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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of an Investigation into Various)
Issues Related to the Missouri Universal Service) Case No. TO-98-329
Fund.)
)

ORDER ESTABLISHING PROCEDURAL SCHEDULES
AND ADOPTING PROTECTIVE ORDER

The Commission established this case to consider issues relating to the implementation of the Missouri Universal Service Fund. The parties met in a prehearing conference on March 25, 1998, and late-filed a recommended procedural schedule on April 6. Because a number of parties were omitted from the signature pages, a Corrected Request to Late File This Recommendation of Parties for Procedural Schedule was filed on April 9. The parties proposed separate procedural schedules for determining the appropriate costing method and for determining just, reasonable, and affordable rates. In both cases the parties agreed that filing dates should be ordered to be "in-hand" dates due to the expedited scheduling. The parties agreed to hand-deliver, fax, or send by overnight delivery the testimony called for in the procedural schedules. The parties also requested a protective order in this case because some of the information necessary to support proposed cost models and to respond to discovery requests may contain proprietary or highly confidential information. For both procedural schedules the parties proposed conference calls in lieu of prehearing conferences. Finally, the parties stated that the issues of low-income designation and certification procedures, determination of existing subsidies, and determination of the appropriate revenue-neutrality

method cannot be scheduled until the Commission has decided an appropriate costing method and decided on just, reasonable, and affordable rates.

The Commission has reviewed the procedural proposals of the parties and finds they are appropriate. The Commission will grant the request to late-file the proposed procedural schedule and will adopt its standard protective order to govern this case. The use of protective orders has been helpful in other cases in minimizing disputes and enabling parties to share confidential and proprietary information. The Commission will adopt the procedural schedules proposed by the parties and approve the parties' use of conference calls in lieu of prehearing conferences. However, if it becomes apparent before the conference call that there are matters pending that need to be taken up on the record, the resolution of those issues will be dependent upon the availability of a hearing room and court reporter and could result in a delay in the proceedings. The Commission will apply the following conditions to both procedural schedules:

A. The Commission will require the prefiling of testimony in compliance with the requirements of 4 CSR 240-2.130, including the filing of testimony on line-numbered pages. The practice of prefiling testimony is designed to give parties notice of the claims, contentions and evidence in issue and to avoid unnecessary objections and delays in the proceedings caused by allegations of unfair surprise at the hearing.

B. Testimony and schedules shall not be filed under seal and treated as proprietary or highly confidential unless a protective order has first been established by the Commission. The party that considers information to be proprietary or highly confidential should indicate the material's proper classification at the time of filing. Any testimony or

schedule filed without a protective order first being established, or its classification clearly indicated, shall be considered public information.

C. The Commission will permit the parties to participate in a conference call in lieu of a prehearing conference. The parties should use the conference call to resolve substantive issues as well as to consider those matters described in 4 CSR 240-2.090(6). The parties shall also use the conference to eliminate issues which can be resolved through updating of a party's case, clarification of misunderstandings, explanation of an issue's interrelationship with other issues, and correction of clerical or arithmetic errors.

D. The parties shall file a hearing memorandum setting out the issues to be heard and the witnesses to appear on each day of the hearing, definitions of terms used in describing those issues, and each party's position on those issues. The hearing memorandum will set forth the issues that are to be heard and decided by the Commission. Any issue not contained in the hearing memorandum will be viewed as uncontested and not requiring resolution by the Commission.

The Commission Staff will be responsible for preparing and filing the hearing memorandum. The Commission wishes to emphasize the importance of the deadline for filing the hearing memorandum. Unless the Commission orders otherwise, the hearing memorandum shall be filed on the date set. Each party is expected to provide Staff with its position on each unresolved issue at least two business days before the due date. If a party fails to provide its position by that date, the Staff is not obligated to include that party's position in the hearing memorandum.

E. Any party wishing to offer a prefiled exhibit into evidence must bring to the hearing three copies of the exhibit for the court

reporter. If the exhibit has not been prefiled, the proponent must also bring six copies for the Commissioners and the regulatory law judge, and copies for opposing counsel.

F. The Commission's general policy provides for the filing of the transcript within two weeks after the conclusion of the hearing. Any party seeking to expedite the filing of the transcript shall tender a written request to the administrative law judge at least five days before the hearing.

