

- d. Absent a protective order, a significant risk exists that highly confidential information might become available to persons who have no legitimate need for such information and that injury to the information provider or third parties could result;
- e. In accordance with WAC 480-07-420(2), the Commission finds that it is necessary to protect the confidentiality of certain information asserted by parties to be highly confidential. This is consistent with the Commission's practice in prior cases involving contentions that certain documents require heightened protection to facilitate discovery, and is consistent with the requirements of WAC 480-07-423.

2 Accordingly, the Commission enters this Protective Order pursuant to RCW 35.05.446 to govern the discovery and use of confidential and highly confidential information in this proceeding:

ORDER

A. General Provisions

3 **Confidential and Highly Confidential Information.** All access, review, use, and disclosure of any material designated by a party to this proceeding as confidential (referred to in this Order as "Confidential Information") or highly confidential (referred to in this Order as "Highly Confidential Information") is governed by this Order and by WAC 480-07-160. Confidential Information is information that (1) might compromise a party's ability to compete fairly or that otherwise might impose a business risk if disseminated without the protections provided in this Order, or (2) reflect Customer Proprietary Network Information, as defined by 47 U.S.C. § 222. Highly Confidential Information includes network, security and anti-fraud information.

- 4 The Commission requires parties to provide complete confidential and redacted versions of pre-filed testimony, exhibits, briefs, and all other documents filed with the Commission in the manner described below. The Commission requires the parties to redact Confidential and Highly Confidential Information from all public versions of documents filed with the Commission. The Commission may reject a filing or any other submission that fails to segregate Confidential and Highly Confidential Information, or categorizes public information as highly confidential.
- 5 **Non-disclosure Agreement.** Before being allowed access to any Confidential or Highly Confidential Information designated for this docket, each counsel, expert, or member of their respective administrative staffs who is to be provided access to Confidential or Highly Confidential Information must agree to comply with and be bound by this Order on the form of Exhibit A (Attorneys), Exhibit B (Experts), or Exhibit C (Highly Confidential Information) attached to this Order. Counsel for the party seeking access to the Confidential or Highly Confidential Information must deliver to counsel for the party producing Confidential or Highly Confidential Information a copy of each signed agreement, which must show each signatory's full name, employer, position and responsibilities, permanent address, and the party with whom the signatory is associated. The party seeking access must also send a copy of the agreement to the Commission.
- 6 At least ten (10) days prior to disclosing any Confidential or Highly Confidential Information to any outside expert pursuant to an Exhibit B or Exhibit C Agreement attached to this Order, the disclosing party shall notify the other parties of the name, address and business affiliation of the proposed expert. During that ten-day period, any party may object in writing to the designation of any outside expert as a person who may review Confidential or Highly Confidential Information. Written response to any objection must be filed within five (5) days after receipt of the objection. For good cause shown, the Commission may order that the information not be disclosed. While any

objection is pending, no Confidential or Highly Confidential Information may be shown to the proposed expert. Each party is prohibited from discussing the subject matter of this case with any outside expert that any other party has identified pursuant to this paragraph and contacted in good faith with the intent to disclose Confidential or Highly Confidential Information, unless the disclosing party has consented in writing to such discussion.

7 **Admission of Confidential and Highly Confidential Information Under Seal.**

The portions of the record of this proceeding and the underlying litigation, *Sandra Judd et al. v. AT&T et al.*, King County Superior Court No. 00-2-17565-5 SEA, including any appeals from that litigation, containing Confidential or Highly Confidential information will be sealed for all purposes, including administrative and judicial review, and must not be examined by any person except under conditions that continue to preserve the confidentiality of the information, unless such Confidential and Highly Confidential information is released from the restrictions of this Order, either through the agreement of the parties or pursuant to a lawful order of the Commission or of a court having jurisdiction to do so.

8 **Right to Challenge Admissibility.** Nothing in this Order may be construed to restrict any party's right to challenge the admissibility or use of any Confidential or Highly Confidential information on any ground other than confidentiality, including but not limited to competence, relevance, or privilege.

9 **Right to Challenge Confidentiality.** Any party may challenge another party's contention that information should be entitled to protection under this Order. The burden of proof to show that such information is properly classified as confidential is on the party asserting confidentiality. The presiding officer will conduct an *in camera* hearing to determine whether the information shall be accorded protection under the terms of this Order. Pending determination, the

challenged information shall be treated in all respects as protected under the terms of this Order.

