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BEFORE THE ARIZONA CORPORATIO.

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Arizona Corporation Commission

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COMMISSIONERS

DOCKETED

MARC SPITZER, Chairman 2004 AUG 26 A 11: 39
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

AUG 26 2004

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY

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

DOCKET NO. T-01051B-03-0454

IN THE MATTER OF THE INVESTIGATION OF
THE COST OF TELECOMMUNICATIONS
ACCESS.

DOCKET NO. T-00000D-00-0672

PROTECTIVE ORDER

BY THE COMMISSION:

On July 1, 2003, Qwest Corporation ("Qwest") filed the Qwest Renewed Price Regulation Plan pursuant to the provisions of the Second Revised Settlement Agreement approved in Decision No. 63487 on March 30, 2001.

By Procedural Order dated November 17, 2003, the Arizona Corporation Commission ("Commission") determined that Phase I of the Access Charge Docket, which addresses Qwest's access charges, should be considered in conjunction with the Price Cap Plan Docket.

On August 12, 2004, AT&T Communications of the Mountain States, Inc., and TCG Phoenix (collectively "AT&T") filed a Motion for Protective Order. AT&T states that the parties in the above-referenced matters are exchanging data requests and discovery that require the disclosure to confidential and highly confidential information. AT&T has not entered into protective agreements with all the parties to the proceeding and believes it would simplify matters and further the exchange of information and data if a protective order was entered that would apply to all parties. AT&T requested that the Administrative Law Judge enter the Protective Order attached to AT&T's Motion.

On August 13, 2004, the Residential Utility Consumer Office ("RUCO") filed a Response to AT&T's Motion for Protective Order. RUCO agrees that a protective order is appropriate in this matter, but proposes a modification to the terms of AT&T's proposed Protective Order. RUCO

1 believes that the proposed order be modified to clarify that it is the party from who discovery is
2 sought that has the burden to establish the validity of an objection to that discovery based on a claim
3 of confidential trade secret. RUCO submitted proposed language to modify Section 6 of AT&T's
4 proposed Protective Order.

5 On August 17, 2004, Commission Utilities Division Staff ("Staff") filed a Reply to AT&T's
6 Motion. Staff believes that a Protective Order is appropriate in this case as there are a large number
7 of parties and it would be burdensome to require every party to enter into protective agreements with
8 every other party; and having one protective order that is applicable to all parties will result in a
9 standardized, smother process for exchanging confidential data. Staff supports RUCO's proposed
10 language concerning the burden of demonstrating confidentiality. Staff further requests that the
11 number of in-house experts be increased from five to six as it pertains to Staff because the concern of
12 limiting the dissemination of confidential information is not as great vis a vis Staff as it is with a
13 competitor, and because Staff's current workload has necessitated involving numerous persons to
14 review data and testimony.

15 RUCO's proposed changes are reasonable and conform to the recent amendment to Rule
16 26(c)(2) of the Rules of Civil Procedure that states "The burden of showing good cause for an order
17 [restricting a party from disclosing information produced in discovery to a person who is not a party
18 to the litigation] shall remain with the party seeking confidentiality." In addition, Staff's request to
19 increase the number of in-house experts who can review highly confidential information from five to
20 six is reasonable as it pertains to Staff, and should be adopted. The increased number only applies to
21 Commission Staff at this time.

22 In addition, consistent with prior Commission practice, the Protective Order proposed by
23 AT&T has been modified slightly to specifically indicate that Commissioners, Administrative Law
24 Judges, and their respective staff, shall not be required to sign the Exhibit "A" and Exhibit "B" forms
25 that the parties are required to execute under the terms of the Protective Order.

26 IT IS THEREFORE ORDERED that in order to facilitate the disclosure of documents and
27 information during the course of this proceeding and to protect trade secrets and other confidential
28 information not in the public domain, the Commission now issues this Protective Order to govern

1 these proceedings.

