

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of)	Docket No. 03-0027
)	
PACIFIC LIGHTNET, INC.,)	
)	
Complainant,)	
)	
vs.)	
)	
VERIZON HAWAII INC.,)	
)	
Respondent.)	
_____)	

STIPULATION FOR PROTECTIVE ORDER

PROTECTIVE ORDER NO. 20092

Filed March 24, 2003

At 1:00 o'clock P.M.

Karen Diggs

Chief Clerk of the Commission

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

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VERIZON HAWAII INC.,)	
)	
Respondent.)	
)	

STIPULATION FOR PROTECTIVE ORDER

I.

WHEREAS, Pacific Lightnet, Inc. ("PLNI") has filed a complaint against Verizon Hawaii Inc. ("Verizon Hawaii" or "Company");

WHEREAS, PLNI and Verizon Hawaii anticipate that the Division of Consumer Advocacy (the "Consumer Advocate") may request each of them to provide certain information that each deems confidential, the release or disclosure of which could result in harm to the disclosing party;

WHEREAS, PLNI and Verizon Hawaii will respond to the Consumer Advocate's request and shall continue to respond to the Consumer Advocate's requests;

WHEREAS, PLNI and Verizon Hawaii anticipate that during the course of any docket or proceeding based on the complaint each may provide the Commission and the Consumer Advocate with additional confidential information, including, but not limited to, cost support studies, the disclosure of which could also result in harm to the disclosing party;

WHEREAS, PLNI and Verizon Hawaii wish to cooperate completely with the Commission and the Consumer Advocate but needs to ensure protection against disclosure of information which PLNI or Verizon Hawaii believes, in good faith, is confidential; and

WHEREAS, the Parties understand and recognize that if any information is requested that is considered confidential by a vendor of PLNI's or Verizon Hawaii's, 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 specific information identified above as well as any other confidential information identified in the course of any proceeding in connection with the Application, 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 a Party in this docket, including, but not limited to, cost support studies and other information.

2. This Stipulation governs and applies to the Consumer Advocate and any party who is granted intervention after the effective date of this Protective Order (collectively, the "Parties").

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. Any Party may designate as “confidential” any information that it believes, in good faith, contains trade secrets or other confidential research, development, commercial or financial information, including but not limited to cost support studies. Such information shall be protected against disclosure to persons other than qualified persons (as defined herein) pursuant to the terms of this Protective Order, unless such information is declassified, or permission to disclose the information to such non-qualified persons is granted by the party claiming confidentiality as provided in Paragraph 13 below.

5. If a Party designates information as confidential, it shall: (1) identify, in reasonable detail, the information it contends is confidential, and specify 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 itself that would result 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 23 below.

6. Confidential information provided to the Commission or any Party orally or in any other form shall be protected as fully as information in written form. The disclosing Party shall indicate when information provided orally or in other than written form includes confidential information. The disclosing Party shall, after such disclosure, confirm in writing the subject matter of such confidential 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 herein) as constituting confidential information. Unless the Commission determines otherwise, any notes, summaries, abstracts or analyses that are prepared by counsel, experts or other qualified persons (as defined herein) and that reflect the underlying confidential information shall also be treated as subject to the terms of this Protective Order.

DESIGNATION

8. The Party claiming confidentiality 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 disclosing Party shall, to the extent reasonably practicable, limit the claim of privilege 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 the disclosing Party, other persons shall, to the extent requested by the disclosing Party, cooperate to ensure that all copies of such confidential information bear the legend required in paragraph 8 of this Protective Order.

10. Any Party may designate as confidential information any document or other information previously produced but not designated as confidential, provided that written notice of such designation is given in the manner specified in paragraph 5 above.

DISCLOSURE

11. 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. Counsel of record for a Party.
- d. The Consumer Advocate, its staff and any consultants retained by the Consumer Advocate for this proceeding.
- e. Independent Consultants employed by a Party who are not employees of the Party, or in-house subject matter experts and/or regulatory personnel, who are not engaged in developing, planning, marketing, or selling the Party’s products or services, or determining the costs of the Party’s products or services or designing prices of the Party’s products or services to be charged customers.
- f. Any other person approved by the Party asserting the claim of confidentiality.
- g. Any other person designated a qualified person by order of the Commission.

13. When a qualified person wishes to disclose confidential information to any person other than a qualified person, the qualified person must request permission from the Party claiming confidentiality. The request shall identify the person to whom disclosure is desired; disclose any past, present or anticipated affiliation between the person and any interested person; specify the exact information to be disclosed; and state the reasons for disclosure.