- 10 The presiding officer may challenge a party's assertion of confidentiality by notice to all parties.
- 11 If the presiding officer determines the challenged information is not entitled to protection under this Order, the information continues to be protected under this Order for ten days thereafter to enable the producing party to seek Commission or judicial review of the determination, including a stay of the decision's effect pending further review.
- 12 **Freedom of Information Laws.** Until the Commission or any court having jurisdiction finds that any particular Confidential or Highly Confidential Information is not of a trade secret, proprietary, or confidential nature, any federal agency that has access to and/or receives copies of the Confidential or Highly Confidential Information must treat the Confidential or Highly Confidential Information as within the exemption from disclosure provided in the Freedom of Information Act at 5 U.S.C. § 552 (b)(4); and any Washington state agency that has access to and/or receives copies of the Confidential or Highly Confidential Information must treat the Confidential or Highly Confidential Information as being within the exemption from disclosure provided in RCW 42.17.310(1)(h) and (q).
- 13 **Notice of Compelled Production in Other Jurisdictions.** If a signatory to this Protective Order is compelled to produce Confidential or Highly Confidential documents in any regulatory or judicial proceeding by the body conducting the proceeding, the signatory must provide notice to the party that provided the Confidential or Highly Confidential Information. Such Confidential and Highly Confidential Information must not be produced for at least ten business days following notice, to permit the party that provided the information an

opportunity to defend the confidential or highly confidential nature of the material before the regulatory or judicial body that would compel production. Disclosure after that date, in compliance with an order compelling production, is not a violation of this Order.

- 14 **Modification.** The Commission may modify this Order on motion of a party or on its own motion upon reasonable prior notice to the parties and an opportunity for hearing.
- 15 **Return of Confidential and Highly Confidential Information.** Within thirty (30) days after the conclusion of this proceeding and the underlying litigation, *Sandra Judd et al. v. AT&T et al.*, King County Superior Court No. 00-2-17565-5 SEA, including any appeals from that litigation, every person who possesses any Confidential or Highly Confidential Information (including personal notes that make substantive reference to Confidential or Highly Confidential Information and transcripts of any depositions to which a claim of confidentiality is made), must return all such information to the party that produced it and destroy any notes or correspondence protected by the attorney-client privilege or work product doctrine that refers to such information, or at the producing party's election, must certify in writing that all copies and substantive references to such information have been destroyed. These provisions apply to all copies of exhibits that contain confidential or highly confidential information and for that reason were admitted under seal. The only exceptions are that counsel may retain exhibits as counsel records, for only so long as they represent the participant in this proceeding, and that the Commission will retain a complete record of the testimony and documentary evidence admitted to the record or refused admission, including Confidential and Highly Confidential Information, as part of the Agency's official records.

- 16 **Purpose of Access and Use; Confidentiality.** No Confidential or Highly Confidential Information distributed or obtained pursuant to this Protective Order may be requested, reviewed, used or disclosed by any party or counsel having access pursuant to this Order, except for purposes of this proceeding. Persons having access to Confidential or Highly Information pursuant to this order must request, review, use, or disclose such information only by or to persons authorized under this Order, and only in accordance with the terms specified in this Order.
- 17 **Violation of this Order.** Violation of this Order by any party to this proceeding or by any other person bound by this Order by unauthorized use or unauthorized divulgence of Confidential or Highly Confidential Information may subject such party or person to liability for damages and shall subject such party to penalties as generally provided by law, including, but not limited to, the provisions of RCW 80.04.380-.405.
- B. Confidential Information**
- 18 Parties must scrutinize potentially confidential material, and limit the amount they designate “Confidential Information” to only information that (1) truly might compromise their ability to compete fairly or that otherwise might impose a business risk if disseminated without the protections provided in this Order, or (2) reflects Customer Proprietary Network Information as defined in 47 U.S.C. § 222. The first page and individual pages of a document determined in good faith to include Confidential Information must be marked by a stamp that reads: **“Confidential Per Protective Order in WUTC Docket No. UT-042022.”**
- 19 Placing a "Confidential" stamp on the first page of a document indicates only that one or more pages contains Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Confidential Information must be marked separately to indicate where

Confidential Information is redacted. The unredacted versions of each page containing Confidential Information and provided under seal also must be stamped "Confidential" and submitted on light yellow paper with references (*i.e.*, highlighting) to where Confidential Information is redacted in the original document.