2 **PROTECTIVE ORDER**

3 1. (a) Confidential Information. All documents, data, studies and other materials
4 furnished pursuant to any requests for information, subpoenas or other modes of discovery (formal or
5 informal), and including depositions, and other requests for information, that are claimed to be
6 proprietary or confidential (herein referred to as "Confidential Information"), shall be so marked by
7 the providing party by stamping the same with a "Confidential" designation. In addition, all notes or
8 other materials that refer to, derive from, or otherwise contain parts of the Confidential Information
9 will be marked by the receiving party as Confidential Information. Access to and review of
10 Confidential Information shall be strictly controlled by the terms of this Order.

11 (b) Use of Confidential Information -- Proceedings. All persons who may be
12 entitled to review, or who are afforded access to any Confidential Information by reason of this Order
13 shall neither use nor disclose the Confidential Information for purposes of business or competition, or
14 any purpose other than the purpose of preparation for and conduct of proceedings in the above-
15 captioned dockets and all subsequent appeals, and shall keep the Confidential Information secure as
16 confidential or proprietary information and in accordance with the purposes, intent and requirements
17 of this Order.

18 (c) Persons Entitled to Review. Each party that receives Confidential Information
19 pursuant to this Order must limit access to such Confidential Information to (1) attorneys employed
20 or retained by the party in the proceedings and the attorneys' staff; (2) experts, consultants and
21 advisors who need access to the material to assist the party in the proceedings; (3) only those
22 employees of the party who are directly involved in the proceedings, provided that counsel for the
23 party represents that no such employee is engaged in the sale or marketing of that party's products or
24 services. In addition, access to Confidential Information may be provided to Commissioners and all
25 Commission Administrative Law Judges, and Commission advisory staff members and employees of
26 the Commission to whom disclosure is necessary. For Commission Staff acting as advocates or in an
27 adversarial role, disclosure of both Confidential Information and Highly Confidential Information to
28 Staff members and consultants employed by Staff shall be under the same terms and conditions as

1 described herein for parties.

2 (d) Nondisclosure Agreement. Any party, person, or entity that receives
3 Confidential Information pursuant to this Order shall not disclose such Confidential Information to
4 any person, except persons who are described in section 1(c) above and who have signed a
5 nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit "A."
6 Court reporters shall also be required to sign an Exhibit "A" and comply with the terms of this Order.
7 Commissioners Administrative Law Judges, and their respective staff members are not required to
8 sign the Exhibit "A" form.

9 The nondisclosure agreement (Exhibit "A") shall require the person(s) to whom
10 disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have
11 reviewed the same and have consented to be bound by its terms. The agreement shall contain the
12 signatory's full name, employer, job title and job description, business address and the name of the
13 party with whom the signatory is associated. Such agreement shall be delivered to counsel for the
14 providing party before disclosure is made, and if no objection thereto is registered to the Commission
15 within three (3) business days, then disclosure shall follow. An attorney who makes Confidential
16 Information available to any person listed in subsection (c) above shall be responsible for having each
17 such person execute an original of Exhibit "A" and a copy of all such signed Exhibit "A's" shall be
18 circulated to all other counsel of record promptly after execution.

19 2. (a) Notes. Limited notes regarding Confidential Information may be taken by
20 counsel and experts for the express purpose of preparing pleadings, cross-examinations, briefs,
21 motions and argument in connection with this proceeding, or in the case of persons designated in
22 section 1(c) of this Protective Order, to prepare for participation in this proceeding. Such notes shall
23 then be treated as Confidential Information for purposes of this Order, and shall be destroyed after the
24 final settlement or conclusion of the proceedings in accordance with subsection 2(b) below.

25 (b) Return. All notes, to the extent they contain Confidential Information and are
26 protected by the attorney-client privilege or the work product doctrine, shall be destroyed after the
27 final settlement or conclusion of the proceedings. The party destroying such Confidential
28 Information shall advise the providing party of that fact within a reasonable time from the date of

1 destruction.

2 3. Highly Confidential Information: Any person, whether a party or non-party, may
3 designate certain competitively sensitive Confidential Information as “Highly Confidential
4 Information” if it determines in good faith that it would be competitively disadvantaged by the
5 disclosure of such information to its competitors. Highly Confidential Information includes, but is
6 not limited to, documents, pleadings, briefs and appropriate portions of deposition transcripts, which
7 contain information regarding the market share of, number of access lines served by, or number of
8 customers receiving a specified type of service from a particular provider or other information that
9 relates to a particular provider’s network facility location detail, revenues, costs, and marketing,
10 business planning or business strategies.

