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BEFORE THE ARIZONA CORPORATION COMMISSION

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

Arizona Corporation Commission

DOCKETED

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AZ CORP COMMISSION  
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IN THE MATTER OF QWEST  
CORPORATION'S FILING OF RENEWED  
PRICE REGULATION PLAN.

Docket No. T-01051B-03-0454

**RUCO's Response to Motion for Protective Order**

The Residential Utility Consumer Office ("RUCO") hereby responds to AT&T Communications of the Mountain States, Inc. and TCG Phoenix's ("AT&T") Motion for Protective Order. RUCO agrees that a protective order is appropriate, but proposes one modification to the terms of AT&T's proposed protective order.

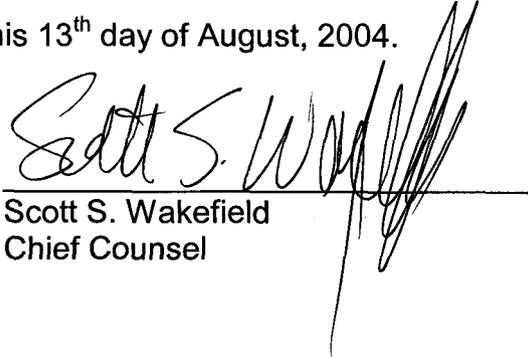
Section 6(b) of AT&T's proposed protective order provides that a party challenging confidentiality shall file a pleading that states the grounds on which the document is deemed non-confidential. A recent amendment to Rule 26(c)(2) of the Rules of Civil Procedure explicitly clarifies that "The burden of showing good cause for an order [restricting a party from disclosing information produced in discovery to a person who is not a party to the litigation] shall remain with the party seeking confidentiality." Arizona Supreme Court Order R-02-0002, Amending Rule 26(c)(2), Arizona Rules of Civil Procedure, effective June 1, 2004 (Attached as Exhibit A). It is the party from whom discovery is sought that has the burden to establish the validity of an objection to that discovery based on a claim of confidential trade secret. See also *Cornet Stores v. Superior Court*, 108 Ariz. 84, 86, 492 P.2d 1191, 1993 (1972). The protective

1 agreement proposed by AT&T, however, attempts to place the burden on the party receiving  
2 the discovery to show that material should not be kept confidential.

3 RUCO is not proposing that, if a party receiving discovery disputes the initial assessment  
4 by a party producing discovery that material is confidential, the receiving party could unilaterally  
5 disclose it publicly. Instead, RUCO agrees with AT&T that a party challenging confidentiality  
6 must present the matter to the Commission if unable to resolve it with the producing party. The  
7 providing party would then have the burden to convince the Commission that the material is in  
8 fact confidential and should remain subject to the Protective Agreement. Exhibit B contains  
9 RUCO's alternative proposed language to AT&T's proposed Section 6.

10 RUCO requests that the Commission enter AT&T's proposed protective order with the  
11 modifications set forth in RUCO's Exhibit B.

12  
13 RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of August, 2004.

14   
15 \_\_\_\_\_  
16 Scott S. Wakefield  
17 Chief Counsel

1 AN ORIGINAL AND THIRTEEN COPIES  
2 of the foregoing filed this 13<sup>th</sup> day  
3 of August, 2004 with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington  
6 Phoenix, Arizona 85007

5 COPIES of the foregoing hand delivered/  
6 mailed this 13<sup>th</sup> day of August, 2004 to:

7 Lyn Farmer  
8 Chief Administrative Law Judge  
9 Hearing Division  
10 Arizona Corporation Commission  
11 1200 West Washington  
12 Phoenix, Arizona 85007

Richard S. Wolters  
AT&T Law Department  
1875 Lawrence Street  
Suite 1503  
Denver, Colorado 80202

10 Christopher Kempley  
11 Legal Division  
12 Arizona Corporation Commission  
13 1200 West Washington  
14 Phoenix, Arizona 85007

Joan S. Burke  
Osborn Maledon  
2929 North Central Avenue  
Suite 2100  
Phoenix, Arizona 85012

13 Ernest Johnson, Director  
14 Utilities Division  
15 Arizona Corporation Commission  
16 1200 West Washington  
17 Phoenix, Arizona 85007

Thomas F. Dixon  
WorldCom Inc.  
606 17<sup>th</sup> Street  
39<sup>th</sup> Floor  
Denver, CO 80202

16 Timothy Berg  
17 Theresa Dwyer  
18 Darcy R. Renfro  
19 Fennemore Craig, P.C.  
20 3003 North Central Avenue  
21 Suite 2600  
22 Phoenix, Arizona 85012

Thomas H. Campbell  
Michael T. Hallam  
Lewis & Roca  
40 North Central Avenue  
Suite 1900  
Phoenix, Arizona 85004

20 Todd Lundy  
21 Qwest Law Department  
22 1801 California Street  
23 Denver, Colorado 80202

Michael W. Patten  
Roshka, Heyman & DeWulf, PLC  
400 East Van Buren Street  
Suite 800  
Phoenix, Arizona 85004

