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BEFORE THE ARIZONA CORPORATION COMMISSION

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MIKE GLEASON
Chairman
WILLIAM MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
KRISTIN MAYES
Commissioner
GARY PIERCE
Commissioner

2008 FEB 28 P 4: 31
AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED
FEB 28 2008

DOCKETED BY
[Signature]

IN THE MATTER OF THE FORMAL
COMPLAINT OF QWEST CORPORATION
AGAINST ARIZONA DIALTONE, INC. TO
ENFORCE ITS INTERCONNECTION
AGREEMENT

DOCKET NO. T-01051B-07-0694
T-03608A-07-0694

QWEST CORPORATION'S MOTION
FOR EXTENSION OF TIME TO FILE
A SUBSTANTIVE VERSION OF
EXHIBIT D TO ITS COMPLAINT

Qwest Corporation ("Qwest") hereby files its motion for an extension of time to file a substantive (not redacted) version of Exhibit D to its Complaint. In support of its motion Qwest states:

By Procedural Order dated February 6, 2008, the Commission instructed Qwest to file a substantive (not redacted) version of Exhibit D to its Complaint by February 29, 2008. The Procedural Order acknowledged the parties' discussion at the procedural conference that a protective order may be necessary to protect disclosure of what may be carrier proprietary information of Arizona Dialtone, Inc., under 47 U.S.C. § 222(a) and (b). The data in question includes the number of circuits Arizona Dialtone, Inc. has had in place through Qwest, and related billing information, since the effective date of the TRRO. Since the issuance of the Procedural Order, Arizona Dialtone, Inc. has confirmed that Arizona Dialtone does in fact consider the information contained in Exhibit D to be proprietary data of a competitively sensitive nature that it does not consent to be released except under an appropriate protective

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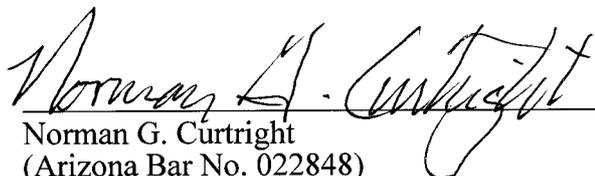
1 order. The parties have exchanged the form of protective order attached hereto, marked as
2 Exhibit A (the "Proposed Protective Order").

3 While Qwest does not at this time have any reason to believe that Staff or Arizona
4 Dialtone may object to the Proposed Protective Order, neither has yet responded. Qwest
5 believes that an appropriate protective order is a commonly utilized procedure in cases such as
6 this and it is likely the parties will soon agree on an appropriate form. Therefore an extension of
7 time that allows Arizona Dialtone and the Staff to focus on the Proposed Protective Order is
8 appropriate. Qwest asks for an extension of seven days. That period of time will allow the
9 parties sufficient time, while not unduly lengthening the time for resolution of this proceeding.
10 Therefore, Qwest asks that the time for it to file a substantive version of Exhibit D be extended
11 to March 7, 2008.

12 Qwest further states it considers the Procedural Order dated February 6, 2008 to be a
13 lawful directive issued by an agency having jurisdiction in the matter, having the force and effect
14 of an administrative subpoena, with respect to which Qwest will comply by filing the substantive
15 (not redacted) Exhibit D by March 7, 2008, unless another date is ordered by the Commission.

16 RESPECTFULLY SUBMITTED this 28th day of February, 2008.

17 QWEST CORPORATION

18 

19 Norman G. Curtright
20 (Arizona Bar No. 022848)
21 20 E. Thomas Rd., 16th Floor
22 Phoenix, Arizona 85012
23 Tel: (602) 630-2187
24 Fax: (303) 383-8484
25 Email: norm.curtright@qwest.com
26

1 ORIGINAL and 13 copies hand-delivered
2 for filing this 28th day of February, 2008, to:

3 Docket Control
4 ARIZONA CORPORATION COMMISSION
5 1200 West Washington Street
6 Phoenix, AZ 85007

6 Sarah Harpring, Administrative Law Judge
7 Hearing Division
8 ARIZONA CORPORATION COMMISSION
9 1200 W. Washington
10 Phoenix, AZ 85007

9 Armando Fimbres
10 Utilities Division
11 ARIZONA CORPORATION COMMISSION
12 1200 W. Washington Street
13 Phoenix, AZ 85007

12 Maureen A. Scott, Esq.
13 Legal Division
14 ARIZONA CORPORATION COMMISSION
15 1200 W. Washington Street
16 Phoenix, AZ 95007

15 Copy of the foregoing hand served and mailed
16 this 28th day of February, 2008, to:

17 Tom Bade
18 President—Arizona Dialtone, Inc.
19 6115 S. Kyrene Rd, Suite 103
20 Tempe, AZ 85283

20 Claudio E. Iannitelli, Esq.
21 Cheifetz, Iannitelli & Marcoline P.C.
22 1850 North Central Avenue, 19th Floor
23 Phoenix, Arizona 85004

