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BEFORE THE ARIZONA CORPORATION COMMISSION

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WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

Arizona Corporation Commission

DOCKETED

AUG 06 2001

DOCKETED BY

RECEIVED

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AZ CORP COMMISSION  
DOCUMENT CONTROL

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

DOCKET NO. T-00000A-97-0238

#63419

MOTION FOR A PROTECTIVE ORDER

The Arizona Corporation Commission ("ACC" or "Commission") Staff hereby moves for entry of a Protective Order in the form attached to govern the disclosure of confidential and highly confidential information in this case. Staff has submitted several data requests recently which ask for information from all active Competitive Local Exchange Carriers ("CLECs") in the State and Qwest, the responses to which are considered to be "highly confidential" in nature, which several parties have requested be subject to more stringent disclosure requirements.

The proposed Protective Order, which contains more stringent disclosure requirements for "highly confidential" information, will facilitate the disclosure of these documents and information. The proposed Protective Order is patterned after protective agreements utilized in other Qwest proceedings before the ACC. In preparing this proposed Protective Order, the Commission Staff sought input and participation from virtually all of the parties to this Docket.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of August 2001.

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1 Original and ten copies of the foregoing  
2 were filed this 6<sup>th</sup> day of August, 2001 with:

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

7 **CERTIFICATE OF SERVICE**

8 Copies of the foregoing "Notice of Filing" were mailed this 6<sup>th</sup> day of August  
9 2001 to:

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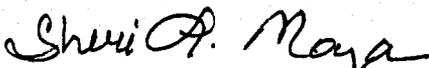
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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL  
Chairman  
JIM IRVIN  
Commissioner  
MARC SPITZER  
Commissioner

IN THE MATTER OF Qwest Corporation's  
Compliance with Section 271  
of the Telecommunications Act of 1996

DOCKET NO. T-00000A-97-0238

PROTECTIVE 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" designation. In addition, all notes or other materials that refer to, derive from, or otherwise contain parts of the Confidential Information will be marked by the receiving

1 party as Confidential Information. Access to and review of Confidential Information shall be  
2 strictly controlled by the terms of this Order.

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

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

21 (d) Nondisclosure Agreement. Any party, person, or entity that receives  
22 Confidential Information pursuant to this Order shall not disclose such Confidential Information  
23 to any person, except persons who are described in section 1(c) above and who have signed a  
24 nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit  
25 "A." Court reporters shall also be required to sign an Exhibit "A" and comply with the terms of  
26 this Order.

27 The nondisclosure agreement (Exhibit "A") shall require the person to whom disclosure  
28 is to be made to read a copy of this Protective Order and to certify in writing that they have

1 reviewed the same and have consented to be bound by its terms. The agreement shall contain the  
2 signatory's full name, employer, business address and the name of the party with whom the  
3 signatory is associated. Such agreement shall be delivered to counsel for the providing party  
4 before disclosure is made, and if no objection thereto is registered to the Commission within five  
5 (5) days, then disclosure shall follow. An attorney who makes Confidential Information  
6 available to any person listed in subsection (c) above shall be responsible for having each such  
7 person execute an original of Exhibit A and a copy of all such signed Exhibit "A"s shall be  
8 circulated to all other counsel of record promptly after execution.

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

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

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

25       3.     Highly Confidential Trade Secret Information: Any person, whether a party or  
26 non-party, may designate certain competitively sensitive Confidential Information as "Highly  
27 Confidential Information" if it determines in good faith that it would be competitively  
28 disadvantaged by the disclosure of such information to its competitors. Highly Confidential

1 Information includes, but is not limited to, documents, pleadings, briefs and appropriate portions  
2 of deposition transcripts, which contain information regarding the market share of, number of  
3 access lines served by, or number of customers receiving a specified type of service from a  
4 particular provider or other information that relates to marketing, retail business planning or  
5 business strategies.

