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January 30, 2004

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Teena I. Wolfe, Esq.
ALJ, Hearing Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Arizona Corporation Commission
DOCKETED

JAN 30 2004

DOCKETED BY	
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Re: *ALLTEL Communications, Inc.: Application for Designation as ETC -
Docket No. T-03887A-03-0316*

Dear Judge Wolfe:

As an initial follow-up concerning the issue of the confidentiality of Exhibit ALECA-8, attached are the two protective agreements pursuant to which the confidential information contained in ALECA-8 was provided to Commission Staff and ALECA. Although the agreements contain procedures addressing circumstances where a party formally challenges a confidential designation of a document, ALLTEL believes that no party to this docket has made such a challenge and the procedures set forth in the agreements do not clearly apply to the situation presented by Exhibit ALECA-8.

That being said, ALLTEL understands that you have concerns about the propriety of the confidential designation of Exhibit ALECA-8. *ALLTEL requests an opportunity to submit a brief addressing the confidentiality of Exhibit ALECA-8 and to further address this issue at the continuation of the hearing on February 17, 2004. ALLTEL proposes to file its brief by February 9, 2004.* ALLTEL believes that, given the procedural status of this docket, reserving a ruling on the confidentiality of Exhibit ALECA-8 until February 17, 2004, will not prejudice any party or improperly affect the hearing. It also will preserve status quo until this issue can be fully addressed and considered.

ROSHKA HEYMAN & DEWULF

Teena I. Wolfe, Esq.

January 30, 2004

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Thank you for your consideration of this request.

Sincerely,



Michael W. Patten

MWP/djj
Enclosures

ORIGINAL + 13 COPIES filed
with Docket Control

cc: Timothy J. Sabo, Esq, ACC Legal (via hand delivery-w/enclosures)
Jeff Crockett, Esq., (via hand delivery-w/enclosures)

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

- MARC SPITZER, CHAIRMAN
- WILLIAM A. MUNDELL
- JEFF HATCH-MILLER
- MIKE GLEASON
- KRISTIN K. MAYES



IN THE MATTER OF THE APPLICATION OF
 ALLTEL COMMUNICATIONS, INC. FOR
 DESIGNATION AS AN ELIGIBLE
 TELECOMMUNICATIONS CARRIER
 PURSUANT TO SECTION 214(e)(2) OF THE
 COMMUNICATIONS ACT OF 1934

Docket No. T-03887A-03-0316

PROTECTIVE AGREEMENT

The Arizona Local Exchange Carriers Association ("ALECA") and ALLTEL Communications, Inc. ("ALLTEL") enter into the following agreement:

1. In the above-captioned docket, ALECA has requested certain documents, data, information, studies and other materials, some of which may be of trade secret, proprietary or confidential nature.
2. ALLTEL will provide information which is of a trade secret, proprietary or confidential nature only pursuant to a Protective Agreement.
3. In order to expedite the provision of information to ALECA, the parties hereto are entering into this Agreement.
4. ALECA agrees to be bound by the terms of this Agreement as to all documents, data, information, studies and other materials provided pursuant to this Agreement.
5. (a) Confidential Information. All documents, data information, studies and other materials furnished pursuant to any requests for information, subpoenas or other

1 modes of discovery (formal or informal), and including depositions, that are claimed to be
2 of a trade secret, proprietary or confidential nature (herein referred to as "Confidential
3 Information"), shall be so marked by ALLTEL by stamping the same with a designation
4 indication its trade secret, proprietary or confidential nature. Access to and review of
5 Confidential Information shall be strictly controlled by the terms of this Agreement.

6 (b) Use of Confidential Information. All persons who may be entitled to
7 review, or who are afforded access to any Confidential Information by reason of this
8 Agreement shall neither use or disclose the Confidential Information for purposes of
9 business or competition, or any purpose other than the purpose of preparation for and
10 conduct of this proceeding and then solely as contemplated herein, and shall keep the
11 Confidential Information secure as trade secret, confidential or proprietary information and
12 in accordance with the purposes and intent of this Agreement.

13 (c) Persons Entitled to Review. Access to information shall be limited
14 to counsel for ALECA, witnesses for ALECA and retained experts for ALECA and their
15 staff. Access to Confidential Information may be authorized to certain limited ALECA
16 employees listed on attached Exhibit "B" who have been designated by counsel for
17 ALECA as being their experts or witnesses in this proceeding.