PROCEDURE FOR OBTAINING ACCESS

14. Prior to disclosing confidential information to a qualified person, other than the Commission and its staff, the disclosing person shall require the qualified person to 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 protective 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 this proceeding and any related hearings (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 may be directed by (a) order of court, (b) an order of the Public Utilities Commission, or (c) in the case of an “agency” as defined in HRS § 92F-3, the UIPA, including any ruling of the Office of Information Practices.

16. Unless otherwise ordered by the Commission, if the Party desires to file written testimony, exhibits or pleadings which contain or reflect the confidential information, 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 the 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

17. Confidential information shall be retained in a locked cabinet dedicated to the storage of confidential information.

18. 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.

19. To the extent possible, confidential information shall be segregated. If the confidential portion of a document cannot be reasonably practicably segregated, then the entire document shall be deemed confidential.

20. Confidential information shall not be reproduced or duplicated, except to make working copies and copies to be filed 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."

21. If a court or another administrative agency requests, subpoenas or orders production of confidential information that a person has obtained under this Protective Order, that person, prior to disclosure, shall promptly notify the Party claiming confidentiality of the request, subpoena or order.

DURATION OF CONFIDENTIALITY

22. The confidentiality of 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.

CHALLENGES TO CONFIDENTIALITY

23. If any interested person disagrees with the designation of information as confidential, the Party claiming confidentiality 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 Party contesting the confidentiality of the information shall file a motion to compel disclosure or other appropriate motion with the Commission. The motion shall identify the contested information and the reasons the information should not be classified 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

24. All persons retain the right to contest any assertion or finding of confidentiality or of non-confidentiality.

25. The Parties retain the right to question, challenge, and object to the admissibility of "confidential information" on the grounds of relevancy or materiality.

26. Nothing in this Protective Order shall prevent any party from objecting to requests for production of information or other discovery requests.

MODIFICATION OF THE ORDER

27. The Commission may modify this 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

28. Within ninety (90) days after the conclusion of this proceeding, persons in possession of confidential information shall, at the option of the party producing the confidential information, return or destroy all such material and all copies, notes, tapes, papers or other medium containing, summarizing, excerpting or otherwise embodying any confidential material or its contents. If the Party claiming confidentiality requests

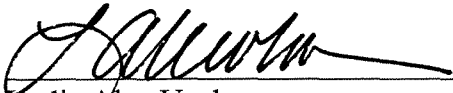
destruction, the person destroying the information shall certify its destruction to the producing Party, indicating the name of the person destroying the documents, the method of destruction and the identity of the specific documents destroyed.

29. Counsel 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 a file on this proceeding. The file shall not be disclosed to any other person.

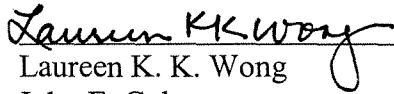
30. Confidential information produced in this proceeding shall remain in the possession of the Commission, the Consumer Advocate and counsel for the Consumer Advocate for the duration required by applicable statute.

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

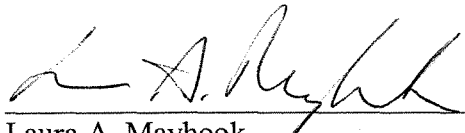
Dated: Honolulu, Hawaii, March 17, 2003.


Leslie Alan Ueoka
Assistant General Counsel

Attorney for Verizon Hawaii Inc.


Laureen K. K. Wong
John E. Cole

Attorneys for the Division of
Consumer Advocacy


Laura A. Mayhook
J. Jeffrey Mayhook

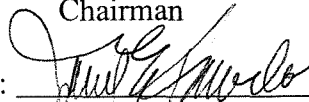
Attorneys for Pacific Lightnet, Inc.


APPROVED AND SO ORDERED this 24th day of March, 2003.

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:



Catherine P. Awakuni
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 Public Utilities Commission in Docket No. 03-0027 on the _____ day of _____, 2003 ("Protective Order").

2. I am employed, retained or assisting _____ in Docket No. 03-0027 and have requested review of the confidential information covered by the Protective Order.

3. I understand that 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 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: _____, _____, _____.
(city) (state) (date)

Signature

Address

() _____
Telephone Number

CERTIFICATE OF SERVICE

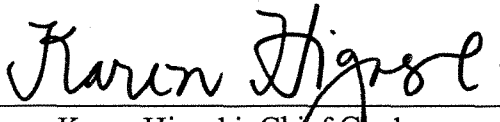
I hereby certify that I have this date served a copy of the foregoing PROTECTIVE ORDER NO. 20092, upon the following party(s), by causing a copy hereof to be mailed, postage prepaid and properly addressed.

DIVISION OF CONSUMER ADVOCACY
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J. JEFFREY MAYHOOK
508 NW 189th Street
Ridgefield, WA 98642



Karen Higashi, Chief Clerk

DATED: March 24, 2003