly broad, and unduly burdensome because it encompasses any person who "actively considered" purchasing "data colocation services," including from providers of such services other than Respondent.

SPECIFIC OBJECTIONS AND RESPONSES

Subject to the foregoing, Complaint Counsel provide the following responses and objections to Respondent's Interrogatories:

Request No. 1: Describe in Detail each category of Personal Information or Personal Data that Complaint Counsel contends that RagingWire collects from individuals. For each category, your response should include a statement of the basis for Complaint Counsel's contention that RagingWire collects such information, including identification of any document referring to or reflecting such collection.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to this interrogatory as overly broad, unduly burdensome and oppressive because it asks Complaint Counsel to provide information that is already in Respondent's possession or control, or is a matter of public record. Complaint Counsel will not undertake to catalogue and organize these materials for Respondent. Complaint Counsel also object to this interrogatory to the extent it seeks information that is protected by the work product doctrine, government deliberative process privilege, government informant privilege, or investigative files privilege. Complaint Counsel also object to this interrogatory as premature because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2). Subject to and without waiving any General or Specific objection, Complaint Counsel contend that Respondent collects Personal Information or Personal Data from individuals, and direct Respondent to its response to Complaint Counsel's Second Set of Interrogatories, and to RagingWire's privacy policy and Privacy Shield policy, available at ragingwire.com.

Request No. 2: Does Complaint Counsel contend that RagingWire processes Personal Information or Personal Data? If so, your response should include a statement of the basis for Complaint Counsel's contention that RagingWire processes such information, including identification of any document referring to or reflecting such processing.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to this interrogatory as overly broad, unduly burdensome and oppressive in that it asks Complaint

Counsel to provide information that is already in Respondent's possession or control, or is a matter of public record. Complaint Counsel will not undertake to catalogue and organize these materials for Respondent. Complaint Counsel also object to this interrogatory to the extent it seeks information that is protected by the work product doctrine, government deliberative process privilege, government informant privilege, or investigative files privilege. Complaint Counsel further object to this interrogatory as premature to the extent it seeks information that may be the subject of expert testimony prior to the time prescribed for expert discovery in the Court's December 5, 2019 Scheduling Order. Complaint Counsel also object to this interrogatory as premature because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2). Subject to and without waiving any General or Specific objection, Complaint Counsel contend that RagingWire processes Personal Information or Personal Data, and direct Respondent to its response to Complaint Counsel's Second Set of Interrogatories and to RagingWire's Privacy Shield policy, available at www.ragingwire.com.

Request No. 3: Describe in Detail the basis for your allegation in paragraph 4 of the Complaint that RagingWire has made deceptive statements in its marketing materials and, if different, the basis for your allegation in paragraph 21 of the Complaint that "RagingWire has disseminated or caused to be disseminated sales materials containing representations that RagingWire was a Participant in Privacy Shield and/or the Safe Harbor Framework after it was no longer participating in the frameworks." Your answer should include identification of each marketing or sales material in which a deceptive statement allegedly was made, and for each such material, identify each allegedly deceptive statement in such marketing material, each Customer or Potential Customer to whom the material was disseminated, the Person that disseminated the information, and the means by which the material was disseminated.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to this interrogatory as irrelevant and not reasonably calculated to lead to the discovery of admissible

evidence. Complaint Counsel also object to this interrogatory to the extent it seeks information protected by the investigative files privilege, deliberative process privilege, and attorney work product doctrine. Complaint Counsel further object to this interrogatory because Respondent has refused to provide responsive information to Complaint Counsel in its response to Complaint Counsel's Second Set of Interrogatories. Complaint Counsel further object to this interrogatory as overly broad, unduly burdensome and oppressive in that it asks Complaint Counsel to provide information that is already in Respondent's possession or control. Complaint Counsel will not undertake to catalogue and organize these materials for Respondent. Complaint Counsel further note that this interrogatory contains multiple separate and discrete subparts.