18 (d) Nondisclosure Agreement. Confidential Information shall not be
19 disclosed to any person who has not signed a nondisclosure agreement in the form which is
20 attached hereto and incorporated herein as Exhibit "A." Court reporters shall also be asked
21 to sign an Exhibit "A."

22 The nondisclosure agreement (Exhibit "A") shall require the person to whom
23 disclosure is to be made to read a copy of this Protective Agreement and to certify in
24 writing that they have reviewed the same and have consented to be bound by its terms. The
25 agreement shall contain the signatory's full name, permanent address and employer, and
26 the name of the party with whom the signatory is associated. Such agreement shall be
27 delivered to counsel for the providing party before disclosure is made, and if no objection

1 thereto is registered to the Commission within five (5) days, then disclosure shall follow.

2 6. A copy of the Confidential Information requested by the parties shall be
3 provided at an office of the providing party or a location convenient to the parties.

4 7. (a) Notes. Limited notes regarding Confidential Information may be
5 taken by counsel and experts for the express purpose of preparing pleadings, cross-
6 examinations, briefs, motions and argument in connection with this proceeding. No copies
7 of such notes shall be made.

8 (b) Return. All notes and copies of Confidential Information which
9 have not been received into evidence shall be returned to the providing party within thirty
10 (30) days after the final settlement or conclusion of this matter, including administrative or
11 judicial review thereof.

12 8. Objections to Admissibility. The furnishing of any document, infor-
13 mation, data, study or other materials pursuant to this Protective Agreement shall in no way
14 limit the right of the providing party to object to its relevance of admissibility in
15 proceedings before this Commission.

16 9. Challenge to Confidentiality. This Agreement establishes a procedure for
17 the expeditious handling of information that a party claims is confidential; it shall not be
18 construed as an agreement or ruling on the confidentiality of any document. Any party may
19 challenge the characterization of any information, document, data or study claimed by the
20 providing party to be confidential in the following manner:

21 (a) A party seeking to challenge the confidentiality of any materials
22 pursuant to this Agreement shall first contact counsel for the providing party and attempt to
23 resolve any differences by stipulation;

24 (b) In the event that the parties cannot agree as to the character of the
25 information challenged, any party challenging the confidentiality shall do so by appropriate
26 pleading. This pleading shall:

27 (1) Designate the document, transcript or other material

1 challenged in a manner that will specifically isolate the
2 challenged material from other material claimed as
confidential; and

3 (2) State with specificity the grounds upon which the
4 documents, transcript or other material are deemed to be
nonconfidential by the challenging party.

5 (c) A ruling on the confidentiality of the challenged information,
6 document, data or study shall be made by a Hearing Officer after proceedings *in camera*,
7 which shall be conducted under circumstances such that only those persons duly authorized
8 hereunder to have access to such confidential materials shall be present. This hearing shall
9 commence no earlier than five (5) business days after service on the providing party of the
10 pleadings required by subparagraph 5(b) above)

11 (d) The record of said *in camera* hearing shall be marked
12 "CONFIDENTIAL-SUBJECT TO PROTECTIVE AGREEMENT IN DOCKET NO. T-
13 03887A-03-0316." Court reporter notes of such hearing shall be transcribed only upon
14 agreement by the parties or Order of the Hearing Officer and in that event shall be
15 separately bound, segregated, sealed, and withheld from inspection by any person not
16 bound by the terms of this Agreement.

17 (e) In the event that the Hearing Officer should rule that any
18 information, document, data or study should be removed from the restrictions imposed by
19 this Agreement, no party shall disclose such information, document, data or study or use it
20 in the public record for ten (10) business days unless authorized by the providing party to
21 do so. The provisions of this subparagraph are entered to enable the providing party to
22 seek a stay or other relief from an order removing the restriction of this Agreement from
23 materials claimed by the providing party to be confidential.

24 10.(a) Receipt into Evidence. Provision is hereby made for receipt into
25 evidence in this proceeding materials claimed to be confidential in the following manner:

26 (1) At least five (5) days prior to the use of or substantive
27 reference to any Confidential Information, the parties

1 intending to use such Information shall make that
2 intention known to the providing party.