G. The briefs to be submitted by the parties shall follow the same format established in the hearing memorandum. Initial briefs must set forth and cite the proper portions of the record concerning the remaining unresolved issues that are to be decided by the Commission. Initial briefs shall be limited to 30 pages and reply briefs to 15 pages. All pleadings, briefs and amendments shall be filed in accordance with 4 CSR 240-2.080(7).

IT IS THEREFORE ORDERED:

1. That permission is granted for the parties to late-file their recommended procedural schedule.

2. That the Commission adopts its standard protective order to govern this case (Attachment A).

3. That the following procedural schedule is adopted for resolution of the just, reasonable, and affordable rates for basic local service subject to the conditions set out in the body of this order:

Technical conference	June 1, 1998
Direct testimony	July 9, 1998, 3:00 p.m.
Rebuttal testimony	July 30, 1998, 3:00 p.m.
Conference call	August 4, 1998, 9:00 a.m.

Hearing memorandum

August 11, 1998

Evidentiary hearing

August 17-19, 1998
9:00 a.m. (first day)

4. That the Commission adopts the following procedural schedule for determination of the appropriate cost models for the Missouri Universal Service Fund subject to the conditions set out in the body of this order:

Direct testimony June 23, 1998, 3:00 p.m.

Rebuttal testimony August 25, 1998, 3:00 p.m.

Surrebuttal testimony September 22, 1998, 3:00 p.m.

Conference call September 24, 1998

Hearing memorandum September 29, 1998

Evidentiary hearing October 5-9, 13 & 14, 1998
9:00 a.m. (first day)

5. That all dates ordered for the filing of testimony and briefs in this case shall be "in-hand" dates, meaning parties must hand-deliver, fax, or send by overnight delivery each of the necessary documents so that all parties have them on the filing date.

6. That anyone wishing to attend the hearings who has special needs as addressed by the Americans With Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one of the following numbers: Consumer Services Hotline - 1-800-392-4211, or TDD Hotline - 1-800-829-7541.

7. That the Staff of the Commission shall make arrangements for the Technical Conferences and shall advise each party and the Commission of the location and starting time of each technical conference.

8. That this order shall become effective on April 17, 1998.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

L. Anne Wickliffe, Deputy Chief
Regulatory Law Judge, by delegation
of authority pursuant to 4 CSR
240-2.120(1) (November 30, 1995)
and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 17th day of April, 1998.

PROTECTIVE ORDER

- A. The following definitions shall apply to information which a party claims should not be made public.

HIGHLY CONFIDENTIAL: Information concerning (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration in contract negotiations.

PROPRIETARY: Information concerning trade secrets, as well as confidential or private technical, financial and business information.

- B. During the course of discovery a party may designate information as HIGHLY CONFIDENTIAL or PROPRIETARY (hereinafter, "designated information") and shall make such designated information available to the party seeking discovery, if such information is not objectionable on any other ground, under the restrictions set out in paragraphs C and D. The party designating the information as HIGHLY CONFIDENTIAL or PROPRIETARY shall provide to counsel for the requesting party, at the time the designation is made, the ground or grounds for the designation. The requesting party may then file a motion challenging the designation. The party designating the information confidential shall have five (5) days after the filing of the challenge to file a response. No other filings are authorized.

- C. Materials or information designated as HIGHLY CONFIDENTIAL may at the option of the furnishing party, be made available only on the

furnishing party's premises and may be reviewed only by attorneys or outside experts who have been retained for the purpose of this case, unless good cause can be shown for disclosure of the information off-premises and the designated information is delivered to the custody of the requesting party's attorney. Outside expert witnesses shall not be employees, officers or directors of any of the parties in this proceeding. No copies of such material or information shall be made and only limited notes may be taken, and such notes shall be treated as the HIGHLY CONFIDENTIAL information from which notes were taken.

- D. Disclosure of PROPRIETARY information shall be made only to attorneys, and to such employees who are working as consultants to such attorney or intend to file testimony in these proceedings, or to persons designated by a party as outside experts. Employees to whom such disclosure is to be made must be identified to the other party by name, title and job classification prior to disclosure. Information designated as PROPRIETARY shall be served on the attorney(s) for the requesting party. On-premises inspection shall not be required for PROPRIETARY information, except in the case of voluminous documents (see paragraph K). Any employees of the party who wish to review such PROPRIETARY materials shall first read this order and certify in writing that (s)he has reviewed same and consented to its terms. The acknowledgment so executed shall contain the signatory's full name, permanent address, title or position, date signed, and an affirmation that the signer is acting on behalf of his/her employer. Such acknowledgment shall be delivered to counsel for the party furnishing the information or documents before disclosure is made.