11 Parties must scrutinize carefully responsive documents and information and limit their
12 designations as Highly Confidential Information to information that truly might impose a serious
13 business risk if disseminated without the heightened protections provided in this section. The first
14 page and individual pages of a document determined in good faith to include Highly Confidential
15 Information must be marked by a stamp that reads:

16 “HIGHLY CONFIDENTIAL—USE RESTRICTED PER PROTECTIVE ORDER IN
17 DOCKET NOS. T-01051B-03-0454 and T-00000D-00-0672”

18 Placing a “Highly Confidential” stamp on the first page of a document indicates only that one or
19 more pages contain Highly Confidential Information and will not serve to protect the entire contents
20 of a multi-page document. Each page that contains Highly Confidential Information must be marked
21 separately to indicate Highly Confidential Information, even where that information has been
22 redacted. The unredacted versions of each page containing Highly Confidential Information, and
23 provided under seal, should be submitted on paper distinct in color from non-confidential information
24 and “Confidential Information” described in section 1 of this Protective Order.

25 Parties seeking disclosure of Highly Confidential Information must designate the
26 person(s) to whom they would like the Highly Confidential Information disclosed in advance of
27 disclosure by the providing party. Such designation may occur through the submission of Exhibit
28 “B” of the non-disclosure agreement identified in section 1(d). Parties seeking disclosure of Highly

1 Confidential Information shall not designate more than (1) a reasonable number of in-house attorneys
2 who have direct responsibility for matters relating to Highly Confidential Information; (2) five in-
3 house experts (except, notwithstanding the foregoing, the number of Commission Staff in-house
4 experts who may be designated shall be six); and (3) a reasonable number of outside counsel and
5 outside experts to review materials marked as "Highly Confidential." Disclosure of Highly
6 Confidential Information to Commissioners, Administrative Law Judges and Commission Advisory
7 Staff members shall be limited to persons to whom disclosure is necessary. Commissioners,
8 Administrative Law Judges, and their respective staff members are not required to sign an Exhibit
9 "B" form. The Exhibit "B" also shall describe in detail the job duties or responsibilities of the person
10 being designated to see Highly Confidential Information and the person's role in the proceeding.
11 Highly Confidential Information may not be disclosed to persons engaged in strategic or competitive
12 decision making for any party, including, but not limited to, the sale or marketing or pricing of
13 products or services on behalf of any party.

14 Any party providing either Confidential Information or Highly Confidential
15 Information may object to the designation of any individual as a person who may review Confidential
16 Information and/or Highly Confidential Information. Such objection shall be made in writing to
17 counsel submitting the challenged individual's Exhibit "A" or "B" within three (3) business days
18 after receiving the challenged individual's signed Exhibit "A" or "B". Any such objection must
19 demonstrate good cause to exclude the challenged individual from the review of the Confidential
20 Information or Highly Confidential Information. Written response to any objection shall be made
21 within three (3) business days after receipt of an objection. If, after receiving a written response to a
22 party's objection, the objecting party still objects to disclosure of either Confidential Information or
23 Highly Confidential Information to the challenged individual, the Commission shall determine
24 whether Confidential Information or Highly Confidential Information must be disclosed to the
25 challenged individual.

26 Copies of Highly Confidential Information may be provided to the in-house attorneys,
27 in-house experts, outside counsel and outside experts who have signed Exhibit "B".
28

1 Persons authorized to review the Highly Confidential Information will maintain the
2 documents and any notes reflecting their contents in a secure location to which only designated
3 counsel and experts have access. No additional copies will be made, except for use during hearings
4 and then such disclosure and copies shall be subject to the provisions of Section 6. Any testimony or
5 exhibits prepared that reflect Highly Confidential Information must be maintained in the secure
6 location until removed to the hearing room for production under seal. Unless specifically addressed
7 in this section, all other sections of this Protective Order applicable to Confidential Information also
8 apply to Highly Confidential Information.
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10 4. Objections to Admissibility. The furnishing of any document, data, study or other
11 materials pursuant to this Protective Order shall in no way limit the right of the providing party to
12 object to its relevance or admissibility in proceedings before this Commission.