- 3 (2) The requesting party and the providing party shall make
4 a good-faith effort to reach an agreement so the
5 Information can be used in a manner which will not
6 reveal its trade secret, confidential or proprietary nature.
7
8 (3) If such efforts fail, the providing party shall separately
9 identify which portions, if any, of the documents to be
10 offered or referenced shall be placed in a sealed record.
11
12 (4) Only one (1) copy of the documents designated by the
13 providing party to be placed in a sealed record shall be
14 made.
15
16 (5) The copy of the documents to be placed in the sealed
17 record shall be tendered by counsel for the providing
18 party to the Commission, and maintained in accordance
19 with the terms of this Agreement.

20 (b) Seal. While in the custody of the Commission, materials containing
21 Confidential Information shall be marked "CONFIDENTIAL – SUBJECT TO PROTEC-
22 TIVE AGREEMENT IN DOCKET NO. T-03887A-03-0316," and shall not be examined by
23 any person except under the conditions set forth in this Agreement.

24 (c) In Camera Hearing. Any Confidential Information that must be
25 orally disclosed to be placed in the sealed record in this proceeding shall be offered in an *in*
26 *camera* hearing, attended only by persons authorized to have access to the information
27 under this Agreement. Similarly, any cross-examination on or substantive references to
Confidential Information (or that portion of the record containing Confidential Information
or references thereto) shall be received in an *in camera* hearing, and shall be marked and
treated as provided herein.

(d) Access to Record. Access to sealed testimony, records and
information shall be limited to the Hearing Officer and persons who have signed an Exhibit
"A," unless such information is released from the restrictions of this Agreement either

1 through agreement of the parties or after notice to the parties and hearing, pursuant to the
2 ruling of a Hearing Officer, the order of the Commission and/or the final order of a court
3 having final jurisdiction.

4 (e) Appeal. Sealed portions of the record in this proceeding may be
5 forwarded to any court of competent jurisdiction for purposes of an appeal, but under seal
6 as designated herein for the information and use of the court. If a portion of the record is
7 forwarded to a court under seal for the purpose of an appeal, the providing party shall be
8 notified which portion of the sealed record has been designated by the appealing party as
9 necessary to the record on appeal.

10 (f) Return. Unless otherwise ordered, Confidential Information,
11 including transcripts of any depositions to which a claim of confidentiality is made, shall
12 remain under seal, shall continue to be subject to the protective requirements of this
13 Agreement, and shall be returned to counsel for the providing party within thirty (30) days
14 after final settlement or conclusion of this matter, including administrative or judicial
15 review thereof.

16 11. Use in Pleadings. Where references to Confidential Information in the
17 sealed record or with the providing party is required in pleadings, briefs, arguments or
18 motions (except as provided in Paragraph 10), it shall be by citation of title or exhibit
19 number or some other description that will not disclose the substantive Confidential
20 Information contained therein. Any use of or substantive references to Confidential
21 Information shall be placed in a separate section of the pleading or brief and submitted to
22 the Hearing Officer or the Commission under seal. This sealed section shall be served only
23 on counsel of record and parties of record who have signed the nondisclosure agreement
24 set forth in Exhibit "A." All of the restrictions afforded by this Agreement apply to
25 materials prepared and distributed under this Paragraph.

26 12. Summary of Record. If deemed necessary by the Hearing Officer, the
27 providing party shall prepare a written summary of the Confidential Information referred to

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in the Agreement to be placed on the public record.

13. The provisions of this Agreement are specifically intended to apply to all data, documents, information, studies, and other material supplied by ALLTEL, whether the material originated at ALLTEL or was provided to ALLTEL by some other entity pursuant to an agreement to hold the material in a confidential manner.

DATED this 13th day of November 2003.

SNELL & WILMER

By 

Jeffrey Crockett, Esq.
One Arizona Center
400 East Van Buren Street
Phoenix, Arizona 85004

Attorneys for ALECA Corporation

ROSKA HEYMAN & DEWULF, PLC

By 

Raymond S. Heyman
Michael W. Patten
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004
(602) 256-6100

Attorneys for ALLTEL

1 Confidential information provided by Company is confidential solely as a result of either disclosing
2 individual customer information, or disclosing specific prices, this Agreement shall not prohibit Staff
3 from the public disclosure of such information in an aggregated form, where no individual customer
4 or specific individual price can be ascertained.

