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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

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AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S COMPLIANCE
WITH § 271 OF THE TELECOMMUNICATIONS
ACT OF 1996.

DOCKET NO. T-00000A-97-0238

PROTECTIVE ORDER

BY THE COMMISSION:

On August 6, 2001, the Arizona Corporation Commission's ("Commission") Staff filed a Motion for Protective Order ("Motion"). No party to the proceeding has objected to the Motion.

Accordingly, in order to facilitate the disclosure of documents and information during the course of this proceeding and to protect trade secret and other confidential information not in the public domain, the Commission now issues this Protective Order ("Order") to govern these proceedings. This Protective Order shall not supersede the Confidentiality Agreement between Qwest and Cap Gemini Ernst & Young, Telecom Media & Networks ("CGE&Y"), which shall continue to govern Qwest's provision of information to CGE&Y related to CGE&Y's audit and evaluation of Qwest's operational support systems ("OSS"). This Protective Order shall not supersede the Confidentiality Agreement between Cap Gemini America, Inc. and AT&T, which shall continue to govern AT&T's provision of access to confidential information for performing tests on Qwest's OSS. This Protective Order shall not supersede any other Confidentiality Agreements between CGE&Y and other parties, which govern access to confidential information for performing tests on Qwest's OSS.

1. (a) Confidential Information. All documents, data information, studies and other materials furnished pursuant to any requests for information, subpoenas or other modes of discovery (formal or informal), and including depositions, and other requests for information, that are claimed to be of a trade secret, proprietary or confidential nature (herein referred to as "Confidential Information"), shall be so marked by the providing party by stamping the same with a "Confidential"

1 designation. In addition, all notes or other materials that refer to, derive from, or otherwise contain
2 parts of the Confidential Information will be marked by the receiving party as Confidential
3 Information. Access to and review of Confidential Information shall be strictly controlled by the
4 terms of this Order.

5 (b) Use of Confidential Information -- Proceedings. All persons who may be
6 entitled to review, or who are afforded access to any Confidential Information by reason of this Order
7 shall neither use or disclose the Confidential Information for purposes of business or competition, or
8 any purpose other than the purpose of preparation for and conduct of proceedings in the above-
9 captioned docket or before the Federal Communications Commission ("FCC"), and all subsequent
10 appeals ("Section 271 Proceedings"), and shall keep the Confidential Information secure as trade
11 secret, confidential or proprietary information and in accordance with the purposes, intent and
12 requirements of this Order.

13 (c) Persons Entitled to Review. Each party that receives Confidential Information
14 pursuant to this Order must limit access to such Confidential Information to (1) attorneys employed
15 or retained by the party in Section 271 Proceedings and the attorneys' staff; (2) experts, consultants
16 and advisors who need access to the material to assist the party in Section 271 Proceedings; (3) only
17 those employees of the party who are directly involved in these Section 271 Proceedings, provided
18 that counsel for the party represents that no such employee is engaged in the sale or marketing of that
19 party's products or services. In addition, access to Confidential Information may be provided to
20 Commissioners and all Commission Administrative Law Judges, and staff members and employees
21 of the Commissions consultants, CGE&Y and Doherty Company Incorporated ("DCI"), to whom
22 disclosure is necessary.

23 (d) Nondisclosure Agreement. Any party, person, or entity that receives
24 Confidential Information pursuant to this Order shall not disclose such Confidential Information to
25 any person, except persons who are described in section 1(c) above and who have signed a
26 nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit "A."
27 Court reporters shall also be required to sign an Exhibit "A" and comply with the terms of this Order.
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1 The nondisclosure agreement (Exhibit "A") shall require the person to whom disclosure is to
2 be made to read a copy of this Protective Order and to certify in writing that they have reviewed the
3 same and have consented to be bound by its terms. The agreement shall contain the signatory's full
4 name, employer, business address and the name of the party with whom the signatory is associated.
5 Such agreement shall be delivered to counsel for the providing party before disclosure is made, and if
6 no objection thereto is registered to the Commission within five (5) days, then disclosure shall follow.
7 An attorney who makes Confidential Information available to any person listed in subsection (c)
8 above shall be responsible for having each such person execute an original of Exhibit A and a copy of
9 all such signed Exhibit A's shall be circulated to all other counsel of record promptly after execution.

