

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of)
)
HAWAIIAN TELCOM, INC.'s)
)
Non-Docketed Filing of Certain Confidential)
Compliance Reports, Cost Studies and)
Other Materials)
)

PROTECTIVE ORDER 2009-PO-01

STIPULATION FOR PROTECTIVE ORDER

EXHIBIT "A"

and

CERTIFICATE OF SERVICE

RECEIVED

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

PUBLIC UTILITIES
COMMISSION

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FILED

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In the Matter of)
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HAWAIIAN TELCOM, INC.'s)
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Non-Docketed Filing of Certain Confidential)
Compliance Reports, Cost Studies and)
Other Materials)
_____)

STIPULATION FOR PROTECTIVE ORDER

WHEREAS, HAWAIIAN TELCOM, INC. ("Hawaiian Telcom" or "Company") files with the Public Utilities Commission of the State of Hawaii ("Commission") certain reports, cost studies and other materials that contain confidential information but that are not filed in a docketed proceeding before the Commission;

WHEREAS, Hawaiian Telcom maintains that disclosure of certain confidential information could disadvantage Hawaiian Telcom by allowing its competitors to analyze and utilize such information to their competitive advantage;

WHEREAS, Hawaiian Telcom anticipates that it may file information that it considers to be privileged or confidential, which would include but not be limited to cost support and cost studies for tariff filings, information associated with annual reports, certain financial and forecasting information provided in Hawaiian Telcom's annual construction budget report, and competitively sensitive or private customer information requested by the Commission;

WHEREAS, the Division of Consumer Advocacy ("Consumer Advocate") is provided with copies of filed materials pursuant to the Rules of Practice and Procedure before the Public Utilities Commission;

WHEREAS, Hawaiian Telcom and the Consumer Advocate desire to establish a set of procedures and provisions pertaining to the non-docketed use and disclosure of information considered to be confidential;

WHEREAS, Hawaiian Telcom and the Consumer Advocate understand that during the course of an 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, Hawaiian Telcom and the Consumer Advocate understand and recognize that if any information is requested that is considered confidential by a vendor of Hawaiian Telcom, 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 filing of non-docketed confidential information by Hawaiian Telcom 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 Hawaiian Telcom in non-docketed filings with the Commission in the year 2009.

2. If the Commission designates a person as a qualified person pursuant to paragraph 12.e. below, that person shall comply with the provisions of this protective order, including executing a Protective Agreement.

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. Hawaiian Telcom may designate as confidential any information it believes, in good faith, contains trade secrets or other confidential research, development, commercial, financial, vendor, or bid information, including but not limited to cost support studies, detailed financial information and service forecasts. 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 Hawaiian Telcom designates information as confidential pursuant to paragraphs 4 above or 6 below, it shall produce the confidential information in accordance with the procedures described in paragraphs 11 through 14 below, and concurrently provide certain information in writing to the Commission and the Consumer

Advocate. If Hawaiian Telcom seeks to designate information as confidential, it must: (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 the Commission or the Consumer Advocate challenges the claim of confidentiality of the information, Hawaiian Telcom shall bear the burden of proof in supporting its claim of confidentiality, and 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 the Consumer Advocate, orally or in any other form, shall be protected as fully as confidential information provided in written form. Hawaiian Telcom shall notify the Commission and the Consumer Advocate when information provided orally or in other than written form includes confidential information. At the time of such notification, Hawaiian Telcom 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 Hawaiian Telcom 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. Hawaiian Telcom shall place upon the applicable confidential 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, Hawaiian Telcom 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 Hawaiian Telcom, other persons shall, to the extent requested by Hawaiian Telcom, cooperate to ensure that all copies of such confidential information bear the legend required in paragraph 8 above.

10. Hawaiian Telcom or the Consumer Advocate may request the Commission to designate as confidential information any document or other information previously produced but not designated as confidential, provided that Hawaiian Telcom or the Consumer Advocate, 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 Hawaiian Telcom or the Consumer Advocate from any misuse or unpermitted disclosure of the information. In addition, Hawaiian Telcom or the Consumer Advocate 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, its staff, counsel (including employees directly employed by such counsel), and any consultants retained by the Commission specifically to review the confidential information covered under this protective order;
- c. The Consumer Advocate, its staff, counsel (including employees directly employed by such counsel), and any consultants retained by the Consumer Advocate specifically to review the confidential information covered under this protective order;
- d. Any person approved by Hawaiian Telcom; and
- e. Any person designated as a qualified person by order of the Commission.