20 **Confidential and Redacted Versions.** Because the parties and the Commission are manipulating data and handling a number of open cases, and because confidentiality is more significant than it has been in the past, we must require **complete confidential and redacted versions of testimony, exhibits, and briefs.** This requirement extends to electronic versions, as well, and requires that **all diskettes** and **all electronic mail** specify whether the file is confidential, redacted, or public.

- (a) If a witness has a confidential portion of her testimony, the sponsoring party must provide a complete redacted version of the testimony and a complete confidential version, with confidential pages on light yellow paper.
- (b) Parties must submit (at least) two diskettes and e-mails attachments - one with the electronic version of the confidential text and one with the electronic version of the redacted text.
 - (i) Parties **MUST** identify the confidential diskettes with prominent red markings and the word "confidential" in addition to the contents and the docket number. The others must be prominently labeled "redacted" or "public."

- (ii) Parties MUST identify each confidential digital file with a C in the file name and MUST have the legend
“CONFIDENTIAL PER PROTECTIVE ORDER IN WUTC DOCKET NO. UT-042022” prominently displayed on the first page (i.e., the page that appears on the computer screen when the file is opened).

- 21 **Persons Permitted Access.** No Confidential Information will be made available to anyone other than a) Commissioners, b) the Washington Utilities and Transportation Commission Staff (“Commission Staff”), c) the presiding officer(s), d) counsel of record for the parties in this proceeding, e) in-house counsel for parties who are responsible for overseeing this proceeding, including any administrative or judicial review, f) court reporters, g) representatives or employees of a party that produces the Confidential Information, h) persons identified on a document as an author of the document in part or in whole, or persons to whom a copy of such document was sent prior to its production in this proceeding, or persons who had access to the document prior to its production in this proceeding, i) outside experts, designated pursuant to the procedures set forth in this Order, and j) any mediator approved by all of the parties.
- 22 Nothing shall prevent the parties from agreeing unanimously in writing to permit any additional persons to have access to Confidential Information.
- 23 If any party believes that it is appropriate to show Confidential information to a person who does not fit into one of the above categories they may file a motion seeking permission to show Confidential Information to that person and may present evidence supporting their motion. In order to facilitate an expeditious resolution, any party objecting to the motion must file a response within three business days of service of the motion. A reply may be filed within one business day of service of the objection.

24 Staff of counsel, with the exclusion of staff of a non-producing party who are involved in competitive decision making on behalf of that party, and staff of designated outside experts who are authorized to review Confidential Information may have access to such information for purposes of processing the case, including but not limited to, receiving and organizing discovery, and preparing prefiled testimony, hearing exhibits, and briefs. Outside counsel and experts are responsible for appropriate supervision of their staff to ensure the protection of all Confidential Information consistent with the terms of this Order.

25 **Reference to Confidential Information.** If counsel or persons afforded access to Confidential Information refer to such information orally or in writing during any part of this proceeding, any public reference (*i.e.*, any reference that will not be placed in a sealed portion of the record) shall be solely by title, exhibit reference, or some other description that will not disclose the substantive Confidential Information contained in the document. Any other written reference shall be segregated and marked "Confidential Information," as appropriate, and access to it shall be given solely to persons who are authorized access to the information under this Order. The parties must not disclose to any person not bound by the terms of this Order any Confidential Information that has been referenced in this proceeding.

26 Designated counsel and experts will maintain the Confidential documents and information and any notes reflecting their contents in a secure location to which only those individuals and their administrative staff working on this matter have access.

27 All Confidential Information, including any testimony or exhibits prepared that include such information, must be maintained in the secure location until filed with the Commission or removed to the hearing room for production under seal and under circumstances that will ensure continued protection from disclosure

to persons not entitled to review Confidential documents or information. Counsel will provide prior notice, to the presiding officer, of any intention to introduce such material at hearing, or refer to such materials in argument, testimony, or cross-examination of a witness. The presiding officer will determine the process for including such documents or information following consultation with the parties, and will, if necessary, clear the hearing room of persons not bound by this Order or take such other action as is appropriate in the circumstances. The goal is to protect each party's rights with respect to Confidential Information while allowing all parties the latitude to present the evidence necessary to their respective cases.

