

43
Scan

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

| | | | |
|-------|--|-------|----------------------|
| ----- | In the Matter of | ----- |) |
| | | |) |
| | PUBLIC UTILITIES COMMISSION | |) DOCKET NO. 03-0058 |
| | | |) |
| | Instituting an Investigation Into the | |) |
| | Availability of Experienced Providers of | |) |
| | Quality Telecommunications Relay | |) |
| | Services, Pursuant to Section 16.6, Hawaii | |) |
| | Revised Statutes. | |) |
| | _____ | |) |

PROTECTIVE ORDER NO. 20084

STIPULATION FOR PROTECTIVE ORDER

EXHIBIT A

and

CERTIFICATE OF SERVICE

Filed March 17, 2003

At 11:00 o'clock a.m.

Karen Higson

Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

2003 MAR 17 P 4: 17

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

| | | | | |
|-------|--|-------|---|--------------------|
| ----- | In the Matter of | ----- |) | |
| | | |) | |
| | PUBLIC UTILITIES COMMISSION | |) | DOCKET NO. 03-0058 |
| | | |) | |
| | Instituting an Investigation Into the | |) | |
| | Availability of Experienced Providers of | |) | |
| | Quality Telecommunications Relay | |) | |
| | Services, Pursuant to Section 16.6, Hawaii | |) | |
| | Revised Statutes. | |) | |
| <hr/> | | |) | |

STIPULATION FOR PROTECTIVE ORDER

WHEREAS, Verizon Hawaii Inc. (fka GTE Hawaiian Telephone Company Incorporated) (hereinafter "Verizon") began providing telecommunications relay services ("TRS") on July 1, 1989, pursuant to Act 207, 1988 Session Laws of Hawaii and Decision and Order No. 10263, filed on June 29, 1989 in Docket No. 6440;

WHEREAS, in accordance with Act 295, 1989 Session Laws of Hawaii, the Commission issued Order No. 11645, on June 1, 1992 in Docket No. 7320, which initiated an investigation into the availability of experienced providers of quality TRS, and released a request for proposal entitled Specifications and Instructions for Submission of a Proposal to Provide Telecommunications Relay Services for the State of Hawaii ("CRFP");

WHEREAS, Verizon was selected by the Commission to continue providing TRS in Hawaii in Order No. 11764, filed on August 31, 1992;

WHEREAS, by letter dated and filed on February 24, 2003, Verizon gave the Commission its formal 90 days prior written notice that it was exercising its option, pursuant to Order No. 11645, to terminate its TRS service in July 2003;

WHEREAS, by Order No. 20067, filed on March 7, 2003, the Public Utilities Commission instituted a proceeding to investigate the availability of quality TRS providers;

WHEREAS, the Commission made the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate") and Verizon parties to this proceeding by Order No. 20067;

WHEREAS, Verizon anticipates that during the course of this proceeding, information considered to be privileged or confidential may be requested or filed and that Verizon maintains that disclosure of certain confidential information could disadvantage it by revealing to competitors competitive and/or proprietary information;

WHEREAS, the parties were directed to meet informally to formulate a stipulated protective order, pursuant to HAR § 6-61-50, within 5 days from the date of Order No. 20067, or in the alternative, if the parties were unable to stipulate to such an order, each party shall submit a proposed protective order for the Commission's consideration within 5 days from the date of Order No. 20067;

WHEREAS, the parties desire to establish a set of procedures and provisions pertaining to the use and disclosure of information considered to be confidential and any information which any party may in the future contend to be confidential;

WHEREAS, the parties understand that during the course of the evidentiary hearing in this matter, if any, if it becomes necessary to address any information

provided pursuant to this protective order during the course of the hearing, that portion of the proceeding will be heard in camera; and

WHEREAS, the parties understand and recognize that if any information is requested that is considered confidential by a party, additional agreements and protection may be needed before the release of such information, under additional confidential protection, can be accomplished;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, in accordance with Section 6-61-50 of the Rules of Practice and Procedure before the Public Utilities Commission, that the Commission issue a protective order covering the confidential information identified in the course of the proceeding as follows:

TERMS OF THE ORDER

1. This protective order governs the classification, acquisition, and use of trade secrets and other confidential information produced by Verizon in this docket. No party or potential bidder in this docket shall be permitted access to any information filed by any other prospective bidder or party as a result of signing Exhibit A to this protective order; provided, however, that the Commission, the Consumer Advocate and Verizon shall be permitted access to such information.

