

PROTECTIVE AGREEMENT
FOR THIRD-PARTY CONFIDENTIAL INFORMATION

To expedite the disclosure of certain Third-Party Confidential Information, facilitate the prompt resolution of disputes over the confidentiality of such information, adequately protect such information entitled to be kept confidential, and ensure that the protection is afforded to such entitled information, the undersigned, the authorized representative of a party to the proceeding, and Verizon Northwest Inc. by its authorized representative (collectively herein "the Parties," which includes incorporated affiliates, subsidiaries, controlling interests, partners, successors, and assigns) agree in the above-captioned proceeding that:

1. *Exchange of Third-Party Confidential Information.* The Parties will be bound by the terms of this Agreement and may exchange Third-Party Confidential Information under the terms set forth herein. Any Party, including Third-Parties (as defined in paragraph 2), shall be entitled to seek enforcement of (or other appropriate relief pertaining to) this Agreement before the Commission or any other authority having competent jurisdiction, for any breach or threatened breach of this Agreement.

2. *Definition of Third-Party Confidential Information.* For purposes of this Agreement, "Third-Party Confidential Information" shall mean proprietary or confidential information held by any Party (or non-Party) which belongs to a third party ("Third Party") and which is subject to existing nondisclosure obligations owed to the Third Party by a party to this proceeding. Any Third-Party Confidential Information that is produced in this proceeding may be disclosed pursuant to paragraph 4 below.

3. *Designation of Third-Party Confidential Information.* Materials generated or provided by a Party in this proceeding may be designated as "Third-Party Confidential Information" by that Party if the Party believes in good faith that the materials are confidential or proprietary information belonging to a Third Party, or contain such information that could be determined or derived from the materials, and are subject to existing nondisclosure obligations owed to the Third Party. Any Party asserting confidentiality for such materials shall so indicate by clearly marking such materials, or portions thereof, for which a Third-Party Confidential Information designation is claimed with markings that are reasonably calculated to alert custodians of the material to its confidential or proprietary nature. Except with the prior written

consent of the Party or other person who has designated a document as Third-Party Confidential Information, no Third-Party Confidential Information may be disclosed to any person except as provided in paragraph 4. For purposes of this Agreement, the term "document" means all written, recorded or graphic material, and non-paginated items such as computer tapes, diskettes, and CD ROMs, whether produced or created by a Party or another person, whether produced pursuant to the Commission's rules, subpoena, by agreement, or otherwise. Interrogatory and document request answers, responses to requests for admission, deposition transcripts and exhibits, pleadings, motions, affidavits, and briefs that quote, summarize, or contain materials entitled to protection are accorded status as a stamped confidential document, and to the extent feasible, shall be prepared consistently with WAC 480-07-423 in such a manner that the Third-Party Confidential Information is clearly identified in a confidential version and all information not entitled to protection is provided in a redacted version. When substantial volumes of Third-Party Confidential information are included, as in a table or series of tables, the material shall be presented and bound separately, as in an exhibit or attachment.

EACH PAGE CONTAINING THIRD-PARTY CONFIDENTIAL

INFORMATION SHALL BE CLEARLY IDENTIFIED ON THE PAGE AND, IF PRINTED, SHALL BE PRINTED ON GREEN PAPER.

4. *Permissible Disclosure of Third-Party Confidential Information.*

(a) Notwithstanding paragraph 3, Third-Party Confidential

Information provided pursuant to this Agreement may be disclosed without prior consent to the following persons, only in prosecuting this proceeding, and only to the extent necessary to assist in prosecuting this proceeding:

i. Counsel of record representing a Party in this proceeding, and any legal support personnel (e.g., paralegals and clerical employees) employed by such attorneys, and any regulatory support personnel acting at the direction of such attorneys.

ii. Other designated employees, officers, or directors of a Party, or Independent consultants or experts retained by a Party, who are,

1. not currently involved in the marketing, procurement, manufacturing, pricing, or development of telecommunications equipment, software, or services, for which price and contract data are

- disclosed (collectively, "Competitive Activities"); or
2. not currently involved in the development of computerized telecommunications costing models that are not designed primarily for litigation support, including arbitration and rulemaking proceedings (also considered "Competitive Activities"); or
 3. not currently network planning and operations staff.

For purposes of this Agreement, any version of the HAI Consulting, Inc. costing model filed in this proceeding shall be deemed to be a model designed primarily for litigation support. Individuals who are authorized access to Third-Party Confidential Information under this paragraph may not engage or consult in Competitive Activities relating to software for one (1) year, or Competitive Activities relating to hardware or other equipment for three (3) years, or until such hardware or other equipment is no longer marketed, whichever period is less, following their review of the

Third-Party Confidential Information under this Agreement.