C. Highly Confidential Information

- 28 Parties must scrutinize potentially highly confidential material, and strictly limit what they designate as "Highly Confidential Information" to only information that truly might compromise network security or create risk to carriers or third parties if disseminated without the protections provided in this Order. The first page and individual pages of a document determined in good faith to include Highly Confidential Information must be marked by a stamp that reads: "**Highly Confidential Per Protective Order in WUTC Docket No. UT-042022.**"
- 29 Placing a "Highly Confidential" stamp on the first page of a document indicates only that one or more pages contains Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly Confidential Information must be marked separately to indicate where Highly Confidential Information is redacted. The unredacted versions of each page containing Highly Confidential Information and provided under seal also must be stamped "Highly Confidential" and submitted on light blue paper with references (*i.e.*, highlighting) to where Highly Confidential Information is redacted in the original document.

30 **Highly Confidential and Redacted Versions.** Parties must file **complete confidential (i.e., unredacted) and redacted versions of testimony, exhibits, and briefs** with the Commission. This includes electronic versions, and requires that all diskettes and all electronic mail specify whether the file is highly confidential, redacted, or public.

- (a) If a witness has a highly confidential portion of her testimony, the sponsoring party must provide a complete redacted version of the testimony and a complete highly confidential version, with highly confidential pages on light blue paper.
- (b) Parties must submit (at least) two diskettes and e-mails attachments - one with the electronic version of the highly confidential text and one with the electronic version of the redacted text.
 - (i) Parties **MUST** identify the highly confidential diskettes with prominent red markings and the word “highly confidential” in addition to the contents and the docket number. The others must be prominently labeled “redacted” or “public”.
 - (ii) Parties **MUST** identify each highly confidential digital file with a HC in the file name and **MUST** have the legend **“HIGHLY CONFIDENTIAL PER PROTECTIVE ORDER IN WUTC DOCKET NO. UT-042022”** prominently displayed on the first page (i.e., the page that appears on the computer screen when the file is opened).

- 31 **Persons Permitted Access.** No Highly Confidential Information will be made available to anyone other than a) Commissioners, b) the Washington Utilities and Transportation Commission Staff (“Commission Staff”), c) the presiding officer(s), d) counsel of record for the parties in this proceeding, e) in-house counsel for parties who are responsible for overseeing this proceeding, including any administrative or judicial review, f) court reporters, g) representatives or employees of a party that produces the Highly Confidential Information, h) persons identified on a document as an author of the document in part or in whole, or persons to whom a copy of such document was sent prior to its production in this proceeding, or persons who had access to the document prior to its production in this proceeding, i) former employees of any party who have stated under oath, either in a declaration or as part of a transcribed proceeding, that they were responsible for the specific type of Highly Confidential Information proposed to be made available to them while employed by a party, j) outside experts, designated pursuant to the procedures set forth in this Order, and k) any mediator approved by all of the parties.
- 32 Nothing shall prevent the parties from agreeing unanimously in writing to permit any additional persons to have access to Highly Confidential Information.
- 33 If any party believes that it is appropriate to show Highly Confidential information to a person who does not fit into one of the above categories they may file a motion seeking permission to show Highly Confidential Information to that person and may present evidence supporting their motion. In order to facilitate an expeditious resolution, any party objecting to the motion must file a response within three business days of service of the motion. A reply may be filed within one business day of service of the objection.

- 34 Staff of counsel, with the exclusion of staff of a non-producing party who are involved in competitive decision making on behalf of that party, and staff of designated outside experts who are authorized to review Highly Confidential Information may have access to highly confidential documents or information for purposes of processing the case, including but not limited to, receiving and organizing discovery, and preparing prefiled testimony, hearing exhibits, and briefs. Outside counsel and experts are responsible for appropriate supervision of their staff to ensure the protection of all Highly Confidential Information consistent with the terms of this Order.
- 35 Designated counsel and experts will maintain the Highly Confidential documents and information and any notes reflecting their contents in a secure location to which only those individuals and their administrative staff working on this matter have access.
- 36 All Highly Confidential Information, including any testimony or exhibits prepared that include such information, must be maintained in the secure location until filed with the Commission or removed to the hearing room for production under seal and under circumstances that will ensure continued protection from disclosure to persons not entitled to review Highly Confidential documents or information. Counsel will provide prior notice, to the presiding officer, of any intention to introduce such material at hearing, or refer to such materials in argument, testimony, or cross-examination of a witness. The presiding officer will determine the process for including such documents or information following consultation with the parties, and will, if necessary, clear the hearing room of persons not bound by this Order or take such other action as is appropriate in the circumstances. The goal is to protect each party's rights with respect to Highly Confidential Information while allowing all parties the latitude to present the evidence necessary to their respective cases.