2. All parties or participants to all or any portion of this docket, including persons who are granted intervention or participation after the effective date of this protective order, and all potential bidders that elect to sign Exhibit A hereto shall be subject to this protective order and shall be entitled to all confidential information of Verizon under the provisions of this protective order to the extent allowed by the Commission.

APPLICATION OF THE UNIFORM INFORMATION PRACTICES ACT

3. To the extent that any of the documents covered by this protective order consist of "government records," as defined in Hawaii Revised Statutes ("HRS") §92F-3, the provisions of HRS Chapter 92F ("Uniform Information Practices Act" or "UIPA") shall apply to the disclosure of information contained in such documents. In the event any provision of this protective order conflicts with any provision of the UIPA, the UIPA shall control.

CLASSIFICATION

4. Verizon may designate as confidential any information or data it believes, in good faith, contain trade secrets or other confidential research, development, commercial, financial, vendor, or bid information, including but not limited to cost support studies. Such information shall be protected against disclosure to a non-qualified person pursuant to the terms of this protective order, unless such information is declassified, or permission to disclose the information to such non-qualified person is granted by the party claiming confidentiality, as provided in paragraph 13 below.

5. If Verizon designates information as confidential pursuant to paragraph 4 above or paragraph 6 below, it shall produce the confidential information in accordance with the procedures described in paragraphs 11 through 14 below, and concurrently provide the following information in writing to the Commission and the Consumer Advocate: (1) identify, in reasonable detail, the information's source, character, and location; (2) state clearly the basis for the claim of confidentiality; and (3) describe, with particularity, the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information. If any party challenges the claim of confidentiality of the

information, the Commission will determine whether the information is confidential and whether it should be disclosed under a protective order. Any challenge to the confidentiality of any information shall be made in accordance with paragraph 24 below.

6. Confidential information provided to the Commission or a party, orally or in any other form, shall be protected as fully as confidential information provided in written form. Verizon shall notify the Commission and the parties when information provided orally or in other than written form includes confidential information. At the time of such notification, Verizon shall, in the manner provided in paragraph 5 above, specify the subject matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information.

FORMS OF CONFIDENTIAL INFORMATION

7. All information claimed to be confidential information shall be subject to the terms of this protective order, and shall be treated by all qualified persons (as defined by this protective order) as constituting confidential information. Unless a different treatment is warranted, any notes, summaries, abstracts, or analyses that are prepared by counsel, experts, or other qualified persons, and that reflect the underlying confidential information, shall also be subject to the terms of this protective order.

DESIGNATION

8. Any party claiming that information is confidential shall place upon the applicable material the following legend:

**CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER**

Whenever only a portion of a document, transcript, or other material is deemed to contain confidential information, the party shall, to the extent reasonably practicable, limit the claim of confidentiality to only such portion. However, if such limitation is not reasonably practicable, the entire document, transcript, or other material may be designated as confidential information.

9. With respect to any confidential information that is not under the control of Verizon, other persons shall, to the extent requested by that party, cooperate to ensure that all copies of such confidential information bear the legend required in paragraph 8 above.

10. Verizon may designate as confidential information any document or other information previously produced but not designated as confidential, provided that Verizon, in the manner provided in paragraph 5 above, specifies the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information. In addition, Verizon shall substitute the previously produced but not designated as confidential material with the identical material under designation as required in paragraph 8 above.

DISCLOSURE

11. Except as provided in paragraph 13, confidential information shall not be made available or disclosed to any person who is not a "qualified person" as defined in paragraph 12 below.

12. "Qualified person", as used in this protective order means any one of the following:

- a. The author(s), addressee(s), or originator(s) of the confidential information;
- b. The Commission and its staff;
- c. The Consumer Advocate, its staff, counsel, (including employees directly employed by such counsel), and any consultants retained by the Consumer Advocate for this proceeding;
- d. Verizon, its officers and employees, its counsel (including employees directly employed by such counsel) and any consultants retained by Verizon;
- e. Counsel of record for a party or a participant (including employees directly employed by such counsel);
- f. Any potential bidder that elects to sign Exhibit A hereto; provided, however, that such bidder shall use any confidential information only for purposes of developing a bid to provide TRS and for no other purpose and that such bidder shall limit the number of persons qualifying under this paragraph 12.f. to a reasonable number;
- g. Any other person approved by the party asserting the claim of confidentiality; and
- h. Any other person designated as a qualified person by order of the Commission, including any actual or potential bidders interested in providing TRS services in Hawaii in accordance with the new specifications and requirements to be established in this docket.