- iii. The Commission, its staff, and its adjudicative advisers and consultants.
 - iv. The Public Counsel Section or its staff.
 - v. Court reporters, stenographers, or persons operating audio or video recording equipment at hearings or depositions.
 - vi. Any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.
 - vii. Persons noticed for depositions or designated as witnesses, to the extent reasonably necessary in preparing to testify or for the purpose of examination in this proceeding.
- (b) Persons obtaining access to Third-Party Confidential Information under this Agreement shall not disclose information designated as Third-Party Confidential Information to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than in prosecuting this proceeding before the Commission or any Administrative Law Judge ("ALJ") appointed by this Commission. Each individual who is provided access to Third-Party Confidential Information pursuant to subparagraphs 4(a), (i), (ii),

(vi), or (vii), must first sign a statement affirmatively stating that the individual has personally reviewed this Agreement and understands and agrees to be bound by the limitations it imposes on the signing party. The form of statement to be used is Appendix A to this Agreement. The Party making disclosure under subparagraphs 4(a)(i), (ii), (vi) or (vii) shall notify the Party producing the Third-Party Confidential Information of such disclosure and, upon request, provide a copy of the signed statement (Appendix A) referenced above.

- (c) No copies or notes of materials marked Third-Party Confidential Information may be made except copies or notes to be used by persons designated in paragraph (a) of this section. Each Party shall maintain a log recording the number of copies made of all Third-Party Confidential materials and the persons to whom the copies have been provided.
- (d) Within ninety (90) days of termination of this proceeding, including all appeals and petitions, all originals and reproductions of any Third-Party Confidential materials, along with the log recording persons who have received copies of such materials, shall be returned to the producing Party and/or destroyed except those that are contained in the Commission's official record of the proceeding.

In addition, upon such termination, any notes or other work product derived in whole or in part from the Third-Party Confidential materials shall be destroyed, and counsel of record for the receiving Party shall notify counsel for the Party who produced the materials that this destruction has been completed. If materials are destroyed, rather than returned to the producing Party, a sworn statement to that effect by counsel of record for the receiving Party shall be provided to the producing Party.

- (e) Before disclosing Third-Party Confidential Information to any person listed in subparagraphs (a)(vi) or (a)(vii), the Party wishing to make such disclosure shall give at least ten (10) business days advance written notice to the counsel who designated such information as Third-Party Confidential Information, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. If, within the ten (10) business day period, a motion is filed objecting to the proposed disclosure, such disclosure shall not be permissible unless and until the Commission has denied such motion.
- (f) The number of authorized persons designated by a Party to review confidential information under paragraph 4(a)(ii) may not exceed

ten (10) individuals unless (i) the Party producing the Third-Party Confidential Information, and any Third Party whose Third-Party Confidential Information is being disclosed, consent to additional authorized persons, or (ii) the Commission or an ALJ denies a motion to bar disclosure of the Third-Party Confidential Information to additional authorized persons. Failure to file such a motion within ten (10) business days after receiving written notice that a reviewing Party intends to designate additional reviewing representative(s) shall constitute consent to the designation. The written notice shall (i) identify the additional authorized persons; (ii) identify the Third-Party Confidential Information that is proposed to be disclosed; and (iii) provide a copy of the resume of the proposed additional reviewing representative(s) containing the individual's up-to-date employment history.

- (g) Consistent with the terms of this Agreement, the Parties are responsible for employing reasonable measures to control duplication of, access to, and distribution of Third-Party Confidential Information.
5. *Declassification.* A Party may apply to the Commission and/or ALJ under the process identified in WAC 480-07-425 for a ruling that documents, categories of documents, or deposition transcripts,

stamped or designated as confidential, are not entitled to such status and protection. The Party or other person that designated the document or testimony Third-Party Confidential, and, if different, the person that owes an obligation of non-disclosure to the Third Party or at whose request or direction the material was designated as Third-Party Confidential, shall be given notice of the application and an opportunity to respond. To maintain confidential status, the proponent of confidentiality must show by a preponderance of the evidence that the materials are entitled to protected treatment under Washington Law, or that the materials are subject to existing nondisclosure obligations owed to a Third Party that is enforceable in the context of this proceeding under Washington Law, or that the materials fall within an exemption to disclosure contained in the Freedom of Information Act, 5 U.S.C. § 552(b)(1)–(9) that is legally enforceable in the context of this proceeding.

6. *Third-Party Confidential Information in Depositions.* In the event that depositions are to be taken in this proceeding:
 - (a) A deponent may during the deposition be shown or examined about Third-Party Confidential Information if the deponent already

knows the Third-Party Confidential Information contained therein or if the provisions of paragraph 4 above are complied with.

- (b) Parties (and deponents) may, within fifteen (15) days after receiving a deposition transcript, designate pages of the transcript (and exhibits thereto) as Third-Party Confidential Information. Third-Party Confidential Information within the deposition transcript may be designated by marking the portions of the pages that are confidential and marking such pages with the following legend: "Third-Party Confidential – Subject to Protective Agreement in Docket No. UT-040788 before the Washington Utilities and Transportation Commission." Until expiration of the fifteen (15) day period, the entire deposition will be treated as Confidential Information subject to protection against disclosure under this Agreement. If no Party or deponent timely designates Third-Party Confidential Information in a deposition, then none of the transcript or its exhibits shall be filed (to the extent such filing may be required) under seal separately from the portions and exhibits not so marked.

7. *Third-Party Confidential Information Offered in Evidence or Filed in the Record.* Subject to the Commission's rules, Third-Party Confidential Information may be offered into evidence or in the

record made by the Parties and submitted to the Commission (or to an ALJ appointed by the Commission) in this proceeding, provided that the proponent does so in the manner set forth in this Agreement, consistent with the rules of the Washington Utilities and Transportation Commission. Pursuant to this Agreement, any party may move before the Commission (or an ALJ appointed by the Commission) for an order that the evidence be received in camera or under other conditions to prevent unnecessary disclosure. The Commission or ALJ will then determine whether the proffered evidence should continue to be treated as Third-Party Confidential Information and, if so, what protection, if any, may be afforded to such information at any hearing or other proceeding.

8. *Subpoena by Courts or Other Agencies.* If a court or other administrative agency subpoenas or orders production of Third-Party Confidential Information that a Party has obtained under the terms of this Agreement, such Party shall promptly (within four (4) business days) notify the Party (or other person who designated the document confidential) of the pendency of such subpoena or order to allow that Party time to object to that production or seek a protective order.

9. *Filing.* The Third-Party Confidential Information shall not be filed with the Commission's Executive Secretary except when required in connection with motions under the Commission's rules and regulations, when filed as proposed exhibits to be offered into evidence, when accepted into evidence, or when necessary for the resolution of other matters pending before the Commission or an ALJ appointed by the Commission. If filed, such information shall be filed under seal and shall remain sealed, pursuant to the provisions of WAC 480-07-423, while in the Executive Secretary's office or such other office as the Commission may designate, so long as they retain their status as Third-Party Confidential Information.

10. *Client Consultation.* Nothing in this Agreement shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course thereof, relying generally on examination of Third-Party Confidential Information; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of or reference to any Third-Party Confidential Information except under the procedures of paragraph 4 above.

11. *Use.* Persons obtaining access to Third-Party Confidential Information under this Agreement shall use the information only for preparation of and the conduct of litigation in this proceeding and any related appeals or review proceedings, and shall not use such information for any other purpose, including business or commercial purposes, or governmental or other administrative or judicial proceedings.
12. *Non-Termination.* The provisions of this Agreement shall not terminate at the conclusion of this proceeding.
13. *Modification Permitted.* Nothing in this Agreement shall prevent any Party from objecting to discovery of Third-Party Confidential Information that it believes to be otherwise improper.
14. The terms of this Agreement shall be broadly and liberally construed so as to protect Third-Party Confidential Information from disclosure while expanding the flow of available discovery materials and testimony.

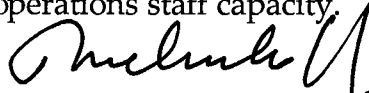
Dated: _____

By: _____
VERIZON NORTHWEST INC.

CERTIFICATION

I certify my understanding that I have been given a copy of an Agreement Regarding Disclosure and Use of Third-Party Confidential Information, and have read said Agreement, and agree to comply with and be bound by this Agreement.

I further certify that I am not currently involved in the marketing, procurement, manufacturing, pricing, or development of telecommunications equipment, software or services, or the development of computerized telecommunications costing models that are not designed primarily for litigation support, including arbitration and rulemaking proceedings, within the meaning of this Agreement, or employed in a network planning or operations staff capacity.

SIGNATURE: 
EMPLOYER: US DEPARTMENT OF DEFENSE
REPRESENTING: US DEPARTMENT OF DEFENSE AND ALL
OTHER FEDERAL EXECUTIVE AGENCIES (DOD/FEA)
DATE: 10/18/04