10 2. (a) Notes. Limited notes regarding Confidential Information may be taken by
11 counsel and experts for the express purpose of preparing pleadings, cross-examinations, briefs,
12 motions and argument in connection with this proceeding, or in the case of persons designated in
13 paragraph 1(c) of this Protective Order, to prepare for participation in this proceeding. Such notes
14 shall then be treated as Confidential Information for purposes of this Order, and shall be destroyed
15 after the final settlement or conclusion of the Section 271 Proceedings in accordance with subsection
16 2(b) below.

17 (b) Return. All notes, to the extent they contain Confidential Information and are
18 protected by the attorney-client privilege or the work product doctrine, shall be destroyed after the
19 final settlement or conclusion of the Section 271 Proceedings. The party destroying such
20 Confidential Information shall advise the providing party of that fact within a reasonable time from
21 the date of destruction.

22 CGE&Y, Hewlett-Packard Company ("HP") and DCI shall return all
23 Confidential Information at the end of the Section 271 Proceedings or the termination of their
24 engagement, whichever is earlier. For purposes of this paragraph, return of Confidential Information
25 shall be made to Staff.

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

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

12 “HIGHLY CONFIDENTIAL—USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO.
13 T-00000B-0238.” Placing a “Highly Confidential” stamp on the first page of a document indicates
14 only that one or more pages contain Highly Confidential Information and will not serve to protect the
15 entire contents of a multi-page document. Each page that contains Highly Confidential Information
16 must be marked separately to indicate Highly Confidential Information, even where that information
17 has been redacted. The unredacted versions of each page containing Highly Confidential
18 Information, and provided under seal, should be submitted on paper distinct in color from non-
19 confidential information and “Confidential Information” described in section 1 of this Protective
20 Order.

21 Parties seeking disclosure of Highly Confidential Information must designate the person(s) to
22 whom they would like the Highly Confidential Information disclosed in advance of disclosure by the
23 providing party. Such designation may occur through the submission of Exhibit A of the non-
24 disclosure agreement identified in section 1(d). Parties seeking disclosure of Highly Confidential
25 Information shall not designate more that (1) one in-house attorney; (2) one in-house expert; and (3) a
26 reasonable number of outside counsel and outside experts to review materials marked as “Highly
27 Confidential.” Disclosure of Highly Confidential Information to Commissioners, Administrative
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1 Law Judges and Staff members shall be limited to persons to whom disclosure is necessary. Prior to
2 disclosure of Highly Confidential Information to CGE&Y, HP or DCI, CGE&Y, HP or DCI shall
3 designate the persons to whom disclosure will be made and must be made for HP, CGE&Y and DCI
4 to fulfill its contractual obligations. The Exhibit "A" also shall describe in detail the duties or
5 responsibilities of the person being designated to see Highly Confidential Information and the
6 person's role in the proceeding. Highly Confidential Information may not be disclosed to persons
7 engaged in strategic or competitive decision making for any party, including the sale or marketing of
8 products or services on behalf of any party.

9 Any person, whether a party or non-party, may object in writing to the designation of any
10 individual as a person who may review Highly Confidential Information within three (3) business
11 days after receiving a signed Exhibit "A". Any such objection must demonstrate good cause to
12 exclude the challenged individual from the review of the Highly Confidential Information. Written
13 response to any objection shall be made within three (3) business days after receipt of an objection.
14 If after receiving a written response to the providing party's objection, the providing party still
15 declines to produce the requested information, the Commission Hearing Division shall determine
16 whether the Highly Confidential Information must be disclosed to the challenged individual.

17 Copies of Highly Confidential Information shall be provided to the in-house attorney, outside
18 counsel and outside experts. The in-house expert may inspect and review the in-house attorney's
19 copies of Highly Confidential Information.

20 Persons authorized to review the Highly Confidential Information will maintain the
21 documents and any notes reflecting their contents in a secure location to which only designated
22 counsel and experts have access. No additional copies will be made. Any testimony or exhibits
23 prepared that reflect Highly Confidential Information must be maintained in the secure location until
24 removed to the hearing room for production under seal and under circumstances that will ensure
25 continued protection from disclosure to persons not entitled to review Highly Confidential
26 Information.