13. When a qualified person wishes to disclose confidential information to a non-qualified person, the qualified person must request written permission from the party claiming confidentiality. The request shall identify the non-qualified person to whom disclosure is desired; disclose any past, present, or anticipated affiliation between the qualified person and the non-qualified person; specify the exact information to be disclosed; and state the reasons for disclosure. If written permission is granted by Verizon, disclosure of the confidential information shall be made to such non-qualified person in the same manner as provided for qualified persons in paragraph 14 below.

PROCEDURE FOR OBTAINING ACCESS

14. Prior to disclosing confidential information to a qualified person other than the Commission and its staff, the qualified person shall read a copy of this protective order, complete a copy of the agreement attached as Exhibit A to this protective order, and sign the completed copy of the agreement. A copy of the executed agreement shall be delivered to the party claiming confidentiality and the Commission.

USE OF CONFIDENTIAL INFORMATION

15. Any confidential information obtained under this protective order shall be used solely in connection with developing a bid to provide TRS and any related administrative and judicial proceedings (at which time the information will continue to be treated as confidential), and shall not be used for any other purpose, including business, governmental or commercial purposes, or in any other administrative or judicial proceeding, except as provided in paragraphs 16 and 17, and except as may be directed by (a) an order of court, (b) an order of the Commission, and (c) the UIPA, including any ruling of the Office of Information Practices.

16. Subject to relevancy, materiality and any other evidentiary requirements and also subject to confidential protection as contained or set forth in this protective order, any confidential information obtained under this protective order may be used by the Commission and its staff in any proceeding pending before the Commission involving the producing party, or where the intended use of such confidential information is for the purpose of assisting the Commission in fulfilling its statutory duties and responsibilities. The confidential information shall continue to be treated as confidential

until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

17. Subject to relevancy, materiality and other any evidentiary requirements and also subject to confidential protection as contained or set forth in this protective order, any confidential information obtained under this protective order may be used by the Consumer Advocate, its staff, its consultant and its counsel in any proceeding pending before the Commission involving the producing party, or where the intended use of such confidential information is for the purpose of assisting the Consumer Advocate in fulfilling its statutory duties and responsibilities. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

18. Unless otherwise ordered by the Commission, if a party desires to file written testimony, exhibits or pleadings which contain or reflect the confidential information, only that part of the page(s) containing or reflecting such information shall be treated as confidential, and that part of any hearing at which such information is discussed shall be held in camera, or under other conditions imposed by the Commission to prevent unnecessary public disclosure of such information. A copy of any confidential page, with any such information deleted, shall be filed to be included in the public record, and each such page shall contain the following designation in the upper left-hand corner:

**Confidential Information
Deleted Pursuant To
Protective Order No. _____.**

RETENTION OF CONFIDENTIAL INFORMATION

19. Confidential information shall be retained in a locked cabinet dedicated to the storage of confidential information, or otherwise secured to ensure that access to and disclosure of the confidential information is limited to a qualified person.

20. Confidential information that is given to or filed with the Commission or its staff shall be separately bound and placed in a sealed envelope or other appropriate sealed container on which shall appear the following legend:

THIS ENVELOPE IS SEALED PURSUANT TO PROTECTIVE ORDER NO. _____ AND CONTAINS DOCUMENTS WITH CONFIDENTIAL INFORMATION. IT IS NOT TO BE OPENED OR THE CONTENTS OF THIS ENVELOPE DISPLAYED OR REVEALED EXCEPT TO QUALIFIED PERSONS AUTHORIZED TO INSPECT THE ENCLOSED DOCUMENTS.

21. Confidential information shall not be reproduced or duplicated, except to make working copies and copies to be filed with the Commission under seal. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the following legend: "Copying Prohibited."

22. If a court or other administrative agency requests, subpoenas, or orders production of confidential information that a party or person has obtained under this protective order, that party or person, prior to disclosure, shall promptly notify the party claiming confidentiality of the request, subpoena, or order.

DURATION OF CONFIDENTIALITY

23. The confidentiality of the information produced pursuant to this protective order shall be preserved until all interested parties, by written stipulation, terminate the protection conferred by this protective order, or until further order of the Commission.

APPEAL TO THE COMMISSION

24. If any interested person disagrees with the designation of information as confidential, Verizon and the person so disagreeing shall first make a good faith attempt to resolve the dispute on an informal basis. If the dispute cannot be resolved, the person contesting the confidentiality of the information shall file a motion to compel disclosure or any other appropriate motion with the Commission. The motion shall identify the contested information and the reasons the information should not be classified as confidential. Pending a disposition of the motion, the information in question shall be treated as confidential information and shall not be disclosed except as permitted in this protective order.