5 **§2. Designation of Confidential Information.** For purposes of this Agreement, all
6 documents, data, information, studies and all other written, printed, transcribed, audio-taped or video-
7 taped materials furnished to Staff that Company claims to be a trade secret, or of a proprietary,
8 confidential, or legally protected nature, shall be designated and referred to herein as "Confidential
9 Information". Access to and review of Confidential Information shall be strictly controlled by the
10 terms of this Agreement.

11 All Confidential Information provided to Staff pursuant to this Agreement shall be so marked
12 by Company with a designation indicating its alleged trade secret, proprietary, confidential or legally
13 protected nature. The Company shall memorialize any Confidential Information disclosed verbally
14 by Company in writing within five (5) business days of its verbal disclosure, and the writing shall be
15 marked by the Company with the appropriate designation. Any Confidential Information disclosed
16 verbally by Company shall be safeguarded by Staff and its contracting consultants only during the
17 five (5) business day period during which memorialization may be provided. Company agrees that it
18 will carefully consider the basis upon which any information is claimed to be trade secret,
19 proprietary, confidential, or otherwise legally protected. Company shall designate as Confidential
20 Information, only such information as it has a good faith basis for claiming to be legally protected.
21 Where a part of a document, or only a part of an informational submittal may reasonably be
22 considered to be trade secret, proprietary, confidential, or otherwise legally protected, Company shall
23 only designate that part of such information submittal as Confidential Information under this
24 Agreement. Information that is publicly available from any other source, shall not be claimed as
25 Confidential Information under this Agreement.

26 **§3. Performance Under Agreement Does Not Result in Waiver or Disclosure.**
27 Execution of this Agreement by the parties and performance of their obligations hereunder shall not
28 result in waiver of any claim, issue or dispute concerning the trade secret, proprietary, confidential or

1 legally protected nature of the Confidential Information provided. Neither shall the limited provision
2 of Confidential Information by Company pursuant to this Agreement, nor the limited provision by
3 Staff of Confidential Information pursuant to Section 6 of this Agreement constitute public disclosure
4 of it.

5 **§4. Access to Confidential Information.** Prior to reviewing any Confidential
6 Information, any Commission Staff members or independent contracting consultants shall first be
7 required to read a copy of this Protective Agreement, and to certify by their signatures on Exhibit A
8 of this Agreement, that they have reviewed the same and have consented to be bound by its terms.
9 Exhibit A of this Agreement shall contain the signatory's full name, business address and employer,
10 and the signatory's position with, or relationship to the Arizona Corporation Commission
11 ("Commission"). Upon their execution, any and all Exhibits shall be promptly provided to counsel
12 for Company.

13 **§5. Use of Confidential Information.** All persons who are signatories to this Agreement
14 shall neither use nor disclose the Confidential Information for purposes of business or competition, or
15 for any purposes other than those necessary for the disposition of this docket, including preparation
16 for and the conduct of any administrative or legal proceeding. All persons entitled to review or
17 afforded access to Confidential Information shall keep it secure as trade secret, confidential, or
18 legally protected information in accordance with the purposes and intent of this Agreement.

19 **§6. Non-Signatories Entitled to Review.** The information provided pursuant to this
20 Protective Agreement may be disclosed to other members of the Staff and to the Commission by any
21 Commission signatory to this Agreement only to the extent that disclosure is necessary to the
22 disposition of this docket. Such disclosure may be made only if the non-signatory is provided with a
23 copy of this Agreement and agrees to be bound by its terms.

24 **§7. Disclosure of Information to the Public.** The Confidential Information provided
25 pursuant to this Agreement shall not be disclosed, nor shall it be made a part of the public record in
26 this docket, or in any other administrative or legal proceeding unless: Staff provides Company five
27 (5) business days written notice that information designated by Company as Confidential Information
28 shall be subject to disclosure as a public record. Upon the expiration of five (5) business days from

1 the date written notice is received by Company, any Confidential Information identified in the notice
2 as subject to disclosure shall become part of the public record in this docket, unless Company
3 initiates a protective proceeding under the terms of this Agreement.

4 **§8. Protective Proceedings to Prevent Disclosure to the Public.** In the event that
5 Company seeks to prevent public disclosure of Confidential Information pursuant to Paragraph 7
6 above, Company shall file within five (5) business days of receipt of Staff's written notice, a motion
7 presenting the specific grounds upon which it claims that the Confidential Information should not be
8 disclosed or should not be made a part of the public record. Staff shall have an opportunity to respond
9 to the motion. Company's motion may be ruled upon by either the Commission or an assigned
10 Commission Administrative Law Judge ("ALJ"). Company may provide to the Commission or the
11 ALJ, the Confidential Information referenced in the motion without waiver that the information
12 should remain confidential under the terms of this Agreement. Any Confidential Information so
13 provided shall be kept under seal for the purpose of permitting inspection by the Commission or the
14 ALJ prior to ruling on the motion.

