

FCC MAIL SECTION

Federal Communications Commission

DA 97-2219

Oct 24 3 00 PM '97

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
) CC Docket No. 97-149
1997 Annual Access)
Tariff Filings)

ORDER

Adopted: October 17, 1997

Released: October 17, 1997

By the Chief, Competitive Pricing Division, Common Carrier Bureau

1. On September 2, 1997, GTE Service Corporation (GTE), filed data in support of its 1997 Annual Access tariff investigation filing for which it requested confidential treatment.¹ In this Order, we grant in part and deny in part GTE's request for confidential treatment of this data. GTE's data will be made publicly available subject to a protective order, as described below.

2. GTE requested confidential treatment of its data pursuant to section 0.459 of the Commission's rules.² GTE claims that the data for which confidential treatment is sought contains commercial or financial information, and would cause GTE competitive injury if it were available for public inspection.³

3. Section 0.453(a)(1) of the Commission's Rules, 47 C.F.R. §§ 0.453(a)(1), provides that materials filed in all docketed cases are to be made publicly available. GTE has filed a request that certain data filed in support of its 1997 Annual Access tariff investigation filing not be made publicly available pursuant to section 0.459 of our rules.⁴ We do not find that good cause exists to waive the rules that require public disclosure of the support data. Specifically, we do not find that GTE has demonstrated, by a preponderance of the evidence, that a case for absolute non-disclosure exists. We find, however, that the data in question should be afforded confidential treatment, and that commenting parties should be allowed access to the support data subject to a protective order that will guard against improper dissemination or use of the data. The Commission recently adopted a protective order to safeguard confidential data for use in connection with streamlined tariff proceedings under section 402(b) of the Telecommunications Act of 1996.⁵ We find that the same protective order affords adequate protection of

¹ See *In re 1997 Annual Access Tariff Filings*, Order Designating Issues for Investigation, Memorandum Opinion and Order on Reconsideration. (rel. July 28, 1997).

² 47 C.F.R. § 0.459.

³ Letter from Gail L. Polivy, GTE, to William F. Caton, FCC, September 2, 1997 at 1.

⁴ 47 C.F.R. § 0.459.

⁵ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, §402(b). See also *In re Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, Report and Order, 12 FCC Rcd 2170, Appendix B (1997) (*Streamlined Tariff Filing Order*).

the data submitted in the instant proceeding.

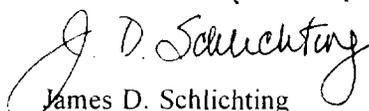
4. We find that making these data available for inspection subject to a protective order will guard against any potential competitive harm, while furthering the goals of public disclosure. For these purposes, we adopt the Standard Protective Order and Declaration in Section 402(b) Streamlined LEC Tariff Proceedings, attached hereto as Appendix A.⁶ Any party wishing to view GTE's information must first sign the declaration contained in Appendix A, thereby agreeing to the terms of this protective order. For purposes of GTE's, 1997 Annual Access tariff investigation filing, we deem its identification of the confidential information to be in compliance with Paragraph 3 of the Protective Order.⁷

5. Accordingly, IT IS ORDERED that, pursuant to section 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.291, for the purposes of this proceeding, GTE's Request for Confidential Treatment IS GRANTED in part and DENIED in part.

6. IT IS FURTHER ORDERED that the Protective Order and Declaration attached herein as Appendix A, be imposed in this matter on GTE's data for which confidential treatment was requested, pursuant to the terms contained in this Order.

7. IT IS FURTHER ORDERED that all comments on the confidential data must be filed by October 27, 1997, and any replies to the comments must be filed by November 3, 1997. All comments and replies must be filed in accordance with Section 1.51 of the Commission's rules, 47 C.F.R. § 1.51(c). In addition, one copy of each pleading must be filed with International Transcription Services (ITS), the Commission's duplication contractor, at its office at 1231 20 Street, N.W., Washington, D.C. 20037 and one copy with the Chief, Competitive Pricing Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION



James D. Schlichting
Chief, Competitive Pricing Division
Common Carrier Bureau

⁶ See *Streamlined Tariff Filing Order*, 12 FCC Rcd 2170, Appendix B.

⁷ We will also consider GTE to be defined as the "Submitting Party" pursuant to Paragraph 1(f) of the Protective Order.

APPENDIX A:

STANDARD PROTECTIVE ORDER

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
) Cc Docket No. 97-149
1997 Annual Access)
Tariff Filings)

PROTECTIVE ORDER

This Protective Order is intended to facilitate and expedite the review of documents containing trade secrets and commercial or financial information obtained from a person and privileged or confidential. It reflects the manner in which "Confidential Information," as that term is defined herein, is to be treated. The Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 C.F.R. § 0.442.

1. Definitions.

a. Authorized Representative. "Authorized Representative" shall have the meaning set forth in Paragraph seven.

b. Commission. "Commission" means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.

c. Confidential Information. "Confidential Information" means (i) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith constitutes trade secrets and commercial or financial information which is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4) and (ii) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith falls within the terms of Commission orders designating the items for treatment as Confidential Information. Confidential Information includes additional copies of, notes, and information derived from Confidential Information.

d. Declaration. "Declaration" means Attachment A to this Protective Order.

e. Reviewing Party. "Reviewing Party" means a person or entity participating in this proceeding or considering in good faith filing a document in this proceeding.

f. Submitting Party. "Submitting Party" means a person or entity that seeks confidential treatment of Confidential Information pursuant to this Protective Order.

2. Claim of Confidentiality. The Submitting Party may designate information as "Confidential Information" consistent with the definition of that term in Paragraph 1 of this Protective Order. The Commission may, *sua sponte* or upon petition, pursuant to 47 C.F.R. §§ 0.459 & 0.461, determine that all or part of the information claimed as "Confidential Information" is not entitled to such treatment.

