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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 731

In the Matter of the Investigation of)
Universal Service in the State of Oregon.)

ORDER

DISPOSITION: MOTION GRANTED IN PART

On October 29, 1997, Administrative Law Judge Lowell Bergen issued a Standard Protective Order, Order No. 97-418. On October 13, 1999, GTE Northwest, Inc. (GTENW) filed a motion to amend the Standard Protective Order and for partial relief from a filing requirement. No party filed an objection to either request.

Protective Order Amendments

GTENW requests that the Standard Protective Order be modified to clearly state that the scope of the order is limited to information that is confidential to a party to this proceeding. GTENW contends that the production and disclosure of information that is confidential to entities not involved in this proceeding (for example, GTENW's third party vendors) should be governed by a separate agreement. GTENW has a standard Agreement Regarding Disclosure and Use of Third Party Confidential Information it requires to be executed prior to producing information that is confidential to its third party vendors. In addition, GTENW proposes a few editorial language changes to the Standard Protective Order.

Paragraph 16 of the Standard Protective Order allows a person to move for additional protection. In general, the Commission does not favor protections beyond those established in the Standard Protective Order. However, additional protections are granted in individual cases when they are shown to be necessary. In this case, we are persuaded by GTENW's reasons for wanting to specifically limit the terms of the protective order to information that is confidential to parties to this proceeding. That part of the motion is granted, and the attached Modified Standard Protective Order is adopted. The revised language can be found in paragraphs 2 and 17 and is shown in bold print (note: no changes have been made to section headings, which were already in bold print). The additional editorial changes suggested by GTENW are not adopted. They make subtle although perhaps not inconsequential changes to the Standard Protective Order. One change commits the Commission to handling requests for information under

ORS Chapter 192 in a certain way. GTENW did not offer any support for its requested editorial changes. We have given considerable thought to the language in the Standard Protective Order, and we do not want to make any changes without adequate review of them and a showing that they are necessary in a particular proceeding.

Relief From Filing Requirement

OAR 860-013-0060 requires parties to file with the Commission an original and five copies of any pleading, written testimony, exhibit, or brief. The written testimony GTENW prepared for its most recent filing includes cost study documentation exceeding ten volumes in length. GTENW filed five copies of its testimony, but only one copy of its cost study and a diskette containing the cost model. GTENW served each party a copy of its testimony but made the cost study available to parties upon request, and only after the execution of a proprietary agreement.

The request for relief from the normal filing requirements is granted. Due to the volumes of cost model documentation, it would be unduly burdensome for GTENW to meet the normal copy requirements established in OAR 860-013-0060. GTENW's proposal to make the documentation available to those who request it is reasonable.

ORDER

IT IS ORDERED that the request for modification of the Standard Protective Order and for partial relief from OAR 860-013-0060 filed by GTENW is granted in part, as indicated above.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements of OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070. A party may appeal this order to a court pursuant to ORS 756.580.

APPENDIX A

MODIFIED 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") **and pertains to a party to this proceeding.**

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 party;
- d. A person employed directly by counsel of record;
- e. An unaffiliated expert retained by a party;
- f. A person approved by the party desiring confidentiality (pursuant to paragraph 9); or

- g. A party designated a qualified person by order of the Commission (pursuant to paragraph 9).

Designation of Confidential Information-

4. A party providing confidential information shall inform other parties 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 party shall designate only the portions of the document that fall within ORCP 36(C)(7).

5. A party may designate as confidential any information previously provided by giving written notice to the other parties. Parties 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 party 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 parties 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 party desiring confidentiality.

8. Prior to disclosing confidential information to an unaffiliated expert qualified under paragraph 3(e), the party seeking to disclose the information must notify the party 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 party to the proceeding.

9. When a party desires to disclose confidential information to an unqualified person, the party must, in writing, request permission from the party 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 party to this proceeding; and
- d. The specific reasons why disclosure is necessary.

If the party 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 party requests permission to disclose confidential information to an unqualified person, and the party desiring confidentiality fails to grant permission in writing within three business days, the party 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, parties may not copy, microfilm, microfiche, or otherwise reproduce confidential information without the written consent of the providing party.

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 party desiring confidentiality within 90 days after final resolution of this proceeding unless the party 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 party disagrees with the designation of information as confidential, the party shall contact the designating party and attempt to resolve the dispute on an informal basis. If the parties are unable to resolve the dispute, the party 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 party resisting disclosure has the burden of showing that the challenged information falls within ORCP 36(C)(7). If the party 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 party desiring additional protection may move for any of the remedies set forth in ORCP 36(C). The motion shall state:

- a. The parties 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.

17. In the course of this proceeding, the parties may wish to produce or request information that is confidential to a third party vendor of a party to this proceeding. Prior to production of such information, the requesting party shall execute a separate agreement governing production and disclosure of information confidential to the third party.

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
_____ Party	
_____ Signature & Printed	_____ Date
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