Request No. 4: *Describe in Detail the basis for your allegation in paragraph 11 of the Complaint that “[o]ne way to meet this requirement [‘Accountability for Onward Transfer’] is to use an agent that is also Privacy Shield Compliant,” and identify any other way(s) to meet such requirement.*

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to this interrogatory as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Complaint Counsel also object to this interrogatory to the extent it seeks information protected by the investigative files privilege, deliberative process privilege, and attorney work product doctrine. Complaint Counsel further object to this interrogatory as overly broad, unduly burdensome and oppressive because it seeks to impose duties and obligations beyond those required by the FTC's Rules of Practice for Adjudicatory Procedures by seeking purely legal conclusions. Complaint Counsel further note that this interrogatory contains multiple separate and discrete subparts.

Request No. 5: Identify each Customer that you contend transferred or wanted to transfer Personal Data and/or Personal Information from the European Economic Area to RagingWire in the United States, and, for each such Customer, Describe in Detail the nature of the relevant data or information and the basis for your contention that the Customer transferred or wanted to transfer the data or information to RagingWire in the United States. (See Complaint paragraph 16.)

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to the phrases “transferred or wanted to transfer” and “the nature of the relevant data or information” as vague and ambiguous. Complaint Counsel also object to this interrogatory as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information about Customers of colocation service providers other than RagingWire. Complaint Counsel also object to this interrogatory to the extent it seeks information protected by the investigative files privilege, deliberative process privilege, and attorney work product doctrine. Complaint Counsel also object to this interrogatory as overly broad, unduly burdensome and oppressive to the extent it asks Complaint Counsel to undertake investigation, discovery, and analysis on behalf of Respondent. Complaint Counsel further object to this interrogatory as unduly burdensome to the extent it purports to obligate Complaint Counsel to conduct an extensive and complete investigation of detailed facts within the thirty (30) days allotted for responses and objections when fact discovery is ongoing, and Complaint Counsel’s investigation of the facts relating to this case, formal discovery, and preparation for trial are ongoing. Complaint Counsel also object to this interrogatory as premature because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2). Complaint Counsel further note that this interrogatory contains multiple separate and discrete subparts. Subject to and without waiving any General or Specific objection, Complaint

Counsel will supplement its answer, as appropriate, in the time frame allowed for by Rule 3.35(b)(2).

***Request No. 6:** Identify each Customer or Potential Customer that has indicated, orally or in writing, that Privacy Shield compliance was or is material to its decision regarding contracting for colocation services.*

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to the terms “indicated,” “Privacy Shield compliance,” and “material” as vague and ambiguous. Complaint Counsel also object to this interrogatory as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information about Customers or Potential Customers of colocation service providers other than RagingWire. Complaint Counsel also object to this interrogatory as overly broad, unduly burdensome and oppressive to the extent it asks Complaint Counsel to undertake investigation, discovery, and analysis on behalf of Respondent. Complaint Counsel also object to this interrogatory to the extent it seeks information protected by the investigative files privilege, deliberative process privilege, and attorney work product doctrine. Complaint Counsel further object to this interrogatory as unduly burdensome to the extent it purports to obligate Complaint Counsel to conduct an extensive and complete investigation of detailed facts within the thirty (30) days allotted for responses and objections when fact discovery is ongoing, and Complaint Counsel’s investigation of the facts relating to this case, formal discovery, and preparation for trial are ongoing. Subject to and without waiving any General or Specific objection, Complaint Counsel directs Respondent to its Preliminary Witness List, dated December 20, 2019, and RDC_FTC_0002546.

***Request No. 7:** Identify each Customer or Potential Customer that has indicated, orally or in writing, that Safe Harbor compliance was or is material to its decision regarding contracting for colocation services.*

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to the terms “Safe Harbor compliance” and “material” as vague and ambiguous. Complaint Counsel also object to this interrogatory as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information about Customers or Potential Customers of colocation service providers other than RagingWire. Complaint Counsel also object to this interrogatory as overly broad, unduly burdensome and oppressive to the extent it asks Complaint Counsel to undertake investigation, discovery, and analysis on behalf of Respondent. Complaint Counsel also object to this interrogatory to the extent it seeks information protected by the investigative files privilege, deliberative process privilege, and attorney work product doctrine. Complaint Counsel further object to this interrogatory as unduly burdensome to the extent it purports to obligate Complaint Counsel to conduct an extensive and complete investigation of detailed facts within the thirty (30) days allotted for responses and objections when fact discovery is ongoing, and Complaint Counsel’s investigation of the facts relating to this case, formal discovery, and preparation for trial are ongoing. Subject to and without waiving any General or Specific objection, Complaint Counsel directs Respondent to RDC_FTC_0002546.