- E. Attorneys, in-house experts or outside experts who have been provided access to material or information designated HIGHLY CONFIDENTIAL or PROPRIETARY shall be subject to the nondisclosure requirements set forth in paragraphs C or D, whichever is applicable, and S.
- F. If material or information to be disclosed in response to a data request contains material or information concerning another party which the other party has indicated is confidential, the furnishing party shall notify the other party of the intent to disclose the information. The other party may then choose to designate the material or information as HIGHLY CONFIDENTIAL or PROPRIETARY under the provisions of this Protective Order.
- G. Any party may use material or information designated as HIGHLY CONFIDENTIAL or PROPRIETARY in prefiled or oral testimony at hearing provided that the same level of confidentiality assigned by the furnishing party is maintained, unless otherwise classified by the Commission. In filing testimony all parties shall designate as HIGHLY CONFIDENTIAL or PROPRIETARY only those portions of their testimony which contain information so designated by the furnishing party. If any party plans to use information and testimony which has been obtained outside this proceeding, it must ascertain from the furnishing party if any of such information is claimed to be HIGHLY CONFIDENTIAL or PROPRIETARY prior to filing.
- H. A party may designate prefiled or live testimony, or portions thereof, submitted in this case as HIGHLY CONFIDENTIAL or PROPRIETARY (hereinafter, "designated testimony"). Prefiled testimony designated as HIGHLY CONFIDENTIAL or PROPRIETARY shall be filed under seal and served upon all attorneys of record. Only those portions of the

prefiled testimony designated as HIGHLY CONFIDENTIAL or PROPRIETARY should be filed under seal, and should be marked in a manner which clearly indicates which materials are considered HIGHLY CONFIDENTIAL and which are considered PROPRIETARY.

- I. Within five (5) days of the filing of designated testimony, the party asserting the claim shall file with the Commission the specific ground or grounds for each claim. Such filing shall show the nature of the information sought to be protected and specifically state the alleged harm of disclosure. Such filing shall be filed under seal only if it contains either PROPRIETARY or HIGHLY CONFIDENTIAL information and shall be served upon all attorneys of record.
- J. Attorneys upon whom prefiled testimony designated HIGHLY CONFIDENTIAL or PROPRIETARY has been served shall make such testimony available only to those persons authorized to review such testimony under the restrictions in Paragraphs C or D, whichever is applicable.
- K. If a response to a discovery request requires the duplication of voluminous material or material not easily copied because of its binding or size, the furnishing party may require the voluminous material be reviewed on its own premises. Voluminous material shall mean a single document, book or paper which consists of more than 150 pages.
- L. Attorneys of record in this case shall require that the in-house or outside expert read this Protective Order and certify in a written nondisclosure agreement that the person has reviewed the Protective Order and consented to be bound by its terms. The nondisclosure agreement shall contain the signatory's full name, permanent address, employer and the name of the party with whom the signatory is

associated. Such agreement shall be filed with the Commission. Attached hereto as Appendix "A" and incorporated by reference herein is a form for use in complying with the terms of this paragraph.

- M. In the event a witness discloses the contents of designated prefiled testimony in his or her own prefiled testimony, such testimony shall also be designated in the same manner as the designated prefiled testimony and handled in accordance with this order.
- N. Unless good cause is shown, challenges to the confidential nature of prefiled designated testimony shall be filed with the Commission no later than ten (10) days after the grounds supporting the designations are filed or at the hearing, whichever occurs first. The party making the designation shall have five (5) days to respond to the challenge or may respond at the hearing, whichever occurs first.
- O. The Commission or Regulatory Law Judge may rule on the challenge to the designations prior to the hearing, or at the hearings.
- P. In the event no party challenges prefiled designated testimony, or in the event the Commission or its Regulatory Law Judge rules that testimony was properly designated, then such testimony shall be received into evidence, subject to any other objections being made and ruled upon, and kept under seal.
- Q. In addition, all live testimony, including cross-examination and oral argument which reveals the content of prefiled designated testimony or which is otherwise held to be confidential, including any argument as to whether certain testimony is properly designated, shall be made only after the hearing room is cleared of all persons besides the Commission, its Regulatory Law Judges, court reporters, attorneys of record and witnesses to whom the designated information is available

pursuant to the terms of this Protective Order. The transcript of such live testimony or oral argument shall be kept under seal and copies shall only be provided to the Commission, its Regulatory Law Judges, and attorneys of record. Such attorneys shall not disclose the contents of such transcripts to anyone other than those who may have access to the designated information under the terms of this Protective Order. Persons who have access to the designated information under the terms of this Protective Order shall treat the contents of such transcript as any other designated information under the terms of this Protective Order.

