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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

AR 427

In the Matter of a Rulemaking to Amend)
OAR 860-021-0200, 860-034-0140,)
860-036-0040, and 860-037-0035 relating) PROTECTIVE ORDER
to a Customer's or Applicant's Ability to)
Establish Credit for Residential Utility)
Service.)

DISPOSITION: STANDARD PROTECTIVE ORDER ISSUED

On February 8, 2002, Qwest Corporation (Qwest) filed a Motion for a Protective Order. Qwest seeks protection of information relating to the percentage of customers or applicants that currently pay a deposit, the percentage of customers with delinquent accounts that did not pay a deposit, the amount of annual credit losses, and Qwest's credit goals and objectives. Qwest states that the release of confidential and proprietary information could provide advantages to its competitors.

Although Qwest's motion is somewhat unique, the Commission previously has issued a protective order in an administrative rules docket.¹ In *Telecommunications Service Standards*, the participants wished to introduce testimony that was previously submitted in a similar matter pending before the Arizona Corporation Commission (ACC). As the testimony had been submitted in Arizona docket under a protective order issued by the ACC, the participants asked for the Oregon Commission to also issue a protective order.

In this rulemaking docket, Qwest is concerned that unprotected disclosure of the information could benefit Qwest's competitors. Verizon has expressed similar concerns about disclosing its uncollectible rate and number of late payments charges without some protection. No rulemaking participant has objected to the issuance of a protective order. All agree that access to the designated information is necessary to determine the need for any rulemaking.

¹ *In the Matter of the Amendment of OAR 860-023-0055 and OAR 860-034-0390, Telecommunications Service Standards, Phase II*, Docket AR 324, Order No. 97-098, issued March 10, 1997.

I find that good cause exists to issue a Standard Protective Order, attached as Appendix A. OAR 860-012-0035(1)(k). Because this is a rulemaking proceeding, I have revised the order to replace the term “party” with “participant.” The purpose of this protective order is to establish a process under which confidential information, as that term is defined in ORCP 36(C)(7), may be disclosed and used by participants in this proceeding. If a participant disagrees with the designation of information as confidential, there is a process by which an Administrative Law Judge (ALJ) or the Commission may resolve the dispute.

Under the terms of this order, a participant may designate as confidential any information it believes falls within the scope of ORCP 36(C)(7). Once designated as confidential, the information may be disclosed only to “qualified persons” associated with participants that have agreed to be bound by the terms of the Protective Order by signing the signatory page set forth in Appendix B.

Paragraph 3 of the Protective Order establishes two categories of “qualified persons.” The first category, set forth in subsections (a) through (d), includes the authors of the confidential material, the Commission or its Staff, and counsel of record for a participant or persons directly employed by counsel. This group of persons is entitled to review confidential information without the need to give notice to the participant desiring confidentiality or execute an additional statement agreeing to be bound by the terms of the order. As noted above, however, a participant must sign the signatory page before anyone associated with the participant, including its counsel, may review the confidential material.

Subsections (e) through (g) of paragraph 3 set forth the second category of qualified persons. These include unaffiliated participant experts, persons approved by the participant desiring confidentiality, and persons designated as qualified by Commission order. As a prerequisite to gaining access to confidential information, this second category of qualified persons must execute a consent to be bound. Prior to disclosing confidential information to an unaffiliated expert, the participant seeking to disclose the information must also notify the participant desiring confidentiality. *See* paragraphs 7 and 8.

Paragraph 9 provides the procedures for when a participant desires to disclose information to a person who is not qualified under paragraph 3. In such circumstances, the participant must request permission from the participant desiring confidentiality and provide certain information, including the identity of the unqualified person and the specific reasons why disclosure is necessary. If the participant desiring confidentiality fails or refuses to grant the request, the participant seeking disclosure may file a motion to qualify the person by Commission order.