3. Procedures for Claiming Information is Confidential. Confidential Information submitted to the Commission shall be filed under seal and shall bear on the front page in bold print, "CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION - DO NOT RELEASE." Confidential Information shall be segregated by the Submitting Party from all non-confidential information submitted to the Commission. To the extent a document contains both Confidential Information and non-confidential information, the Submitting Party shall designate the specific portions of the document claimed to contain Confidential Information and shall, where feasible, also submit a redacted version not containing Confidential Information.

4. Storage of Confidential Information at the Commission. The Secretary of the Commission or other Commission staff to whom Confidential Information is submitted shall place the Confidential Information in a non-public file. Confidential Information shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

5. Access to Confidential Information. Confidential Information shall only be made available to Commission staff, Commission consultants and to counsel to the Reviewing Parties, or if a Reviewing Party has no counsel, to a person designated by the Reviewing Party. Before counsel to a Reviewing Party or such other designated person designated by the Reviewing Party may obtain access to Confidential Information, counsel or such other designated person must execute the attached Declaration. Consultants under contract to the Commission may obtain access to Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement or if they execute the attached Declaration.

6. Counsel to a Reviewing Party or such other person designated pursuant to Paragraph 5 may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of paragraph 7 of this Protective Order only after advising such Authorized Representatives of the terms and obligations of the Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the attached Declaration.

7. Authorized Representatives shall be limited to:

- a. Counsel for the Reviewing Parties to this proceeding including in-house counsel actively engaged in the conduct of this proceeding and their associated attorneys, paralegals, clerical staff and other employees, to the extent reasonably necessary to render professional services in this proceeding;
- b. Specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding, except that disclosure to persons in a position to use this information for competitive commercial or business purposes shall be prohibited;
- c. Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper.

8. Inspection of Confidential Information. Confidential Information shall be maintained by a Submitting Party for inspection at two or more locations, at least one of which shall be in Washington, D.C. Inspection shall be carried out by Authorized Representatives upon reasonable notice not to exceed one business day during normal business hours.

9. Copies of Confidential Information. The Submitting Party shall provide a copy of the Confidential Material to Authorized Representatives upon request and may charge a reasonable copying fee not to exceed twenty five cents per page. Authorized Representatives may make additional copies of Confidential Information but only to the extent required and solely for the preparation and use in this proceeding. Authorized

Representatives must maintain a written record of any additional copies made and provide this record to the Submitting Party upon reasonable request. The original copy and all other copies of the Confidential Information shall remain in the care and control of Authorized Representatives at all times. Authorized Representatives having custody of any Confidential Information shall keep the documents properly secured at all times.

10. Filing of Declaration. Counsel for Reviewing Parties shall provide to the Submitting Party and the Commission a copy of the attached Declaration for each Authorized Representative within five (5) business days after the attached Declaration is executed, or by any other deadline that may be prescribed by the Commission.

11. Use of Confidential Information. Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than for use in this proceeding (including any subsequent administrative or judicial review), shall not be used for competitive business purposes, and shall not be used or disclosed except in accordance with this Order. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents.

12. Pleadings Using Confidential Information. Submitting Parties and Reviewing Parties may, in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

- a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings and filed under seal;
- b. The portions containing or disclosing Confidential Information must be covered by a separate letter referencing this Protective Order;
- c. Each page of any Party's filing that contains or discloses Confidential Information subject to this Order must be clearly marked: "Confidential Information included pursuant to Protective Order, [cite proceeding];" and
- d. The confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission, the Submitting Party, and those Reviewing Parties that have signed the attached Declaration. Such confidential portions shall be served under seal, and shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party and an opportunity to comment on such proposed disclosure). A Submitting Party or a Reviewing Party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. A Submitting Party or a Reviewing Party may provide courtesy copies of pleadings containing Confidential Information to Commission staff so long as the notation required by subsection c. of this paragraph is not removed.

13. Violations of Protective Order. Should a Reviewing Party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, it shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure or use of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The Violating Party shall also immediately notify the Commission and the Submitting Party, in writing, of the identity of each party known or reasonably suspected to have obtained the Confidential Information through any such disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order

shall limit any other rights and remedies available to the Submitting Party at law or equity against any party using Confidential Information in a manner not authorized by this Protective Order.

14. Termination of Proceeding. Within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall destroy or return to the Submitting Party all Confidential Information as well as all copies and derivative materials made, and shall certify in a writing served on the Commission and the Submitting Party that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel to a Reviewing Party may retain two copies of pleadings submitted on behalf of the Reviewing Party. Any confidential information contained in any copies of pleadings retained by counsel to a Reviewing Party or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with paragraphs 9 and 11 of this Protective Order unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

15. No Waiver of Confidentiality. Disclosure of Confidential Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information shall not be deemed a waiver of the privilege.

16. Additional Rights Preserved. The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Information.

17. Effect of Protective Order. This Protective Order constitutes an Order of the Commission and an agreement between the Reviewing Party, executing the attached Declaration, and the Submitting Party.

18. Authority. This Protective Order is issued pursuant to Sections 4(i) and 4(j) of the Communications Act as amended, 47 U.S.C. §§ 154(i), (j) and 47 C.F.R. § 0.457(d).

Attachment A to Standard Protective Order

DECLARATION

In the Matter of)
) CC Docket No. 97-149
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I, _____, hereby declare under penalty of perjury that I have read the Protective Order that has been entered by the Commission in this proceeding, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceedings in this matter. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement with the Submitting Party.

(signed) _____

(printed name) _____

(representing) _____

(title) _____

(employer) _____

(address) _____

(phone) _____

(date) _____