13. When a qualified person wishes to disclose confidential information to a non-qualified person, the qualified person must request permission from Hawaiian Telcom. 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 permission is granted by Hawaiian Telcom,

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 and counsel, and the Consumer Advocate and its staff and counsel, 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 Hawaiian Telcom and the Commission.

USE OF CONFIDENTIAL INFORMATION

15. Any confidential information obtained under this protective order shall be used solely in connection with the review of the associated filing 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. Any confidential information obtained under this protective order may be used by the Commission and its staff and counsel in any proceeding pending before the Commission involving Hawaiian Telcom, 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 Hawaiian Telcom, or until further order of the Commission.

17. 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 Hawaiian Telcom, 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 Hawaiian Telcom, or until further order of the Commission.

18. Unless otherwise ordered by the Commission, if Hawaiian Telcom or the Consumer Advocate desires to file written testimony, information requests, exhibits or any other material that 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.**

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 and counsel 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 NON-
DOCKETED PROTECTIVE ORDER ISSUED _____
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 qualified person has obtained under this protective order, such person, prior to disclosure, shall promptly notify Hawaiian Telcom 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 Hawaiian Telcom terminates 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, Hawaiian Telcom 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. Hawaiian Telcom shall bear the burden of proof in supporting its claim, and the Commission will determine whether the information shall continue to be designated as confidential under this protective order. 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. Hawaiian Telcom and the Consumer Advocate retain the right to contest any assertion or finding of confidentiality or of non-confidentiality.

26. Hawaiian Telcom and the Consumer Advocate retain the right to question, challenge, and object to the admissibility of confidential information on the grounds of relevancy or materiality.

27. Nothing in this protective order shall prevent Hawaiian Telcom or the Consumer Advocate from objecting to requests for production of information or other discovery requests.

MODIFICATION OF THE PROTECTIVE ORDER

28. The Commission may modify this protective order on the motion of Hawaiian Telcom or the Consumer Advocate, or on its own motion, upon reasonable notice to Hawaiian Telcom and the Consumer Advocate and an opportunity for hearing, or the Commission may modify this protective order upon receipt and approval of written stipulation by the parties.

DISPOSAL OF CONFIDENTIAL INFORMATION

29. Except as provided in paragraphs 30 and 31 below, within 90 days after the conclusion of this proceeding, persons in possession of confidential information shall, at the option of Hawaiian Telcom, 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 Hawaiian Telcom requests destruction, the person destroying the information shall certify its destruction to Hawaiian Telcom, indicating the name of the person destroying the documents, the method of destruction, and the identity of the specific documents destroyed.

30. The Consumer Advocate and its counsel 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 statutes, rules and administrative directives.

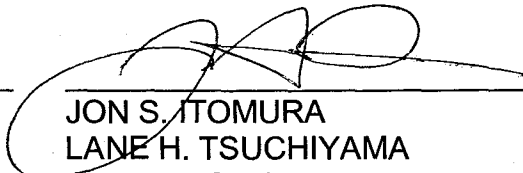
SANCTIONS

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

DATED: Honolulu, Hawaii, January 15, 2009.




KENT D. MORIHARA
KRIS N. NAKAGAWA
Attorneys for
Hawaiian Telcom, Inc.



JON S. ITOMURA
LANE H. TSUCHIYAMA
Attorneys for the
Division of Consumer Advocacy
Department of Commerce and Consumer Affairs

APPROVED AND SO ORDERED THIS FEB - 6 2009
at Honolulu, Hawaii.

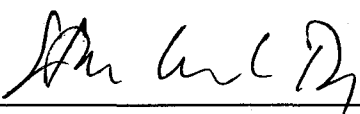
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

*APPROVED AS TO FORM:


Stacey Kawasaki Djou
Chief Legal Counsel

* This Protective Order is only applicable to confidential information appropriately identified in Hawaiian Telcom, Inc.'s filings of certain confidential compliance reports, cost studies and other materials for the year 2009.

EXHIBIT "A"

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

PROTECTIVE AGREEMENT

1. I, _____, have been presented with a copy of the non-docketed Protective Order issued by the Public Utilities Commission on the _____ day of _____, 2009 ("Protective Order").

2. I am employed, retained or assisting _____ 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 _____, 2009.
(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 upon the following, by causing a copy hereof to be mailed, postage prepaid and properly addressed.

DIVISION OF CONSUMER ADVOCACY
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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