13 5. Small Company Exemption. Notwithstanding the restrictions in sections 1 and 3
14 applicable to persons who may access Confidential Information and Highly Confidential Information,
15 a Small Company may designate any employee or in house expert to review Confidential Information
16 and/or Highly Confidential Information if the producing party, upon request, gives prior written
17 authorization for that person to review Confidential Information and/or Highly Confidential
18 Information. If the producing party refuses to give such written authorization, the reviewing party
19 may, for good cause shown, request an order from the Administrative Law Judge allowing a
20 prohibited person(s) to review Confidential Information and/or Highly Confidential Information. The
21 producing party shall be given the opportunity to respond to the Small Company's request before an
22 order is issued. "Small Company" means a party with fewer than 5000 employees, including the
23 employees of affiliates' U.S. ILEC, CLEC, and IXC operations within a common holding company.
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26 6. Challenge to Confidentiality. This Order establishes a procedure for the expeditious
27 handling of information that a party claims is Confidential or Highly Confidential. It shall not be
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1 construed as an agreement or ruling on the confidentiality of any document. Any party may
2 challenge the characterization of any information, document, data or study claimed by the providing
3 party to be confidential in the following manner:

- 4 (a) A party seeking to challenge the confidentiality of any materials pursuant to this Order
5 shall first contact counsel for the providing party and attempt to resolve any
6 differences by stipulation;
- 7 (b) In the event that the parties cannot agree as to the character of the information
8 challenged, any party challenging the confidentiality shall do so by appropriate
9 pleading. This pleading shall designate the document, transcript or other material
10 challenged in a manner that will specifically isolate the challenged material from other
11 material claimed as confidential.
- 12 (c) A ruling on the confidentiality of the challenged information, document, data or study
13 shall be made by an Administrative Law Judge after proceedings in camera, which
14 shall be conducted under circumstances such that only those persons duly authorized
15 hereunder to have access to such confidential materials shall be present. This hearing
16 shall commence no earlier than five (5) business days after service on the providing
17 party of the pleading required by subsection 6(b) above. The providing party shall
18 bear the burden of showing that the Confidential Information is in fact of a trade
19 secret, proprietary or confidential nature entitled to be protected according to the terms
20 of this Protective Order.
- 21 (d) The record of said in camera hearing shall be marked "CONFIDENTIAL-SUBJECT
22 TO PROTECTIVE ORDER IN DOCKET NOS. T-01051B-03-0454 and T-00000D-
23 00-0672." Court reporter notes of such hearing shall be transcribed only upon
24 agreement by the parties or Order of the Administrative Law Judge and in that event
25 shall be separately bound, segregated, sealed, and withheld from inspection by any
26 person not bound by the terms of this Order.
- 27 (e) In the event that the Administrative Law Judge should rule that any information,
28 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.

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

- 26 (1) Prior to the use of or substantive reference to any Confidential Information, the
27 parties intending to use such Information shall make that intention known to
28 the providing party.

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

12 (b) Seal. While in the custody of the Commission, materials containing Confidential
13 Information shall be marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER IN
14 DOCKET NOS. T-01051B-03-0454 and T-00000D-00-0672" and Highly Confidential
15 Information shall be marked "HIGHLY CONFIDENTIAL — USE RESTRICTED PER
16 PROTECTIVE ORDER IN DOCKET NOS. T-01051B-03-0454 and T-00000D-00-0672 " and shall not be examined by any person except under the conditions set forth in this Order.

17 (c) In Camera Hearing. Any Confidential Information or Highly Confidential Information
18 that must be orally disclosed to be placed in the sealed record in this proceeding shall be
19 offered in an in camera hearing, attended only by persons authorized to have access to the
20 information under this Order. Similarly, any cross-examination on or substantive reference to
21 Confidential Information or Highly Confidential Information (or that portion of the record
22 containing Confidential Information or Highly Confidential Information or references thereto)
23 shall be received in an in camera hearing, and shall be marked and treated as provided herein.

