

ENTERED FEB 18 2000

This is an electronic copy.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 375

In the Matter of a Rulemaking to Amend OAR Chapter)	
860, Divisions 023 and 034 to Adopt Rule Changes to)	
Implement SB 622, Section 29, Minimum Service)	PROTECTIVE ORDER
Quality Standards for Providing Retail)	
Telecommunications Services)	

On February 17, 2000, Commission Staff (Staff) filed a motion for a Protective Order. Staff asserts that material included in its comments in this proceeding may contain material that other participants in this docket have previously asked the Commission to keep confidential in other proceedings or investigations. As such, Staff argues that it is appropriate to continue to maintain the confidentiality of such information if it is used in the present proceeding.

I find that good cause exists to issue a Standard Protective Order, attached as Appendix A. OAR 860-012-0035(1)(k). Under the terms of that 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 with that participant at the time it files with the Commission a copy of the signatory page set forth in Appendix B.

Made, entered, and effective February 18, 2000, pursuant to OAR 860-012-0035(1)(k).

Ruth Crowley
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.

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 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.

ORDER NO. 00-106

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

SIGNATORY PAGE

AR 375

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

Party

Date

Signature & Printed

Party

Date

Signature & Printed

Party

Date

Signature & Printed

Party

Date

Signature & Printed

Date

ORDER NO. 00-106

Party