

**David L. Rice**  
David.Rice@millernash.com  
(206) 777-7424 direct line

October 15, 2003

**VIA FEDERAL EXPRESS AND E-MAIL**

Ms. Carole J. Washburn  
Executive Secretary  
Washington Utilities and Transportation Commission  
Post Office Box 47250  
1300 S. Evergreen Park Dr. SW  
Olympia, Washington 98504-7250

Subject: Comments of Covad Communications Company regarding protective order issues, Docket No. UT-033025

Dear Ms. Washburn:

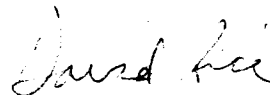
Covad Communications Company files these comments on the draft protective order circulated by Administrative Law Judge Ann Rendahl during the prehearing conference on October 13, 2003. The proposed protective order allows the Commission to collect confidential and highly confidential data of parties and nonparties. Covad does not object to the collection of this data. However, Covad is concerned that the protective order allows the Commission to distribute that data to parties in this docket. The problem is that this information is arguably protected from disclosure under the Public Records Act ("Act"). The Act protects from disclosure any "[v]aluable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss." RCW 42.17.310(1)(h). A party receiving a request might refuse to cooperate with discovery by claiming that information requested is "research data" that would be disclosed to benefit private companies participating in this docket to the detriment of the public at large, such as nonparty competitors.

The remedy for this situation is for the Commission Staff to collect confidential and highly confidential information, remove company-identifying information from it, and distribute it to the parties in aggregate form only. The Commission adopted a similar approach in UT-000883. If the Commission does not do this, it runs the risk that a party will claim that it has been harmed by the proposed disclosure and even ask a review in court to overturn the Commission's findings to the extent they are based on improperly disclosed information. There

Carole J. Washburn  
October 15, 2003  
Page 2

is no reason to run that risk, since distributing aggregate information is a reasonable compromise that will allow collection and provision of data.

Sincerely,



David L. Rice

cc: All Parties of Record