NON-WAIVER OF OBJECTIONS AND RIGHTS

25. The parties retain the right to contest any assertion or finding of confidentiality or non-confidentiality.

26. The parties retain the right to question, challenge, and object to the admissibility of confidential information on the grounds of relevancy, materiality or other evidentiary requirements.

27. Nothing in this protective order shall prevent any party from objecting to requests for production of information or other discovery requests on grounds other than confidentiality.

MODIFICATION OF THE PROTECTIVE ORDER

28. The Commission may modify this protective order on the motion of any party, or on its own motion, upon reasonable notice to the parties and an opportunity for hearing.

DISPOSAL OF CONFIDENTIAL INFORMATION

29. Except as provided in paragraphs 30 and 31 below, within 90 days after the selection of the TRS provider or providers, persons in possession of confidential information shall, at the option of the party producing the confidential information, return or destroy all such materials and all copies, notes, tapes, papers, or other medium containing, summarizing, excerpting, or otherwise embodying any confidential information. If the party producing the confidential information requests destruction, the person destroying the information shall certify its destruction to the producing party, indicating the name of the person destroying the documents, the method of destruction, and the identity of the specific documents destroyed.


30. Counsel and the representatives of record for a party shall be entitled to retain memoranda, pleadings, exhibits of record, written testimony, and transcripts embodying information derived from or incorporating confidential information to the extent reasonably necessary to preserve files on this proceeding. The files shall not be disclosed to any other person.

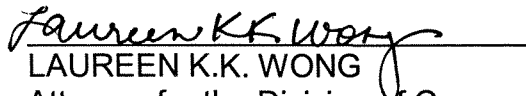
31. Confidential information produced in this proceeding shall remain in the possession of the Commission, the Consumer Advocate and counsel for the Consumer Advocate for the duration required by applicable statute.

SANCTIONS

32. Any person violating this protective order shall be subject to sanctions imposed by the Commission.

DATED: Honolulu, Hawaii, March 13, 2003.



LESLIE ALAN UEOKA
Assistant General Counsel
Attorney for Verizon Hawaii Inc.


LAUREEN K.K. WONG
Attorney for the Division of Consumer
Advocacy, Department of Commerce and
Consumer Affairs

APPROVED AND SO ORDERED THIS 17th day of March, 2003,
at Honolulu, Hawaii.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Wayne H. Kimura, Chairman

By 
Janet E. Kawelo, Commissioner

By 
Gregg J. Kinkley, Commissioner

APPROVED AS TO FORM:

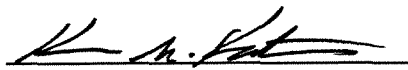

Kevin Katsura
Commission Counsel

EXHIBIT "A"

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

PROTECTIVE AGREEMENT

1. I, _____, have been presented with a copy of Protective Order No. _____ issued by the Hawai'i Public Utilities Commission in Docket No. 03-0058 on the _____ day of _____, 2003 ("Protective Order").

2. I am employed, retained or assisting _____ in Docket No. 03-0058 and have requested review of the confidential information covered by the Protective Order.

3. I understand the confidential information covered by the Protective Order is to be used solely to assist _____ and that unless otherwise permitted by the Protective Order, I am to make no other use of the confidential information, nor am I to disclose the confidential information to any other person.

4. I further understand that at the conclusion of my assistance to _____, I shall account for each copy, extract, note and summary of, or other document containing any part of such confidential information to the party claiming confidentiality and I shall abide by the provisions in paragraph 29 of the Protective Order, unless otherwise permitted by paragraphs 30 and 31 of the Protective Order.

5. I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

DATED at _____, _____, this _____, 2003.

Signature

Address

() _____
Telephone Number

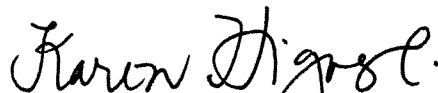
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing PROTECTIVE ORDER NO. 20084, upon the following party(s), by causing a copy hereof to be mailed, postage prepaid and properly addressed.

DIVISION OF CONSUMER ADVOCACY
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P.O. Box 541
Honolulu, HI 96809

JOEL MATSUNAGA
Vice President – External Affairs
VERIZON HAWAII INC.
P.O. Box 2200
Honolulu, HI 96841

LESLIE ALAN UEOKA
Assistant General Counsel
VERIZON HAWAII INC.
P.O. Box 2200
Honolulu, HI 96841



Karen Higashi, Chief Clerk

DATED: March 17, 2003