***Request No. 8:** Identify each Customer or Potential Customer that has indicated, orally or in writing, that GDPR compliance was or is material to its decision regarding contracting for colocation services.*

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to the terms “GDPR compliance” and “material” as vague and ambiguous. Complaint Counsel also object to

this interrogatory as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information about Customers or Potential Customers of colocation service providers other than RagingWire. Complaint Counsel also object to this interrogatory as overly broad, unduly burdensome and oppressive to the extent it asks Complaint Counsel to undertake investigation, discovery, and analysis on behalf of Respondent. Complaint Counsel further object to this interrogatory as unduly burdensome to the extent it purports to obligate Complaint Counsel to conduct an extensive and complete investigation of detailed facts within the thirty (30) days allotted for responses and objections when fact discovery is ongoing, and Complaint Counsel's investigation of the facts relating to this case, formal discovery, and preparation for trial are ongoing. Complaint Counsel further object to this interrogatory to the extent it seeks information protected by the investigative files privilege, deliberative process privilege, and attorney work product doctrine. Subject to and without waiving any General or Specific objection, Complaint Counsel directs Respondent to Complaint Counsel's Preliminary Witness List, dated December 20, 2019.

Request No. 9: Identify each Person, other than Respondent, that markets or sells U.S. colocation services.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to this interrogatory as overly broad, unduly burdensome and oppressive in that it asks Complaint Counsel to provide information that is already in Respondent's possession or control, or is a matter of public record. Complaint Counsel will not undertake to catalogue and organize these materials for Respondent. Complaint Counsel also object to the interrogatory because it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Complaint Counsel further object to this interrogatory to the extent it seeks information that is protected by the work product doctrine, government deliberative process privilege, government informant privilege, or investigative files privilege. Subject to and without waiving any General or Specific objection, Complaint Counsel provide the following list of entities that may have provided colocation services in the United States:

- CyrusOne
- Cyxtera
- Flexential
- Iron Mountain
- QTS Realty Trust and
- Viawest

Request No. 10: *Identify each Person, other than Respondent, that you contacted concerning your investigation of RagingWire or this adjudicative proceeding and describe in detail any related Communications.*

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to this interrogatory to the extent to the extent it seeks materials protected from discovery by the deliberative process privilege, investigative files privilege, and the work product doctrine. Complaint Counsel further object to this interrogatory as overly broad and unduly burdensome because any underlying relevant information can be obtained directly by Respondent through less burdensome means. Complaint Counsel also object to this interrogatory as overly broad and unduly burdensome to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings. Complaint Counsel further object to this interrogatory as premature and unduly burdensome to the extent it seeks information that may be the subject of expert testimony prior to the time prescribed for expert discovery in the Court's December 5, 2019 Scheduling Order. Complaint Counsel also

[REDACTED]

Request No. 11: Describe in Detail the circumstances that led you to obtain any declaration or affidavit from any Person in connection with your investigation of RagingWire and this proceeding, including, but not limited to, whether that Person was under investigation by the FTC or another U.S. government agency.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to the term “circumstances” as vague and ambiguous. Complaint Counsel also object to this interrogatory as overly broad and unduly burdensome to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission’s Rules of Practice for Adjudicative Proceedings. Complaint Counsel further object to the interrogatory to the extent that it seeks materials protected from discovery by the deliberative process privilege, investigative files privilege, and the work product doctrine. Subject to and without waiving any General or Specific objection, Complaint Counsel obtained the declarations provided to Respondent solely in furtherance of Complaint Counsel’s efforts to litigate and/or settle this matter.