24 (d) Access to Record. Access to sealed testimony, records and information shall be
25 limited to the Administrative Law Judge, Commissioners, and their respective staffs, and
26 persons who are entitled to review Confidential Information or Highly Confidential
27 Information pursuant to subsection 1(c) above and have signed an Exhibit "A" or "B," unless
28 such information is released from the restrictions of this Order either through agreement of
the parties or after notice to the parties and hearing, pursuant to the ruling of a Administrative

1 Law Judge, the order of the Commission and/or final order of a court having final jurisdiction.

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

7 (f) Return. Unless otherwise ordered, Confidential Information and Highly Confidential
8 Information, including transcripts of any depositions to which a claim of confidentiality is
9 made, shall remain under seal, shall continue to be subject to the protective requirements of
10 this Order, and shall, at the providing party's discretion, be returned to counsel for the
11 providing party, or destroyed by the receiving party, within thirty (30) days after final
12 settlement or conclusion of the proceedings. If the providing party elects to have Confidential
13 Information or Highly Confidential Information destroyed rather than returned, counsel for
14 the receiving party shall verify in writing that the material has in fact been destroyed.

15 8. Use in Pleadings. Where references to Confidential Information or Highly
16 Confidential Information in the sealed record or with the providing party is required in pleadings,
17 briefs, arguments or motions (except as provided in section 6), it shall be by citation of title or exhibit
18 number or some other description that will not disclose the substantive Confidential Information or
19 Highly Confidential Information contained therein. Any use of or substantive references to
20 Confidential Information or Highly Confidential Information shall be placed in a separate section of
21 the pleading or brief and submitted to the Administrative Law Judge or the Commission under seal.
22 This sealed section shall be served only on counsel of record and parties of record who have signed
23 the nondisclosure agreement set forth in Exhibit "A" or "B." All of the restrictions afforded by this
24 Order apply to materials prepared and distributed under this section.

25 9. Summary of Record. If deemed necessary by the Commission, the providing party
26 shall prepare a written summary of the Confidential Information referred to in the Order to be placed
27 on the public record.

28 IT IS FURTHER ORDERED that the provisions of this Protective Order are specifically

1 intended to apply to all data, documents, studies, and other material designated as confidential or
2 highly confidential by any party to Docket Nos. T-01051B-03-0454 and T-00000D-00-0672. The
3 provisions are also intended to apply to all data, documents, studies, and other material designated as
4 confidential or highly confidential by any non-party that provides such material in response to data
5 requests in this docket, whether it is provided voluntarily or pursuant to subpoena.

6 IT IS FURTHER ORDERED that the terms of the June 30, 2004 Procedural Order (as
7 amended) and July 23, 2004 Procedural Order shall remain in effect.

8 IT IS FURTHER ORDERED that this Protective Order shall continue in force and effect after
9 this Docket is closed.

10 DATED this 25th day of August, 2004.

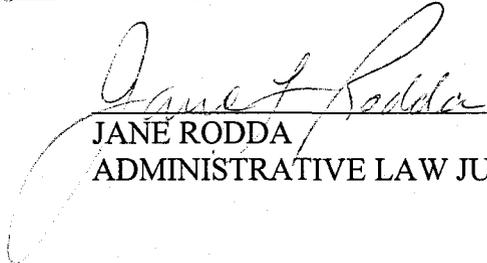
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13 JANE RODDA
14 ADMINISTRATIVE LAW JUDGE
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EXHIBIT "A"
CONFIDENTIAL INFORMATION

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I have read the foregoing Protective Order dated August 25, 2004, in Docket Nos. T-01051B-03-0454 and T-00000D-00-0672 and agree to be bound by the terms and conditions of this Order.

Name

Employer

Job Title and Job Description

Business Address

Party

Signature

Date

EXHIBIT "B"
HIGHLY CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated August 25, 2004, in Docket No. T-01051B-03-0454 and T-00000D-00-0672 and agree to be bound by the terms and conditions of this Order.

Name

Employer

Job Title and Job Description

Business Address

Party

Signature

Date

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1 Copy of the foregoing mailed/delivered
this 25th day of August, 2004, to:

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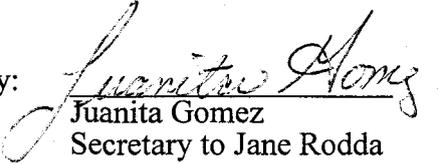
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By: 
Juanita Gomez
Secretary to Jane Rodda