To assist the Commission and participants in determining whether an individual is entitled to review confidential information, counsel for each participant shall submit a list of “qualified persons” associated with that participant. Counsel shall submit the list of names at the time it files with the Commission a copy of the signed “consent to be bound.” A copy of the list

shall be served on all participants to the case. If the participant desiring confidentiality disagrees with the designation of any individual as a qualified person, the participant shall contact the designating participant and attempt to resolve the dispute on an informal basis. If the participants are unable to resolve the dispute, the participant desiring confidentiality may file a motion seeking exclusion of the individual from the list of qualified persons.

All persons who are given access to confidential information have the duty to monitor their own conduct to ensure their compliance with the Protective Order. Such persons shall not use or disclose the information for any purpose other than the purposes of preparation for and conduct of this proceeding, and shall take all reasonable precautions to keep the confidential information secure.

ORDER

IT IS ORDERED that:

- (1) The Standard Protective Order, attached as Appendix A, shall govern the disclosure of confidential information in this case.
- (2) Each participant shall submit a list of “qualified persons” associated at the time it files with the Commission a copy of the signatory page set forth in Appendix B.

Made, entered, and effective March 12, 2002, pursuant to OAR 860-012-0035(1)(k).

Michael Grant
Administrative Law Judge

This order may be appealed to the Commission pursuant to OAR 860-014-0091. The appeal should be in the form of a motion. *See* OAR 860-013-0031.

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APPENDIX A

STANDARD PROTECTIVE ORDER

Scope of this Order-

1. This order governs the acquisition and use of “confidential information” in this proceeding.

Definitions -

2. “Confidential Information” is information that falls within the scope of ORCP 36(C)(7) (“a trade secret or other confidential research, development, or commercial information”).

3. A “qualified person” is an individual who is:

- a. The author(s), addressee(s), or originator(s) of the confidential information;
- b. The Commissioner(s) or the Commission staff;
- c. Counsel of record for a participant;
- d. A person employed directly by counsel of record;
- e. An unaffiliated expert retained by a participant;
- f. A person approved by the participant desiring confidentiality (pursuant to paragraph 9); or
- g. A participant designated a qualified person by order of the Commission (pursuant to paragraph 9).

Designation of Confidential Information-

4. A participant providing confidential information shall inform other participants that the material has been designated confidential by placing the following legend on the information:

CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER

To the extent practicable, the participant shall designate only the portions of the document that fall within ORCP 36(C)(7).

5. A participant may designate as confidential any information previously provided by giving written notice to the other participants. Participants in possession of newly designated confidential information shall, when feasible, ensure that all copies of the information bear the above legend to the extent requested by the participant desiring confidentiality.

Disclosure of Confidential Information-

6. Confidential information shall not be disclosed to any person other than a “qualified person,” as defined in paragraph 3. When feasible, confidential information shall be delivered to counsel. In the alternative, confidential information may be made available for inspection and review by qualified persons in a place and time agreeable to the participants or as directed by the presiding officer.

7. Before reviewing confidential information, a person qualified under paragraphs 3(e) through 3(g) must:

- a. Read a copy of this Protective Order;
- b. Execute a statement acknowledging that the order has been read and agreeing, in return, for access to the information, to be bound by the terms of the order; and
- c. Date the statement.

Counsel shall, upon request, deliver a copy of the signed statement to the participant desiring confidentiality.

8. Prior to disclosing confidential information to an unaffiliated expert qualified under paragraph 3(e), the participant seeking to disclose the information must notify the participant desiring confidentiality, in writing, at least three business days prior to the intended disclosure. The notice shall state:

- a. The exact nature of the information to be disclosed;

- b. The identity of the unaffiliated expert; and
- c. Any past, present, or anticipated future affiliation between the expert and any participant to the proceeding.

