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BEFORE THE ARIZONA CORPORATION COMMISSION

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MARC SPITZER  
Chairman  
WILLIAM A. MUNDELL  
Commissioner  
JEFF HATCHMILLER  
Commissioner  
MIKE GLEASON  
Commissioner  
KRISTIN K. MAYES  
Commissioner

AZ CORP COMMISSION  
DOCUMENT CONTROL

Arizona Corporation Commission  
DOCKETED

FEB 26 2004

DOCKETED BY *AKP*

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IN THE MATTER OF THE APPLICATION OF  
**EVERCOM SYSTEMS, INC.** UNDER  
SECTION 40-285 OF THE ARIZONA REVISED  
STATUTES FOR APPROVAL TO ENCUMBER  
ASSETS USED IN THE PROVISIONS OF  
CUSTOMER OWNED PAY TELEPHONE  
SERVICES IN ARIZONA

Docket No. T-03479A-04-0038

**PROTECTIVE AGREEMENT**

13

14 The Arizona Corporation Commission Staff ("Staff") has requested access to certain  
15 documents, data, studies, and other materials, some of which EVERCOM SYSTEMS, INC.  
16 ("Company") alleges may be of a proprietary, confidential or legally protected nature ("Confidential  
17 Information").

18 In order to expedite the provision of information to Staff – Company, Staff, and any  
19 independent contracting consultants retained by Staff for this docket (cumulatively referred to herein  
20 as "the parties"), agree as follows:

21 **§1. Non-Disclosure.** Except with the prior written consent of the party originally  
22 designating a document to be stamped as Confidential Information, or as hereinafter provided under  
23 this Agreement, no Confidential Information may be disclosed to any person. This requirement does  
24 not prohibit Staff from using and disclosing Confidential Information provided by Company in  
25 reports or documents that aggregate all information gathered from the parties to this docket, provided  
26 Company's individual disclosure is indiscernible from the aggregate report. In addition, where  
27 Confidential information provided by Company is confidential solely as a result of either disclosing  
28 individual customer information, or disclosing specific prices, this Agreement shall not prohibit Staff

1 from the public disclosure of such information in an aggregated form, where no individual customer  
2 or specific individual price can be ascertained.

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

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

24       **§3. Performance Under Agreement Does Not Result in Waiver or Disclosure.**  
25 Execution of this Agreement by the parties and performance of their obligations hereunder shall not  
26 result in waiver of any claim, issue or dispute concerning the trade secret, proprietary, confidential or  
27 legally protected nature of the Confidential Information provided. Neither shall the limited provision  
28 of Confidential Information by Company pursuant to this Agreement, nor the limited provision by

1 Staff of Confidential Information pursuant to Section 6 of this Agreement constitute public disclosure  
2 of it.

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

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

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

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

1 as subject to disclosure shall become part of the public record in this docket, unless Company  
2 initiates a protective proceeding under the terms of this Agreement.

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

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

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

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.

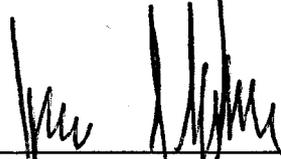
26 **§13. Breach of Agreement.** Company, in any legal action or complaint it files in any court  
27 alleging breach of this Agreement shall, at the written request of the Commission, name the Arizona  
28 Corporation Commission as a Defendant therein.

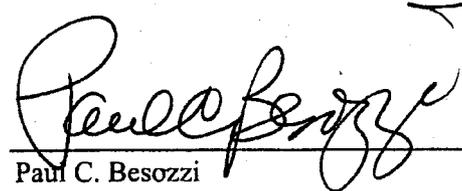
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§14. Non-Termination. The provisions of this Agreement shall not terminate at the conclusion of this proceeding.

DATED this 26<sup>th</sup> day of February 2004.

ARIZONA CORPORATION COMMISSION

By  \_\_\_\_\_  
Jason D. Gellman  
Attorney, Legal Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007  
(602) 542-3402

 \_\_\_\_\_  
By Paul C. Besozzi  
Attorney, Evercom Systems, Inc.  
Patton Boggs, LLP  
2550 M Street, NW  
Washington, DC 20037-1350  
(202) 437-6000

**EXHIBIT "A"**

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I have read the foregoing Protective Agreement dated February 26, 2004, in Evercom Systems, Inc's., Application Under Section 40-285 of Arizona Revised Statutes, in Docket No. T-3479A-04-0038 and agree to be bound by the terms and conditions of such Agreement.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

ARIZONA CORPORATION COMMISSION  
Employer or Firm

1200 WEST WASHINGTON  
Business Address

\_\_\_\_\_  
Position or relationship with the  
Arizona Corporation Commission

\_\_\_\_\_  
Date

EXHIBIT "A"

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Gordon L. Fox  
Name

Gordon L. Fox  
Signature

ARIZONA CORPORATION COMMISSION  
Employer or Firm

1200 WEST WASHINGTON  
Business Address

Manager, Financial Analysis  
Position or relationship with the  
Arizona Corporation Commission

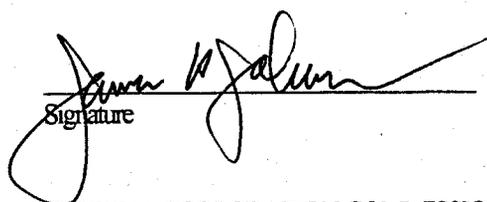
Feb. 25, 2004  
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James Johnson  
Name

  
Signature

ARIZONA CORPORATION COMMISSION  
Employer or Firm

1200 WEST WASHINGTON  
Business Address

Auditor III  
Position or relationship with the  
Arizona Corporation Commission

2/26/04  
Date

EXHIBIT "A"

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Alejandro Romínez

Name

Cheryl H.