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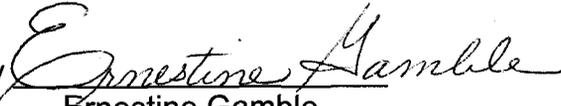
24

1 Mark A. DiNunzio  
Cox Arizona Telecom, LLC  
2 20401 North 29<sup>th</sup> Avenue  
Phoenix, Arizona 85027

3  
4 Peter Q. Nyce, Jr.  
Regulatory Law Office  
U.S. Army Litigation Center  
5 901 North Stuart Street  
Suite 713  
6 Arlington, VA 22203

7 Richard Lee  
Snaveley King Majoros O'Connor  
8 & Lee, Inc.  
1220 L Street NW  
9 Suite 410 Washington, DC 20005

10 Patrick A. Clisham  
AT&T Arizona State Director  
11 320 East Broadmoor Court  
Phoenix, Arizona 85022

12  
13 By   
Ernestine Gamble

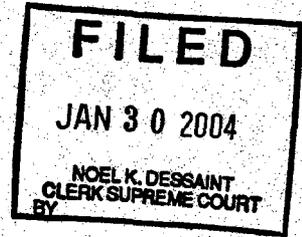
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EXHIBIT A

**IN THE SUPREME COURT OF THE STATE OF ARIZONA**

R-02-0002

**ORDER AMENDING  
RULE 26(c)(2), ARIZONA RULES OF CIVIL PROCEDURE**



IT IS ORDERED that Rule 26(c)(2), Arizona Rules of Civil Procedure, be amended in accordance with the attachment hereto,\* effective as of June 1, 2004.

DATED in the City of Phoenix, Arizona at the Arizona Courts Building, this 30<sup>th</sup> day of January, 2004.

For the Court:

A handwritten signature in cursive script, appearing to read "Charles E. Jones".

CHARLES E. JONES  
Chief Justice

\* Changes or additions in text are indicated by underlining and deletions from text are indicated by ~~strikeouts~~.

## ARIZONA RULES OF CIVIL PROCEDURE

\* \* \*

### Rule 26(c). Protective Orders

(1) [No change in text.]

(2) Before entering an order in any way restricting a party or person from disclosing information or materials produced in discovery to a person who is not a party to the litigation in which the information or materials are being discovered or denying an intervenor's request for access to such discovery materials, a court shall direct: (a) the party seeking confidentiality to show why a confidentiality order should be entered or continued; and (b) the party or intervenor opposing confidentiality to show why a confidentiality order should be denied in whole or part, modified or vacated. The burden of showing good cause for an order shall remain with the ~~movant~~ the party seeking confidentiality. The court shall then make findings of fact concerning any relevant factors, including but not limited to: (i) any party's need to maintain the confidentiality of such information or materials; (ii) any nonparty's or intervenor's need to obtain access to such information or materials; and (iii) any possible risk to the public health, safety or financial welfare to which such information or materials may relate or reveal. Any order restricting release of such information or materials to nonparties or intervenors shall use the least restrictive means to maintain any needed confidentiality. No such findings of fact are needed where the parties have stipulated to such an order or where a motion to intervene and to obtain access to materials subject to a confidentiality order are not opposed.

## EXHIBIT B

6. Challenge to Confidentiality. This Order establishes a procedure for the expeditious handling of information that a party claims is Confidential or Highly Confidential. It shall not be construed as an agreement or ruling on the confidentiality of any document. Any party may challenge the characterization of any information, document, data or study claimed by the providing party to be confidential in the following manner:

- (a) A party seeking to challenge the confidentiality of any materials pursuant to this Order shall first contact counsel for the providing party and attempt to resolve any differences by stipulation;
- (b) In the event that the parties cannot agree as to the character of the information challenged, any party challenging the confidentiality shall do so by appropriate pleading. This pleading shall designate the document, transcript or other material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential.:
  - ~~(1) Designate the document, transcript or other material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential; and~~
  - ~~(2) State with specificity the grounds upon which the documents, transcript or other material are deemed to be non-confidential by the challenging party.~~
- (c) A ruling on the confidentiality of the challenged information, document, data or study shall be made by an Administrative Law Judge after proceedings *in camera*, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential materials shall be present. This hearing shall commence no earlier than five (5) business days after service on the providing party of the pleading required by subsection 6(b) above. The providing party shall bear the burden of showing that the Confidential Information is in fact of a trade secret, proprietary or confidential nature entitled to be protected according to the terms of this Protective Order.
- (d) The record of said *in camera* hearing shall be marked "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN DOCKET NOS. T-01051B-03-0454 and T-00000D-00-0672." Court reporter notes of such hearing shall be transcribed only upon

agreement by the parties or Order of the Administrative Law Judge and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order.

- (e) In the event that the Administrative Law Judge should rule that any information, document, data or study should be removed from the restrictions imposed by this Order, no party shall disclose such information, document, data or study or use it in the public record for five (5) business days unless authorized by the providing party to do so. The provisions of this subsection are intended to enable the providing party to seek a stay or other relief from an order removing the restriction of this Order from materials claimed by the providing party to be confidential.