- 37 **Reference to Highly Confidential Information.** If counsel or persons afforded access to highly confidential information refer to such information orally or in writing during any part of this proceeding, any public reference (*i.e.*, any reference that will not be placed in a sealed portion of the record) shall be solely by title, exhibit reference, or some other description that will not disclose the substantive confidential information contained in the document. Any other written reference shall be segregated and marked "Highly Confidential Information," as appropriate, and access to it shall be given solely to persons who are authorized access to the information under this Order. The parties must not disclose to any person not bound by the terms of this Order any Highly Confidential Information that has been referenced in this proceeding.
- 38 (a) All deposition testimony shall be treated as Highly Confidential Information for a period of time (the "Designation Period") up to ten calendar days after the court reporter notifies the parties in writing that the transcript of the testimony is available. If notification is by mail, it shall be effective five business days after mailing. If notification is by e-mail, facsimile or messenger, it shall be effective the business day following delivery. At any time during the Designation Period, any party may designate any particular testimony as Confidential or Highly Confidential Information by notifying the court reporter and all parties in writing. Upon receipt of such notice, all persons receiving notice shall promptly stamp the relevant portions of all copies of the transcript or other record with the legend, "This transcript/record contains Highly Confidential Information," or "This transcript/record contains Confidential Information," as required, and treat it as such pursuant to the terms of this Order.

- 39 (b) Any party may also designate any deposition testimony as Confidential or Highly Confidential Information on the record at the deposition, at which time it shall be treated as such pursuant to the terms of this Order. If any Confidential or Highly Confidential Information is designated or referenced at any deposition, the party that initiated the deposition shall assure that any transcript or record of that portion of the deposition is prepared as a separate transcript or record and marked with the notation, "This transcript/record contains Highly Confidential Information," or "This transcript/record contains Confidential Information," as required.

DATED at Olympia, Washington, and effective this 18th day of March, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

EXHIBIT A (ATTORNEY AGREEMENT)

AGREEMENT CONCERNING CONFIDENTIAL INFORMATION
IN DOCKET NO. UT-042022
BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, _____, as

Attorney

Administrative Staff

in this proceeding for _____
(party to this proceeding) agree to comply with and be bound by the Protective
Order entered by the Washington Utilities and Transportation Commission in
Docket No. UT-042022, and acknowledge that I have reviewed the Protective
Order and fully understand its terms and conditions.

Signature

Date

Employer

Address

Position and Responsibilities

EXHIBIT B (EXPERT AGREEMENT)

AGREEMENT CONCERNING CONFIDENTIAL INFORMATION
IN DOCKET NO. UT-042022
BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, _____, as expert witness in this proceeding for _____ (a party to this proceeding) hereby agree to comply with and be bound by the Protective Order entered by the Washington Utilities and Transportation Commission in Docket No. UT-042022 and acknowledge that I have reviewed the Protective Order and fully understand its terms and conditions.

Signature

Date

Employer

Address

Position and Responsibilities

EXHIBIT C (Highly Confidential Information Agreement)

AGREEMENT CONCERNING HIGHLY CONFIDENTIAL INFORMATION
IN DOCKET NO. UT-042022
BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, _____, hereby agree that: (a) I have read a copy of this Protective Order with Highly Confidential Provisions and agree to be comply with and be bound thereby; (b) I will not disclose any Highly Confidential Information, or the contents thereof to which I become privy, to any person not entitled thereto under the terms of the Protective Order with Highly Confidential Provisions; and (c) I will not use such Highly Confidential Information except in connection with this litigation, which is to include *Judd et al. v. AT&T et al.*, King County Superior Court No. 00-2-17565-5 SEA.

Signature

Date

Employer

Address

Position and Responsibilities