Signature

ARIZONA CORPORATION COMMISSION

Employer or Firm

1200 WEST WASHINGTON

Business Address

Public Utility Analyst

Position or relationship with the  
Arizona Corporation Commission

2-25-04

Date

EXHIBIT "A"

I have read the foregoing Protective Agreement dated February 26, 2004, in Evercom Systems, Inc's., Application Under Section 40-285 of Arizona Revised Statutes, in Docket No. T-3479A-04-0038 and agree to be bound by the terms and conditions of such Agreement.

Angela L. Bennett  
Name

Angela L. Bennett  
Signature

ARIZONA CORPORATION COMMISSION  
Employer or Firm

1200 WEST WASHINGTON  
Business Address

Legal Secretary  
Position or relationship with the  
Arizona Corporation Commission

2/25/04  
Date

EXHIBIT "A"

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I have read the foregoing Protective Agreement dated February 26, 2004, in Evercom Systems, Inc's., Application Under Section 40-285 of Arizona Revised Statutes, in Docket No. T-3479A-04-0038 and agree to be bound by the terms and conditions of such Agreement.

Deborah A. Amaral  
Name

Deborah A Amaral  
Signature

ARIZONA CORPORATION COMMISSION  
Employer or Firm

1200 WEST WASHINGTON  
Business Address

Legal Assistant  
Position or relationship with the  
Arizona Corporation Commission

2/28/04  
Date

EXHIBIT "A"

I have read the foregoing Protective Agreement dated February 26, 2004, in Evercom Systems, Inc's., Application Under Section 40-285 of Arizona Revised Statutes, in Docket No. T-3479A-04-0038 and agree to be bound by the terms and conditions of such Agreement.

NANCY ROE  
Name

Nancy Roe  
Signature

ARIZONA CORPORATION COMMISSION  
Employer or Firm

1200 WEST WASHINGTON  
Business Address

Executive Legal Assistant  
Position or relationship with the  
Arizona Corporation Commission

2-25-04  
Date

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I have read the foregoing Protective Agreement dated February 26, 2004, in Evercom Systems, Inc's., Application Under Section 40-285 of Arizona Revised Statutes, in Docket No. T-3479A-04-0038 and agree to be bound by the terms and conditions of such Agreement.

Michele Finical  
Name

[Signature]  
Signature

ARIZONA CORPORATION COMMISSION  
Employer or Firm

1200 WEST WASHINGTON  
Business Address

Paralegal  
Position or relationship with the Arizona Corporation Commission

2-25-04  
Date

EXHIBIT "A"

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I have read the foregoing Protective Agreement dated February 26, 2004, in Evercom Systems, Inc's., Application Under Section 40-285 of Arizona Revised Statutes, in Docket No. T-3479A-04-0038 and agree to be bound by the terms and conditions of such Agreement.

Caroline Butler

Name

CA Butler

Signature

ARIZONA CORPORATION COMMISSION

Employer or Firm

1200 WEST WASHINGTON

Business Address

Paralegal

Position or relationship with the  
Arizona Corporation Commission

2/25/04

Date

EXHIBIT "A"

I have read the foregoing Protective Agreement dated February 26, 2004, in Evercom Systems, Inc's., Application Under Section 40-285 of Arizona Revised Statutes, in Docket No. T-3479A-04-0038 and agree to be bound by the terms and conditions of such Agreement.

Viola R. Kizis

Name

Viola R. Kizis

Signature

ARIZONA CORPORATION COMMISSION

Employer or Firm

1200 WEST WASHINGTON

Business Address

Staff

Position or relationship with the  
Arizona Corporation Commission

2-25-2004

Date

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EXHIBIT "A"

I have read the foregoing Protective Agreement dated February 26, 2004, in Evercom Systems, Inc's., Application Under Section 40-285 of Arizona Revised Statutes, in Docket No. T-3479A-04-0038 and agree to be bound by the terms and conditions of such Agreement.

Dawn A. Wilson  
Name

Dawn A. Wilson  
Signature

ARIZONA CORPORATION COMMISSION  
Employer or Firm

1200 WEST WASHINGTON  
Business Address

Paralegal  
Position or relationship with the  
Arizona Corporation Commission

2-25-04  
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I have read the foregoing Protective Agreement dated February 26, 2004, in Evercom Systems, Inc's., Application Under Section 40-285 of Arizona Revised Statutes, in Docket No. T-3479A-04-0038 and agree to be bound by the terms and conditions of such Agreement.

Constance J. Fitzsimmons

Name

Constance J. Fitzsimmons

Signature

ARIZONA CORPORATION COMMISSION

Employer or Firm

1200 WEST WASHINGTON

Business Address

Paralegal

Position or relationship with the  
Arizona Corporation Commission

2/26/04

Date

EXHIBIT "A"

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I have read the foregoing Protective Agreement dated February 26, 2004, in Evercom Systems, Inc's., Application Under Section 40-285 of Arizona Revised Statutes, in Docket No. T-3479A-04-0038 and agree to be bound by the terms and conditions of such Agreement.

Monica A. Martinez  
Name

Monica A. Martinez  
Signature

ARIZONA CORPORATION COMMISSION  
Employer or Firm

1200 WEST WASHINGTON  
Business Address

Staff  
Position of relationship with the  
Arizona Corporation Commission

2-26-04  
Date