15 Notwithstanding any determination by the ALJ or the Commission that any Confidential
16 Information provided pursuant to this Agreement should be made a part of the public record or
17 otherwise disclosed, public disclosure shall not occur for a period of five (5) calendar days so that
18 Company may seek judicial relief from the ALJ or the Commission's decision. Upon expiration of
19 the five (5) day period, the Commission shall release the information to the public unless Company
20 has received a stay or determination from a court of competent jurisdiction that the records, data,
21 information or study are proprietary and are not public records subject to disclosure under A.R.S. §
22 39-101 et seq.

23 **§9. Judicial Proceedings Related to NonParty's Request for Disclosure.** Where the
24 Commission, ALJ or Staff determine that disclosure is not appropriate, in any judicial action against
25 the Commission and/or Commissioners by the party seeking disclosure of the information, unless
26 specifically named, Company as the real party in interest, shall join in the action as a co-defendant.
27 Company also agrees to indemnify and hold the Commission harmless from any assessment of
28 expenses, attorneys' fees or damages under A.R.S. § 39-121.02 or any other law, resulting from

1 denial of access by the Commission to the information, data, records or study subsequently found to
2 be non-confidential.

3 In the event that the Commission becomes legally compelled (by deposition, interrogatory,
4 request for documents, subpoena, civil investigative demand or similar process) to disclose any of the
5 Confidential Information, the Commission shall provide Company with prompt written notice of such
6 requirement so that Company may seek an appropriate remedy and/or waive compliance. Company
7 agrees that upon receipt of such notice, Company will either undertake to oppose disclosure of the
8 Confidential Information or waive compliance with this Agreement. In the event that disclosure of
9 the Confidential Information is ordered, the Commission agrees to furnish only that portion of the
10 Confidential Information that is legally required.

11 **§10. No Preclusion of Evidentiary Objections.** In the event that disclosure of
12 Confidential Information occurs, the provision of such information by Company pursuant to this
13 Agreement shall not limit the right of Company to object to its relevance or admissibility in
14 proceedings before the Commission.

15 **§11. Return of Confidential Information.** Upon the final disposition of any
16 administrative or legal proceeding arising in or from this docket, within 90 days Company shall
17 submit a written request for the return of all Confidential Information, copies thereof, and notes made
18 by signatories to this Agreement. If such a request is not received within the stated 90 days, Staff
19 shall destroy all Confidential Information, copies thereof, and notes made by signatories to this
20 Agreement, or return to Company all Confidential Information, copies thereof, and notes made by
21 signatories to this Agreement, following written notice to Company of Staff's intent to return.

22 **§12. No Admission of Privileged or Confidential Status.** By participating in this
23 Agreement, Staff and its contracting consultants are neither admitting nor agreeing with Company
24 that any of the materials or communications designated as Confidential Information are, either in fact
25 or as a matter of law, a trade secret or of a proprietary, confidential or legally protected nature.

26 **§13. Breach of Agreement.** Company, in any legal action or complaint it files in any court
27 alleging breach of this Agreement shall, at the written request of the Commission, name the Arizona
28 Corporation Commission as a Defendant therein.

1 §14. Non-Termination. The provisions of this Agreement shall not terminate at the
2 conclusion of this proceeding.

3
4 DATED this 19th day of August 2003.

5 ARIZONA CORPORATION COMMISSION ALLTEL Communications, Inc.
6

7
8 By _____
9 Timothy A. Sabo
10 Attorney, Legal Division
11 Arizona Corporation Commission
12 1200 West Washington
13 Phoenix, AZ 85007
14 (602) 542-3402

By  _____
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1 §14. Non-Termination. The provisions of this Agreement shall not terminate at the
2 conclusion of this proceeding.

3
4 DATED this 19th day of August 2003.

5 ARIZONA CORPORATION COMMISSION

ALLTEL Communications, Inc.

6
7
8 By Timothy A. Sabo
9 Timothy A. Sabo
10 Attorney, Legal Division
11 Arizona Corporation Commission
12 1200 West Washington
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