- R. References to designated testimony, whether prefiled or live and transcribed, in any pleadings before the Commission, shall be by citation only and not by quotation. Subject to the jurisdiction of any reviewing court, references to designated testimony in pleadings or oral arguments made to such reviewing court shall also be by citation only.
- S. All persons who are afforded access to information under the terms of this Protective Order shall neither use nor disclose such information for purposes of business or competition or any other purpose other than the purpose of preparation for and conduct of this proceeding and then solely as contemplated herein, and shall keep the information secure and in accordance with the purposes and intent of this order.
- T. Subject to the jurisdiction of any reviewing court, designated testimony constituting part of the record before the Commission shall be delivered to any reviewing court under seal upon service of the appropriate writ of review.

- U. The Commission may modify this order on motion of a party or on its own motion upon reasonable notice to the parties and opportunity for hearing.
- V. Within ninety (90) days after the completion of this proceeding, including judicial review thereof, all designated information, testimony, exhibits, transcripts or briefs in the possession of any party other than Staff or the Public Counsel shall be returned to the party claiming a confidential interest in such information and any notes pertaining to such information shall be destroyed.
- W. The provisions of paragraph C, D, J and L of this Protective Order do not apply to Staff or Public Counsel. Staff and Public Counsel are subject to the nondisclosure provisions of Section 386.480, RSMo 1994. Staff and Public Counsel shall provide a list of the names of their employees who will have access to the designated information.
- X. Outside experts of Staff or Public Counsel who have been contracted to be witnesses in this proceeding shall have access to designated information and testimony on the same basis as Staff and Public Counsel except the outside expert shall read this order and sign the nondisclosure agreement attached as Appendix "A" hereto.
- Y. Outside experts of Staff and Public Counsel who have not been contracted to be witnesses in this proceeding are subject to the provisions of this Protective Order.
- Z. Prefiled testimony and exhibits, whether filed or offered at the hearing, shall be prepared in the manner described in Appendix "B".

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

NONDISCLOSURE AGREEMENT

I, _____,
have been presented a copy of this Protective Order issued in Case
No. _____ on the _____ day of _____, 19____.

I have requested review of the confidential information produced in
Case No. _____ on behalf of _____.

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

Dated this _____ day of _____, 19____.

Signature and Title

Employer

Party

Address

Telephone

1. If prefiled testimony contains parts which are classified as Proprietary or Highly Confidential, it shall be filed with the Commission's Secretary/Chief Regulatory Law Judge's Office as follows:
 - A. An original plus eight (8) copies of prefiled testimony with the Proprietary or Highly Confidential portions obliterated or removed shall be filed.
 - B. One (1) copy of those pages which contain information which has been designated as Proprietary, with any Highly Confidential portions obliterated or removed, shall be filed in a separate envelope. The portions which are Proprietary shall be indicated as described in D, below.
 - C. One (1) copy of those pages which have been designated as Highly Confidential shall be filed in a separate envelope. The portions which are Highly Confidential shall be indicated as described in D, below.
 - D. Six (6) copies of the complete prefiled testimony to be filed under seal for the Regulatory Law Judge and Commissioners. The Proprietary pages shall be stamped "P" and the Proprietary information indicated by two asterisks before and after the information, **Proprietary**. The Highly Confidential pages shall be stamped "HC" with the Highly Confidential information indicated by two asterisks and underlining before and after the Highly Confidential information, **Highly Confidential**.

Any deviations from this format must be approved by the Regulatory Law Judge.

2. Three (3) copies of exhibits, whether testimony or other, shall be filed at the hearing with the information separated as described in 1.A, 1.B and 1.C above with each copy of the Proprietary and Highly Confidential portions placed into separate envelopes to be marked as Exhibit __, Exhibit __P and Exhibit __HC.

RECEIVED

APR 17 1998

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION