

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 04-C-0420 - In the Matter of Telecommunications Competition  
in New York Post USTA II Including Commitments  
Made in Case 97-C-0271.

RULING ADOPTING PROTECTIVE ORDER

(Issued April 6, 2004)

JUDITH A. LEE, Chief Administrative Law Judge:

In accordance with the notices issued March 29, 2004  
and April 5, 2004, comments are due from interested parties on  
April 12, 2004 and April 19, 2004.

Since parties may be filing information in this  
proceeding that may be of a confidential or proprietary nature  
or constitute trade secrets, I am hereby adopting the protective  
order that was adopted by Judge Linsider in Case 03-C-0821, In  
the Matter of the Implementation of the Federal Communication  
Commission's Triennial UNE Review Decision.

(SIGNED)

JUDITH A. LEE

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

-----X  
:  
In the Matter of Telecommunications :  
Competition in New York Post USTA II :  
Including Commitments Made in : Case 04-C-0420  
Case 97-C-0271 :  
:  
-----X

PROTECTIVE ORDER

In recognition that the parties may submit in this proceeding material that may be of a confidential or proprietary nature or constitute trade secrets, this Protective Order is adopted to provide a suitable means for obtaining access to and/or limiting distribution and copies of documents, data, information studies and materials (such documents, data, studies and other materials hereinafter collectively referred to as "Information") in a Party's possession and control, which are relevant to matters in this proceeding, in instances where a claim is made by the Party possessing or controlling such Information (such party hereinafter referred to as the "Providing Party") that such Information constitutes trade secrets as defined by 16 NYCRR §6.1-3 or are otherwise confidential or proprietary information covered by the Freedom of Information Law ("FOIL"), Public Officers Law §§84, *et seq.* (hereinafter referred to collectively as "Trade Secret

Information"). In order to protect any potential Trade Secret Information so as to preclude the unrestricted disclosure thereof prior to a final determination of its status as trade secret, confidential, or proprietary information by the Administrative Law Judge assigned to this proceeding, the Commission or a court, the following provisions are hereby adopted to supplement and assist in the administration and application of 16 NYCRR §6-1.3, §6-1.4 and FOIL §87 in this proceeding:

1. All Information furnished in this proceeding that is claimed by the Providing Party to be Trade Secret Information shall be furnished pursuant to the terms of this Order and shall be treated by all persons accorded access thereto pursuant to the terms of this Order as Trade Secret Information, and shall neither be used nor disclosed except for the purposes of this proceeding, and solely in accordance with this Order. Access to and/or copies of Trade Secret Information shall only be had as provided for in this Order.

2. When documents containing Trade Secret Information are to be provided to a Requesting Party, the Providing Party shall submit a form, annexed hereto as Exhibit 1, to the Requesting Party prior to producing the Trade Secret Information, listing the documents for which protection under this Order is sought. If the Requesting Party does not want to

accept the Trade Secret Information pursuant to the terms of this Protective Order, the Requesting Party must so notify the Providing Party, who will be obligated to submit this Trade Secret Information to the Administrative Law Judge for in camera review pursuant to 16 NYCRR §6-1.4. Determination of the trade secret status of any Information so identified will be made by the Administrative Law Judge in accordance with 16 NYCRR §6-1.4 and FOIL §87. If the Administrative Law Judge determines that the Information submitted is Trade Secret Information, the Requesting Party will be required to accept the Trade Secret Information pursuant to the terms of this Order or withdraw its request for the Information. The Providing Party will also designate, by an appropriate stamp on each document or portion thereof, the Trade Secret Information for which protection is sought. Counsel or the representative who requested said Trade Secret Information shall sign a list enumerating all items of Trade Secret Information which have been received and shall acknowledge that such Trade Secret Information has been received and, if possession and/or control of such Trade Secret Information is to be given to an Expert pursuant to this Order, shall provide a statement designating the name and address of such Expert into whose custody such documents will be delivered. Access to such Trade Secret Information shall be limited to a party's counsel or representative, and those Experts identified

pursuant to this Order. No other or further duplication or reproduction of the Trade Secret Information shall be made. Counsel or representatives who have agreed in writing to be bound by this Order and Experts who have agreed in writing to be bound by this Order may take limited notes regarding such Trade Secret Information as may be necessary in connection with this proceeding. Such notes shall be treated the same as the Trade Secret Information from which the notes were taken.

3. All Trade Secret Information produced pursuant to this Order shall be made available solely to counsel or representative for the parties; provided, however, that access to any Trade Secret Information may be authorized by said counsel or representative, on a "need to know" basis and solely for the purposes of this proceeding, to persons indicated by the parties as being their Experts in this matter, with the following exception and subject to the conditions set forth herein. With respect to parties who are not competitors of the Providing Party, "counsel" shall extend to authorized representatives of the parties and full-time employees of such parties. Prior to giving access to Trade Secret Information as contemplated in this paragraph to any such Expert, the counsel or representative for the party seeking access to the Trade Secret Information (hereinafter referred to as the "Requesting Party") shall deliver a copy of this Order to such person, and

prior to disclosure, such person shall agree in writing, in the form of Exhibit 2 attached hereto, to comply with and be bound by this Order. When the Requesting Party seeking access to the Trade Secret Information is a competitor of the Providing Party, the counsel or representative may authorize access to Trade Secret Information only in accordance with the provisions set forth below.

4. Prior to giving access to Trade Secret Information as contemplated in this paragraph to any such Expert, the counsel or representative for the party seeking access to the Trade Secret Information shall deliver a copy of this Order to such Expert, and prior to disclosure, such Expert shall agree in writing, in the form of Exhibit 2 attached hereto, to comply with and be bound by this Order. When the Requesting Party or Expert is a competitor of the Providing Party, counsel may authorize access to Trade Secret Information only in accordance with the provisions set forth herein and in Paragraph 5, below. At least five (5) business days before giving access to such Trade Secret Information to such person, counsel shall deliver to the counsel or representative for the Providing Party a copy of such written agreement (Exhibit 2) which shall show the signatory's full name, business address and employer, title or job responsibility, and the party with whom the signatory is associated. With the signed agreement, counsel shall also

submit the specific reason(s) for which the signatory needs the Trade Secret Information and why such needs cannot be satisfied with other Information. Counsel or the representative for the Providing Party shall have five (5) business days to object to such person receiving Trade Secret Information. The objection shall be in writing, filed with the Administrative Law Judge and served upon the counsel or representative for the Requesting Party. The Administrative Law Judge shall determine the matter as expeditiously as possible if an objection is made. Failure to so object, or denial of such objection by the Administrative Law Judge, in any instance, shall not affect the status of the Information to which access is sought as Trade Secret Information, nor be construed as a waiver of the right of the Providing Party to object to access to such Trade Secret Information by a different person. In any case in which it becomes necessary to bring to the Administrative Law Judge for resolution a dispute about Trade Secret Information, or concerning whether certain Trade Secret Information may or may not be shared with certain Experts, all active parties must receive, at a minimum, written notice that such dispute is being brought to the Administrative Law Judge for resolution. In any case in which there is a dispute about whether Trade Secret Information can be provided to an Expert of a competitor of the party providing information, and the dispute is brought to the

Administrative Law Judge for resolution, the Trade Secret Information will be withheld from the Expert until such time as a ruling is made that the Trade Secret Information may properly be provided to the Expert in question.

5. To facilitate the review and inspection of Trade Secret Information to be made available to an Expert pursuant to this Order as hereinabove set forth, a person authorized to receive such Information will be provided with such Information promptly by overnight mail, unless the Providing Party asserts that the volume of such materials would be unduly burdensome.

6. Except as provided below, one copy of items designated by the Providing Party as Trade Secret Information will be made upon the request of the counsel or representative who has agreed in writing to be bound by this Order, such copy to be made by the Providing Party who will affix a stamp or otherwise identify the Information as Trade Secret Information. Counsel or the representative who requested said copy shall sign a list that enumerates all items of Trade Secret Information which have been copied and acknowledges that such copies have been received and, if possession and/or control of such copies are to be give to an Expert pursuant this Order, a statement designating the name and address of such Expert into whose custody such copies shall be delivered. Access to such copies of Trade Secret Information will be limited to those Experts

identified pursuant to this Order. No other or further duplication or reproduction of the copies shall be made.

Counsel or the representatives who have agreed in writing to be bound by this Order and Experts who have agreed in writing to be bound by this Order may take limited notes regarding such Trade Secret Information as may be necessary in connection with this proceeding. Such notes shall be treated the same as the Trade Secret Information from which the notes were taken.

7. Should the Providing Party allege that any Trade Secret Information to be provided pursuant to this Order is of such a highly sensitive nature that access to and copying of such Trade Secret Information as hereinabove set forth would expose the Providing Party or any of its Affiliates to an unreasonable risk of harm, the following procedure shall apply. On or before the 10th day following the receipt of an information request, the Providing Party shall file with the Administrative Law Judge and serve upon the Requesting Party, in writing, a motion requesting that the items of Trade Secret Information in question be declared to be highly sensitive Trade Secret Information. The motion must include the special protection and treatment desired, the grounds why the Trade Secret Information in question needs special protection and a detailed list of the items of Trade Secret Information alleged to be too highly sensitive to be accessed or copied under the

provisions of this Order. The Requesting Party has five (5) business days to respond in writing to the motion, which response must include the need for access to such Trade Secret Information and why such a need cannot be satisfied with other Information, whether Trade Secret Information or otherwise. A copy of the response, if any, must be filed with the Administrative Law Judge and served upon the Providing Party. The Administrative Law Judge shall determine the status of the Trade Secret Information sought and the treatment that should be afforded to it as expeditiously as possible.

8. If any party desires to publicly use or disclose any Trade Secret Information in the proceeding, then that party shall notify the Providing Party as soon as practicable but, in any event, at least five (5) business days prior to use thereof, of the Trade Secret Information which said party intends to publicly use or disclose. The Providing Party will notify the party seeking to do so at least two (2) business days prior to the proposed introduction of such Trade Secret Information, as to which portion, if any, of the Trade Secret Information so identified should be afforded Trade Secret protection for purposes of the proceeding. Determination of the Trade Secret status of any Information so identified will be made by the Administrative Law Judge in accordance with 16 NYCRR §6-1.4 and FOIL §87.

9. All transcripts, exhibits, responses to discovery requests, prefiled testimony and other Information which have been determined by the Administrative Law Judge to be or contain Trade Secret Information and any Information which discusses or reveals any such Trade Secret Information shall be segregated from the balance of the record in this proceeding and placed in a sealed file or otherwise given appropriate protection against disclosure in accordance with 16 NYCRR §§6-1.3 and 6-1.4. Any employee or consultant or facilitator specifically authorized by the Commission to assist the Commission in this proceeding and any Administrative Law Judge in this docket may have access to such records and shall not, except for the purposes of this proceeding, use or, except pursuant to this Order, disclose the contents of any such records to any person, firm or corporation.

10. At any hearing or conference in these proceedings, no witness, other than any employee or representative of the Providing Party, may be questioned with respect to any Trade Secret Information unless that person has read this Order and agreed to be bound by its terms.

11. No person other than those who have signed an agreement to be bound by this Order shall be permitted to hear or review testimony given or discussion held with respect to Trade Secret Information.

12. The court reporter(s) shall be instructed as to the nature of certain testimony with respect to the Trade Secret Information and shall be further instructed to and shall start a separate transcription for testimony or discussion on the record of Trade Secret Information. Such transcriptions shall be marked "Confidential," sealed and filed with the Commission and copies of same shall be made available only pursuant to all other respects be treated as Trade Secret Information under this Order.

13. All persons who may be entitled to receive, or who are afforded access to any Trade Secret Information by reason of this Order, shall neither use nor disclose the Trade Secret Information for purposes of business other than the purposes of preparation for and conduct of this proceeding and then solely as contemplated herein, and shall use their best efforts to keep the Trade Secret Information secure and in accordance with the purposes and intent of this Order. To this end, persons having custody of any Trade Secret Information shall keep copies and/or notes thereof segregated under lock or otherwise properly secured during all times when the same are not being reviewed, and withheld from inspection by any person except those entitled to access thereto as provided by the terms of this Order, unless and until such Trade Secret Information is released from the restrictions of this Order either through

agreement of the parties, or, after notice to the parties and a hearing, pursuant to the order of the Commission or, to the extent appropriate, pursuant to the final order of a Court having jurisdiction.