Request No. 12: If you contend that any representation by RagingWire relating to Privacy Shield set forth in RagingWire’s online privacy policy, website or sales materials was material to Customers or Potential Customers, identify each such representation, the specific Customers or Potential Customers that saw such representation, and Describe in Detail the basis for your contention the such representation was material to those Customers or Potential Customers.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to the interrogatory as unduly burdensome to the extent it seeks to compel Complaint Counsel to undertake investigation, discovery, and analysis on behalf of Respondent. Complaint Counsel also object to this interrogatory as unduly burdensome and oppressive to the extent it asks Complaint Counsel to provide information that is already in Respondent's possession or control. Complaint Counsel will not undertake to catalogue and organize these materials for Respondent. Complaint Counsel also object to this interrogatory as premature and unduly burdensome because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2). Complaint Counsel further note that this interrogatory contains multiple separate and discrete subparts. Subject to and without waiving any General or Specific objection, Complaint Counsel direct Respondent to Paragraphs 20 and 21 in the Complaint and RagingWire documents produced in response to Complaint Counsel's First Set of Document Requests. Complaint Counsel will supplement its answer, as appropriate, in the time frame allowed for by Rule 3.35(b)(2).

Request No. 13: *If you contend that RagingWire's participation in or marketing of its participation in Safe Harbor is relevant to the current adjudicative proceeding, Describe in Detail the basis for your contention.*

RESPONSE:

Complaint Counsel object to this interrogatory as premature because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2). Subject to and without waiving any General or Specific Objection, Complaint Counsel contend that RagingWire's participation in or marketing of its participation in Safe Harbor is relevant to the current adjudicative proceedings, in part for the reasons discussed in

Complaint Counsel's Motion to Compel, dated January 27, 2020. Complaint Counsel will supplement its answer, as appropriate, in the time frame allowed for by Rule 3.35(b)(2).

Request No. 14: *If you contend that RagingWire's compliance with transfer requirements or marketing of its compliance with transfer requirements related to the GDPR is relevant to the current adjudicative proceeding, Describe in Detail the basis for your contention.*

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to this interrogatory as vague and ambiguous. Complaint Counsel also object to this interrogatory as premature because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2). Subject to and without waiving any General or Specific objection, Complaint Counsel contend that GDPR is relevant to this matter, in part for the reasons discussed in Complaint Counsel's Motion to Compel, dated January 27, 2020, and Complaint Counsel's Motion for Reconsideration, dated February 11, 2020. Complaint Counsel will supplement its answer, as appropriate, in the time frame allowed for by Rule 3.35(b)(2).

Request No. 15: *If you contend that you are entitled to rely on a presumption of materiality during the adjudicative proceeding, Describe in Detail the basis for your contention.*

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to this interrogatory as premature because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2). Subject to and without waiving any General or Specific objection, Complaint Counsel contend that it is entitled to rely on a presumption of materiality, in part for the reasons discussed in Complaint Counsel's Opposition to Respondent's Motion to Dismiss and the Commission's Order Denying Respondent's Motion

to Dismiss. Complaint Counsel will supplement its answer, as appropriate, in the time frame allowed for by Rule 3.35(b)(2).

Request No. 16: *If you contend that providing colocation services constitutes processing Personal Data or Personal Information, Describe in Detail the basis for your contention.*

RESPONSE:

In addition to the General Objections, Complaint Counsel object to the interrogatory on the grounds that it is vague and ambiguous as to “colocation services” and “processing.” Complaint Counsel also object to this interrogatory as irrelevant to the extent it seeks information not reasonably calculated to lead to admissible evidence. Complaint Counsel also object to this interrogatory as premature because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2). Complaint Counsel also object to this interrogatory as premature to the extent it seeks information that may be the subject of expert testimony prior to the time prescribed for expert discovery in the Court’s December 5, 2019 Scheduling Order. Subject to and without waiving any General or Specific objection, see Complaint Counsel’s response to Interrogatory No. 2 above. Complaint Counsel will supplement its answer, as appropriate, in the time frame allowed for in Rule 3.35(b)(2).