9. When a participant desires to disclose confidential information to an unqualified person, the participant must, in writing, request permission from the participant desiring confidentiality. The request must state:

- a. The exact nature of the information to be disclosed;
- b. The identity of the person(s) to whom it would be disclosed;
- c. The nature of any past, present, or anticipated future affiliation between the person(s) and any participant to this proceeding; and
- d. The specific reasons why disclosure is necessary.

If the participant desiring confidentiality agrees to disclosure, the person to receive the information will become qualified under paragraph 3(f) for the information identified in the request. If a participant requests permission to disclose confidential information to an unqualified person, and the participant desiring confidentiality fails to grant permission in writing within three business days, the participant requesting disclosure may move to qualify the person under paragraph 3(g). The motion must contain the information set forth in the original request. The information shall not be disclosed pending the presiding officer's ruling on the motion.

Preservation of Confidentiality-

10. All persons who are given access to any confidential information by reason of this order shall not use or disclose the confidential information for purposes of business or competition, or for any purpose other than the purposes of preparation for and conduct of this proceeding, and shall take all reasonable precautions to keep the confidential information secure.

With the exception of Commission staff, participants may not copy, microfilm, microfiche, or otherwise reproduce confidential information without the written consent of the providing participant.

Information Given to the Commission-

11. Confidential Information that is: (a) filed with the Commission or its staff; (b) made an exhibit; (c) incorporated into a transcript; or (d) incorporated into a pleading, brief, or other document, shall be separately bound and placed in a sealed envelope or other appropriate container. To the extent practicable, only the portions of a document that fall within ORCP 36(C)(7) shall be placed in the envelope container. The envelope/container shall bear the legend:

THIS ENVELOPE IS SEALED PURSUANT TO ORDER NO. _____ AND CONTAINS CONFIDENTIAL INFORMATION. THE INFORMATION MAY BE SHOWN ONLY TO QUALIFIED PERSONS AS DEFINED IN THE ORDER.

12. The Commission's Administrative Hearings Division shall store the confidential information in a locked cabinet dedicated to the storage of confidential information.

Duration of Protection-

13. The confidentiality of confidential information shall be preserved until the Commission, by order, terminates the protection conferred by this order.

Destruction After Proceeding-

14. Counsel of record may retain memoranda or pleadings containing confidential information to the extent reasonably necessary to maintain a file of this proceeding. The information retained may not be disclosed to any person. Any other person retaining confidential information must destroy or return it to the participant desiring confidentiality within 90 days after final resolution of this proceeding unless the participant desiring confidentiality consents, in writing, to retention of the confidential information. This paragraph does not apply to the Commission or its staff.

Appeal to the Presiding Officer-

15. If a participant disagrees with the designation of information as confidential, the participant shall contact the designating participant and attempt to resolve the dispute on an informal basis. If the participants are unable to resolve the dispute, the participant desiring to use the information may move for exclusion of the information from the protection conferred by this order. The motion shall:

- a. Specifically identify the contested information; and
- b. Assert that the information does not fall within ORCP 36(C)(7).

The participant resisting disclosure has the burden of showing that the challenged information falls within ORCP 36(C)(7). If the participant resisting disclosure does not respond to the motion within 10 days, the challenged information shall be removed from the protection of this order.

The information shall not be disclosed pending a ruling by the Commission or the presiding officer on the motion.

Additional Protection-

16. A participant desiring additional protection may move for any of the remedies set forth in ORCP 36(C). The motion shall state:

- a. The participants and persons involved;
- b. The exact nature of the information involved;
- c. The exact nature of the relief requested; and
- d. The specific reasons the requested relief is necessary.

The information need not be released and, if released, shall not be disclosed pending the Commission's ruling on the motion.

SIGNATORY PAGE

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Consent to be Bound-

This order governs the use of “confidential information” in this proceeding.

I have read this Order, including Appendix A, and agree to be bound by its terms.

Signature & Printed

Date

Participant

Signature & Printed

Date

Participant

Signature & Printed

Date

Participant

Signature & Printed

Date

Participant

Signature & Printed

Date

Participant