14. The parties hereto affected by the terms of this Order further retain the right to question, challenge and object to the admissibility of any and all Information furnished under the terms of this Order on the grounds of relevancy and materiality.

15. This Order shall in no way constitute any waiver of the rights of any party herein to contest any assertion, or to appeal any finding, that specific Information is Trade Secret Information or that such Information should be subject to the protective requirements of this Order. This Order shall in no way constitute any waiver of the rights of a party to appeal, in accordance with 16 NYCRR §6-1.4, or FOIL §87, a ruling of the Administrative Law Judge or to appeal a final ruling of the Commission as to the status of any Information sought in connection with this proceeding as Trade Secret Information.

16. Upon completion of this proceeding, or, if this proceeding is continued, after a final ruling has been rendered on the issue for which the Trade Secret Information was obtained by the Requesting Party including administrative or judicial review thereof, all Trade Secret Information, including any

notes taken with regard thereto, furnished under the terms of this Order shall be returned to the Providing Party or counsel for the Providing Party unless such Providing Party receives certification that all such Trade Secret Information has been destroyed. Trade Secret Information which shall remain in the possession of the Commission shall continue to be subject to the protective requirements of this Order.

17. Notwithstanding any provisions to the contrary herein, a Requesting Party may use Trade Secret Information obtained in this proceeding in any other Commission proceeding involving the Providing Party, provided, first, that the proceeding in which the Trade Secret Information is to be used is governed by a Protective Order with conditions and terms as inclusive and protective as those stated herein, and, second, that the Requesting Party provides the Providing Party with a list of all such Trade Secret Information that the Requesting Party intends to use in the other proceeding so that the Providing Party may make any appropriate objections to the use of Trade Secret Information in the other Commission Proceeding. Inasmuch as numerous parties are involved in this proceeding, who have diverse interests, and recognizing that not every party may need specific Trade Secret Information that another party has requested, therefore, notwithstanding any prior orders in this proceeding, any response to an Information Request that

requires the production of Trade Secret Information will be supplied only to the party that has specifically requested that Information.

18. The provisions of this Order are specifically intended to apply to Information which is supplied by any party to this proceeding to any other party to it under the claim that such Information is a Trade Secret as defined in 16 NYCRR §6-1.3, or is otherwise proprietary or confidential information covered by FOIL §87.

Dated: April 6, 2004

SO ORDERED:

\_\_\_\_\_  
CHIEF ADMINISTRATIVE LAW JUDGE

CASE 04-C-0420

COPIES OF DOCUMENTS PROVIDED PURSUANT  
TO PROTECTIVE ORDER DATED APRIL 6, 2004

<u>Item</u>	<u>Request No.</u>	<u>Description of Material</u>
-------------	--------------------	--------------------------------

I acknowledge receipt of the documents listed above and acknowledge that their possession and use is subject to the Protective Order dated April 6, 2004.

Signed:

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

PROTECTIVE ORDER  
CASE 04-C-0420

I acknowledge receipt of a copy of, and have read, a certain protective Order entered by ruling of the presiding Administrative Law Judge issued on April 6, 2004, in Case 04-C-0420 before the Public Service Commission of the State of New York.

I understand that certain information to which I am to be given access is claimed by the Providing Party to be Trade Secret Information or proprietary or confidential information and that the use or disclosure of that Trade Secret Information other than as set forth in the Protective Order may cause substantial commercial harm to the Providing Party.

I agree to comply with and be bound by the terms and conditions of the Protective Order and, except as specifically provided therein, agree that I will not disclose such Trade Secret Information to any person, firm or corporation, copy or otherwise reproduce such Trade Secret Information or use such Trade Secret Information for any purpose for my benefit or the benefit of any other person, firm or corporation.

I hereby certify that I am not an officer, director, employee or agent for any other purpose of any party to this proceeding or any "Affiliate" of any such party.

SIGNATURE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TITLE: \_\_\_\_\_

JOB RESPONSIBILITY: \_\_\_\_\_

PARTY RESPONSIBILITY: \_\_\_\_\_

EMPLOYER: \_\_\_\_\_

DATE: \_\_\_\_\_