Dated: February 12, 2019

Respectfully submitted,

/s/ Linda Kopp
Linda Holleran Kopp (202) 326-226
Robin Wetherill (202) 326-2220
Division of Privacy and Identity Protection
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Mailstop CC-8232
Washington, DC 20580

Exhibit 2

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
RagingWire Data Centers, Inc.,)	DOCKET NO. 9386
a corporation,)	
)	
Respondent)	
)	

**COMPLAINT COUNSEL’S OBJECTIONS AND RESPONSES TO
RAGINGWIRE DATA CENTERS, INC.’S FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 3.37 of the Federal Trade Commission’s (“FTC”) Rules of Practice, Complaint Counsel submit these Objections and Responses to Respondent RagingWire Data Centers, Inc.’s (“RagingWire’s”) First Set of Requests for Production of Documents (“Requests”). The provision of a response to any request shall not constitute a waiver of any applicable objection, privilege, or other right.

GENERAL OBJECTIONS

The following General Objections apply to each request for documents in Respondent’s Requests and are hereby incorporated by reference into each of the following responses. The assertion of the same, similar, or additional objections or the provision of partial answers in response to an individual request does not waive any of Complaint Counsel’s General Objections as to the other requests.

- A. Complaint Counsel object to the Requests to the extent the Requests are directed to the Federal Trade Commission rather than to Complaint Counsel.

- B. Complaint Counsel object to the Requests, definitions, and instructions to the extent that they seek to impose duties and obligations beyond those required or authorized by the Federal Trade Commission Rules of Practice or any applicable order or rule of this court. Complaint Counsel's responses will comply with the Commission's Rules of Practice for Adjudicative Proceedings.
- C. Complaint Counsel object to Respondent's Requests to the extent the requests seek information protected by the work product doctrine, the government deliberative process privilege, the government informant privilege, the investigative files privilege, or common interest privilege. Complaint Counsel does not, by any response to any request, waive or partially waive any applicable privilege or work product claim. The inadvertent disclosure of any privileged information shall not constitute a waiver of the applicable privilege or work product doctrine.
- D. Complaint Counsel object to the Requests to the extent that they are overly broad, vague, ambiguous, unduly burdensome, oppressive, or seek documents not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of Respondent.
- E. Complaint Counsel object to the Requests as unduly burdensome and oppressive to the extent they ask Complaint Counsel to produce documents that are already in Respondent's possession or control, in the public record, or can otherwise be ascertained from sources that are more convenient, less burdensome, or less expensive for Respondent than for Complaint Counsel. Complaint Counsel will not produce documents that it previously provided to Respondent.

- F. Complaint Counsel object to the Requests to the extent that they seek materials “generated and transmitted . . .between complaint counsel and non-testifying FTC Staff,” as such materials are outside the scope of permissible discovery in this matter pursuant to Rule 3.31(c)(2) of the Rules of Practice.
- G. The failure of Complaint Counsel to object to any specific request on a particular ground is not a waiver of the right to object on any additional ground(s). Complaint Counsel reserve the right to amend or supplement the objections and responses to these requests consistent with further investigation and discovery.
- H. Complaint Counsel’s responses to the Requests should not be construed as: (1) an admission that the documents called for by a request is relevant; (2) a waiver of the general or specific objections asserted herein; or (3) an agreement that requests for similar documents will be treated in a similar manner. Complaint Counsel specifically reserve: all objections as to the competency, relevance and admissibility of the documents provided; all objections as to burden, vagueness, unintelligibility, overbreadth, and ambiguity; and all rights to object to the use of any document in any proceeding.
- I. Complaint Counsel respond to these Requests as they interpret and understand them. If RagingWire subsequently asserts an interpretation of any request that differs from Complaint Counsel’s understanding, Complaint Counsel reserves the right to amend, modify, supplement, clarify, correct, withdraw or further explain their objections and responses herein.

OBJECTIONS TO SPECIFIC DEFINITIONS

1. Complaint Counsel object to the definition of “Customer” as overly broad and unduly burdensome to the extent it includes Persons that purchased services from providers of “data colocation services” other than Respondent.
2. Complaint Counsel object to the definition of “Potential Customer” as vague, ambiguous, overly broad, and unduly burdensome because it encompasses any person who “actively considered” purchasing “data colocation services,” including from providers of such services other than Respondent.