27 Unless specifically addressed in this section, all other sections of this Protective Order
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1 applicable to Confidential Information also apply to Highly Confidential Information.

2 4. Competitor-Specific Performance Data. Staff has requested that competitor-specific
3 performance data collected by Qwest be provided to it for review by Staff, HP and CGE&Y in this
4 proceeding. Competitor-specific performance data is considered Highly Confidential by competitors,
5 and competitors are willing to allow Qwest to provide such performance data to Staff only if the
6 information is afforded special protection by the Commission and Staff and only if used for the
7 purpose of enabling Staff to determine if Qwest is in compliance with Section 271 and Qwest
8 remains in compliance with Section 271 after Qwest obtains authority to provide in-region
9 interLATA services in Arizona. Competitors, whether parties or non-parties, seek an order from the
10 Commission limiting the use of performance data by Staff if a competitor permits Qwest to release
11 such data to Staff.

12 If a competitor permits the release of performance data to Staff, HP or CGE&Y, Staff, HP
13 and CGE&Y may only disclose such data if aggregated with other competitor data in a manner that
14 prevents anyone from determining individual competitor performance data, unless the competitor
15 consents to disclosure of its individual performance data by Staff, HP or CGE&Y. Staff may not
16 release the data in a "masked" or redacted manner unless it is done in such a manner that prevents a
17 competitor or the public from identifying a specific competitor's performance data because of, for
18 example, the size, quantity, location, quality, type or nature of the services provided.

19 Notwithstanding any other sections of this Protective Order, Staff, HP or CGE&Y may not,
20 under any circumstances, without the competitor's written consent or pursuant to an order of the
21 Commissioners that contains provisions consistent with the terms of section 3 of this Protective
22 Order, disclose the identity of a competitor's performance data. Staff, HP or CGE&Y may not
23 disclose any performance data pursuant to an order of the Commissioners until the competitor has
24 exhausted all appeals. Such data shall bear the notation: "HIGHLY CONFIDENTIAL--- USE
25 RESTRICTED PURSUANT TO PROTECTIVE ORDER DATED _____, 2001, IN DOCKET
26 NO. T-00000B-0238."

27 5. Objections to Admissibility. The furnishing of any document, information, data, study
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1 or other materials pursuant to this Protective Order shall in no way limit the right of the providing
2 party to object to its relevance or admissibility in proceedings before this Commission.

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

- 8
- 9 (a) A party seeking to challenge the confidentiality of any materials pursuant to
10 this Order shall first contact counsel for the providing party and attempt to
11 resolve any differences by stipulation;
- 12 (b) In the event that the parties cannot agree as to the character of the information
13 challenged, any party challenging the confidentiality shall do so by appropriate
14 pleading. This pleading shall:
- 15 (1) Designate the document, transcript or other material challenged in a
16 manner that will specifically isolate the challenged material from other
17 material claimed as confidential; and
- 18 (2) State with specificity the grounds upon which the documents, transcript
19 or other material are deemed to be non-confidential by the challenging
20 party.
- 21 (c) A ruling on the confidentiality of the challenged information, document, data
22 or study shall be made by a Administrative Law Judge after proceedings in
23 camera, which shall be conducted under circumstances such that only those
24 persons duly authorized hereunder to have access to such confidential
25 materials shall be present. This hearing shall commence no earlier than five
26 (5) business days after service on the providing party of the pleading required
27 by subsection 5(b) above.
- 28 (d) The record of said in camera hearing shall be marked "CONFIDENTIAL-
SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. T-00000B-0238." 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,

1 data or study or use it in the public record for five (5) business days unless
2 authorized by the providing party to do so. The provisions of this subsection
3 are intended to enable the providing party to seek a stay or other relief from an
4 order removing the restriction of this Order from materials claimed by the
5 providing party to be confidential.

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

8 (1) Prior to the use of or substantive reference to any Confidential
9 Information, the parties intending to use such Information shall make
10 that intention known to the providing party.