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

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

20 Parties seeking disclosure of Highly Confidential Information must designate the  
21 person(s) to whom they would like the Highly Confidential Information disclosed in advance of  
22 disclosure by the providing party. Such designation may occur through the submission of  
23 Exhibit A of the non-disclosure agreement identified in section 1(d). Parties seeking disclosure  
24 of Highly Confidential Information shall not designate more than (1) one in-house attorney; (2)  
25 one in-house expert; and (3) a reasonable number of outside counsel and outside experts to  
26 review materials marked as "Highly Confidential." Disclosure of Highly Confidential  
27 Information to Commissioners, Hearing Officers and Staff members shall be limited to persons  
28 to whom disclosure is necessary. Prior to disclosure of Highly Confidential Information to

1 CGE&Y, HP or DCI, CGE&Y, HP or DCI shall designate the persons to whom disclosure will  
2 be made and must be made for HP, CGE&Y and DCI to fulfill its contractual obligations. The  
3 Exhibit "A" also shall describe in detail the duties or responsibilities of the person being  
4 designated to see Highly Confidential Information and the person's role in the proceeding.  
5 Highly Confidential Information may not be disclosed to persons engaged in strategic or  
6 competitive decision making for any party, including the sale or marketing of products or  
7 services on behalf of any party.

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

17 Copies of Highly Confidential Information shall be provided to the in-house attorney,  
18 outside counsel and outside experts. The in-house expert may inspect and review the in-house  
19 attorney's 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  
24 until removed to the hearing room for production under seal and under circumstances that will  
25 ensure 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  
28 applicable to Confidential Information also apply to Highly Confidential Information.

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

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

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

27           5.     Objections to Admissibility. The furnishing of any document, information, data,  
28 study or other materials pursuant to this Protective Order shall in no way limit the right of the

1 providing party to object to its relevance or admissibility in proceedings before this Commission.

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

7 (a) A party seeking to challenge the confidentiality of any materials pursuant  
8 to this Order shall first contact counsel for the providing party and attempt  
9 to resolve any differences by stipulation;

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

13 (1) Designate the document, transcript or other material challenged in  
14 a manner that will specifically isolate the challenged material from  
15 other material claimed as confidential; and

16 (2) State with specificity the grounds upon which the documents,  
17 transcript or other material are deemed to be non-confidential by  
18 the challenging party.

19 (c) A ruling on the confidentiality of the challenged information, document,  
20 data or study shall be made by a Hearing Officer after proceedings in  
21 camera, which shall be conducted under circumstances such that only  
22 those persons duly authorized hereunder to have access to such  
23 confidential materials shall be present. This hearing shall commence no  
24 earlier than five (5) business days after service on the providing party of  
25 the pleading required by subsection 5(b) above.

26 (d) The record of said in camera hearing shall be marked "CONFIDENTIAL-  
27 SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. T-00000B-  
28 0238." Court reporter notes of such hearing shall be transcribed only upon  
agreement by the parties or Order of the Hearing Officer 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 Hearing Officer 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

1 other relief from an order removing the restriction of this Order from  
2 materials claimed by the providing party to be confidential.

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

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

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

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

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

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

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

26 (c) In Camera Hearing. Any Confidential Information that must be orally  
27 disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera  
28 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 record containing Confidential Information or references thereto) shall be received  
in an in camera hearing, and shall be marked and treated as provided herein.

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

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

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

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

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

10. The provisions of this Order are specifically intended to apply to all data, documents, information, studies, and other material designated as confidential or highly confidential by any party to Docket No. T-00000B-0238.

11. This Protective Order shall continue in force and effect after this Docket is closed.

Dated this \_\_\_ day of August, 2001.

\_\_\_\_\_  
Jane Rodda  
Hearing Officer

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EXHIBIT "A"

I have read the foregoing Protective Order dated August \_\_, 2001, in Docket  
Nos. T-00000A-97-0238 and agree to be bound by the terms and conditions of this Order.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Party

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date