SPECIFIC OBJECTIONS AND RESPONSES

Subject to the foregoing, Complaint Counsel provide the following responses to

Respondent’s Requests:

***Request No. 1:** All Documents containing or reflecting Communications between the FTC and any Person, including but not limited to U.S. government entities other than the FTC, including the U.S. Department of Commerce; other government authorities; European Union authorities; Customers; Potential Customers; other providers of data colocation services; and all other non-party Persons, in connection with your investigation of RagingWire or this adjudicative proceeding, including all draft, final, and executed letters, declarations, affidavits, statements, or any other form of communications between the FTC and any Person relating to RagingWire, the investigation, or this proceeding.*

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to this request to the extent it seeks documents that are protected by the work product doctrine, government deliberative process privilege, government informant privilege, or investigative files privilege. Complaint Counsel also object to this request to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission’s Rules of Practice for Adjudicative Proceedings. Subject to and without waiving any General or Specific objections, Complaint Counsel will produce responsive, non-privileged, documents.

Request No. 2: All documents that describe, summarize or analyze RagingWire's business.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to this request because "business" in this context is vague and ambiguous. Complaint Counsel also object to this request because it seeks materials protected by the deliberative process privilege, investigative files privilege, and the work product doctrine. Complaint Counsel further object to this request as overly broad and unduly burdensome because any underlying relevant information contained in the requested documents can be obtained by Respondent through less burdensome means. Complaint Counsel also object to this request to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings. Subject to and without waiving any General and Specific objections, Complaint Counsel will produce responsive, non-privileged documents.

Request No. 3: All documents that describe, summarize, or analyze the applicability of European Union data protection laws and regulations to U.S. colocation services or RagingWire's business.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to this request to the extent it seeks materials protected by the deliberative process privilege, investigative files privilege, and the work product doctrine. Complaint Counsel further object to this request as overly broad and unduly burdensome because any underlying relevant information contained in the requested documents can be obtained directly by Respondent through less burdensome means. Complaint Counsel also object to this request as overly broad and unduly burdensome to the extent it seeks to impose duties and obligations upon Complaint Counsel

beyond the Commission's Rules of Practice for Adjudicative Proceedings. Complaint Counsel further object to this request as premature to the extent it seeks information or documents that may be the subject of expert testimony prior to the time prescribed for expert discovery in the Court's December 5, 2019 Scheduling Order. Subject to and without waiving any General or Specific objections, Complaint Counsel will produce responsive, non-privileged documents.

Request No. 4: *All documents that describe, summarize or analyze the materiality, or lack thereof, of Privacy Shield compliance to Customers or Potential Customers.*

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to this request as vague and ambiguous because "materiality" and "Privacy Shield compliance" are undefined. Complaint Counsel also object to this request to the extent it seeks materials protected by the deliberative process privilege, investigative files privilege, and the work product doctrine. Complaint Counsel further object to this request as overly broad and unduly burdensome because any underlying relevant information contained in the requested documents can be obtained directly by Respondent through less burdensome means. Complaint Counsel also object to this request as overly broad and unduly burdensome to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings. Complaint Counsel further object to this interrogatory as premature to the extent it seeks information and documents that may be the subject of expert testimony prior to the time prescribed for expert discovery in the Court's December 5, 2019 Scheduling Order. Subject to and without waiving any General or Specific objections, Complaint Counsel will produce responsive, non-privileged documents.

Request No. 5: *All documents that describe, summarize, or analyze whether providing colocation services constitutes processing Personal Data or Personal Information.*

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to this request as vague and ambiguous because “colocation services” and “processing” are undefined. Complaint Counsel also object to this request to the extent it seeks materials protected by the deliberative process privilege, investigative files privilege, and the work product doctrine. Complaint Counsel further object to this request as overly broad and unduly burdensome because any underlying relevant information contained in the requested documents can be obtained directly by Respondent through less burdensome means. Complaint Counsel also object to this request as overly broad and unduly burdensome to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission’s Rules of Practice for Adjudicative Proceedings. Complaint Counsel further object to this interrogatory as premature and unduly burdensome to the extent it seeks information that may be the subject of expert testimony prior to the time prescribed for expert discovery in the Court’s December 5, 2019 Scheduling Order. Subject to and without waiving any General or Specific objections, Complaint Counsel will produce responsive, non-privileged documents.