11 (2) The requesting party and the providing party shall make a good-faith
12 effort to reach an agreement so the Information can be used in a manner
13 which will not reveal its trade secret, confidential or proprietary nature.

14 (3) If such efforts fail, the providing party shall separately identify which
15 portions, if any, of the documents to be offered or referenced shall be
16 placed in a sealed record.

17 (4) Only one (1) copy of the documents designated by the providing party
18 to be placed in a sealed record shall be made.

19 (5) The copy of the documents to be placed in the sealed record shall be
20 tendered by counsel for the providing party to the Commission, and
21 maintained in accordance with the terms of this Order.

22 (b) Seal. While in the custody of the Commission, materials containing
23 Confidential Information shall be marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE
24 ORDER IN DOCKET NO. T-00000B-0238" and Highly Confidential Information shall be marked
25 "HIGHLY CONFIDENTIAL—USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO.
26 T-00000B-0238" and shall not be examined by any person except under the conditions set forth in
27 this Order.

28 (c) In Camera Hearing. Any Confidential Information that must be orally
disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing,
attended only by persons authorized to have access to the information under this Order. Similarly,
any cross-examination on or substantive reference to Confidential Information (or that portion of the

1 record containing Confidential Information or references thereto) shall be received in an in camera
2 hearing, and shall be marked and treated as provided herein.

3 (d) Access to Record. Access to sealed testimony, records and information shall
4 be limited to the Administrative Law Judge and persons who are entitled to review Confidential
5 Information pursuant to subsection 1(c) above and have signed an Exhibit "A," unless such
6 information is released from the restrictions of this Order either through agreement of the parties or
7 after notice to the parties and hearing, pursuant to the ruling of a Administrative Law Judge, the order
8 of the Commission and/or final order of a court having final jurisdiction.

9 (e) Appeal/Subsequent Proceedings. Qwest initiated this proceeding in
10 anticipation of its application to provide interLATA service pursuant to Section 271. Sealed portions
11 of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes
12 of an appeal or to the FCC for purposes of a Section 271 proceeding, but under seal as designated
13 herein for the information and use of the court or the FCC. If a portion of the record is forwarded to a
14 court or the FCC, the providing party shall be notified which portion of the sealed record has been
15 designated by the appealing party as necessary to the record on appeal or for use at the FCC.

16 (f) Return. Unless otherwise ordered, Confidential Information and Highly
17 Confidential Information, including transcripts of any depositions to which a claim of confidentiality
18 is made, shall remain under seal, shall continue to be subject to the protective requirements of this
19 Order, and shall be returned to counsel for the providing party within thirty (30) days after final
20 settlement or conclusion of the Section 271 Proceedings.

21 8. Use in Pleadings. Where references to Confidential Information in the sealed record
22 or with the providing party is required in pleadings, briefs, arguments or motions (except as provided
23 in section 5), it shall be by citation of title or exhibit number or some other description that will not
24 disclose the substantive Confidential Information contained therein. Any use of or substantive
25 references to Confidential Information shall be placed in a separate section of the pleading or brief
26 and submitted to the Administrative Law Judge or the Commission under seal. This sealed section
27 shall be served only on counsel of record and parties of record who have signed the nondisclosure
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1 agreement set forth in Exhibit "A." All of the restrictions afforded by this Order apply to materials
2 prepare and distributed under this section.

3 9. Summary of Record. If deemed necessary by the Administrative Law Judge, the
4 providing party shall prepare a written summary of the Confidential Information referred to in the
5 Order to be placed on the public record.

6 IT IS THEREFORE ORDERED that the provisions of this Order are specifically intended to
7 apply to all data, documents, information, studies, and other material designated as confidential or
8 highly confidential by any party to Docket No. T-00000A-97-0238.

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

11 DATED this 9th day of August, 2001.

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14 

15 DWIGHT D. NODES
16 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

17 Copies of the foregoing mailed/delivered
18 this 9th day of August, 2001 to:

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EXHIBIT A

I have read the foregoing Protective Order dated August __, 2001, in Docket No. T-00000A-97-0238 and agree to be bound by the terms and conditions of this Order.

Name

Employer

Business Address

Party

Signature

Date