Request No. 6: All documents regarding any Customer’s or Potential Customer’s decision to use or not to use RagingWire’s services based on RagingWire’s Privacy Shield certification.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to this request to the extent it seeks materials protected by the deliberative process privilege, investigative files privilege, and the work product doctrine. Complaint Counsel further object to this request as overly broad and unduly burdensome because any underlying relevant information contained in the requested documents can be obtained directly by Respondent through less

burdensome means. Complaint Counsel also object to this request as overly broad and unduly burdensome to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings. Subject to and without waiving any General or Specific objections, Complaint Counsel will produce responsive, non-privileged documents.

Request No. 7: All drafts or notes of any declaration or affidavit relating to your investigation of RagingWire or this adjudicative proceeding.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to this request as seeking materials covered by the deliberative process privilege, the investigative files privilege, the government informant's privilege, and the work product doctrine. Complaint Counsel further object to this request as overly broad and unduly burdensome because any underlying relevant information contained in the requested documents can be obtained directly by Respondent through less burdensome means. Complaint Counsel further object to this request as overly broad, impermissibly vague and ambiguous as to "notes of any declaration or affidavit," and unduly burdensome to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings. Subject to and without waiving any General or Specific objections, Complaint Counsel will produce responsive, non-privileged documents.

Request No. 8: All documents, from any time period, regarding any alleged lapses in Safe Harbor certification by RagingWire during the periods August 8, 2007 to September 24, 2008, and June 15, 2012 to November 1, 2012.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to this request as overly broad and unduly burdensome for seeking documents “from any time period” when the request specifically refers to the periods August 8, 2007 to September 24, 2008, and June 15, 2012 to November 1, 2012. Complaint Counsel also object to this request as seeking materials covered by the deliberative process privilege, the investigative files privilege, the government informant’s privilege, and the work product doctrine. Complaint Counsel further object to this request as unduly burdensome and unreasonably cumulative to the extent it seeks documents already produced by Complaint Counsel. Subject to and without waiving the General or Specific objections, Complaint Counsel directs Respondent to Complaint Counsel’s Initial Disclosures.

Request No. 9: *All documents obtained by you other than from RagingWire regarding RagingWire, RagingWire’s business, Customers, Potential Customers, colocation services or colocation service providers, including documents from any public source.*

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to this request as vague and ambiguous as to “RagingWire’s business,” “colocation services,” and “colocation service providers.” Complaint Counsel also object to this request as overly broad, unduly burdensome, unreasonably cumulative and duplicative, and not reasonably calculated to lead to admissible evidence. Complaint Counsel further object to this request to the extent it seeks materials protected by the deliberative process privilege, government informant’s privilege, investigative files privilege, and the work product doctrine. Complaint Counsel further object to this request as overly broad and unduly burdensome to the extent it requests materials that can be obtained directly by Respondent through less burdensome means. Complaint Counsel also object to this request as overly broad and unduly burdensome to the extent it seeks

to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings. Complaint Counsel further note that this request contains multiple separate and discrete subparts. Subject to and without waiving any General or Specific objections, Complaint Counsel will produce responsive, non-privileged documents relating to RagingWire or RagingWire's business.

Request No. 10: *All documents received by you from third parties as part of your investigation of RagingWire.*

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically object to this request as overbroad, unduly burdensome, and unreasonably duplicative or cumulative. Complaint Counsel also object to this request as seeking materials protected by the deliberative process privilege, the investigative files privilege, and the work product doctrine. Subject to and without waiving any General or Specific objection, Complaint Counsel directs Respondent to Complaint Counsel's Initial Disclosures.

Dated: February 12, 2019

Respectfully submitted,

/s/ Linda Kopp
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