24 
25 _____
26

EXHIBIT A

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MIKE GLEASON – Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE FORMAL COMPLAINT
9 OF QWEST CORPORATION AGAINST ARIZONA
10 DIALTONE, INC. TO ENFORCE ITS
11 INTERCONNECTION AGREEMENT

DOCKET NO. T-01051B-07-0694
T-03608A-07-0694

PROPOSED PROTECTIVE ORDER

12 The Arizona Corporation Commission Staff (“Staff”), Qwest Corporation (“Qwest”), and
13 Arizona Dialtone, Inc. (“AZDT”) (collectively referred to herein as “the parties”) intend to exchange,
14 or provide access to, and place into the record of this proceeding, certain information, some of which
15 may be claimed to be of a proprietary, confidential, or legally protected nature. The parties
16 respectfully request that the following agreement (“Agreement”) be entered as an order of the
17 Commission in the above-captioned docket.

18 The parties agree as follows:

19 **§1. Non-Disclosure.** “Confidential Information” as used herein shall mean information,
20 which is claimed by a disclosing party to be of a proprietary, confidential, or legally protected nature.
21 Except with the prior consent of the party originally designating information as confidential, or as
22 hereinafter provided under this Agreement, no Confidential Information may be disclosed to any
23 person. This requirement does not prohibit the receiving party from using and disclosing Confidential
24 Information provided by a disclosing party in reports or documents that aggregate all information
25 gathered from the parties to this docket, provided that the disclosing party’s individual disclosure is
26 indiscernible from the aggregate report.

27 **§2. Designation of Confidential Information.** Access to and review of Confidential
28 Information shall be strictly controlled by the terms of this Agreement.

1 All Confidential Information provided pursuant to this Agreement shall be so marked by
2 disclosing party with a designation indicating its alleged trade secret, proprietary, confidential, or
3 legally protected nature. The disclosing party shall memorialize in writing any Confidential
4 Information that it verbally discloses to a receiving party within five (5) business days of its verbal
5 disclosure, and the writing shall be marked by the disclosing party with the appropriate designation.
6 Any Confidential Information disclosed verbally by disclosing party shall be specifically identified as
7 confidential at the time of its verbal disclosure and shall be safeguarded by Staff and its contracting
8 consultants only during the five (5) business day period during which memorialization may be
9 provided. Disclosing party agrees that it will carefully consider the basis upon which any
10 information is claimed to be trade secret, proprietary, confidential, or otherwise legally protected.
11 Disclosing party shall designate as Confidential Information only such information as it may claim in
12 good faith to be legally protected. Where only a part of a document or only a part of an informational
13 submittal may reasonably be considered to be trade secret, proprietary, confidential, or otherwise
14 legally protected, Disclosing party shall designate only that part of such information submittal as
15 Confidential Information under this Agreement. Information that is publicly available from any other
16 source shall not be claimed as Confidential Information under this Agreement. While the receiving
17 party will honor the disclosing party's designation of documents or portions thereof as
18 "Confidential", mere designation of a document as "Confidential" does not mean that it is in fact or
19 in law confidential. As set forth in § 7 below, the receiving party shall have the right to challenge at
20 any time the disclosing party's designation of any document or portion thereof as "Confidential" in
21 accordance with the procedures described in this Agreement.

22 **§3. Performance Under Agreement Does Not Result in Waiver or Disclosure.**

23 Execution of this Agreement by the parties and performance of their obligations hereunder shall not
24 result in waiver of any claim, issue, or dispute concerning the trade secret, proprietary, confidential,
25 or legally protected nature of the Confidential Information provided. Neither the limited provision of
26 Confidential Information by disclosing party pursuant to this Agreement nor the limited provision by
27 receiving party of Confidential Information pursuant to §6 of this Agreement constitutes public
28 disclosure.

1 **§4. Access to Confidential Information.** Prior to reviewing any Confidential
2 Information, the receiving party (including, without limitation, any Commission Staff members or
3 independent contracting consultants) shall first be required to read a copy of this Protective
4 Agreement and to certify by their signatures on Exhibit A of this Agreement that they have reviewed
5 the same and have consented to be bound by its terms. Exhibit A of this Agreement shall contain the
6 signatory's full name, business address, employer, including in the case of disclosures to the Staff
7 the signatory's position with or relationship to the Arizona Corporation Commission
8 ("Commission"). Upon their execution, any and all Exhibits shall be promptly provided to counsel
9 for Disclosing party.

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

16 **§6. Non-Signatories Entitled to Review.** To the extent that disclosure is necessary to the
17 disposition of this docket, any Commission signatory to this Agreement may provide Confidential
18 Information under seal to the Commissioners and their Staffs, to other members of the Commission
19 Staff who are advising the Commissioners and their Staffs, or to any Commission administrative law
20 judge ("ALJ").

21 **§7. Disclosure of Information to the Public.** The Confidential Information provided
22 pursuant to this Agreement shall not be disclosed, nor shall it be made a part of the public record in
23 this docket, or in any other administrative or legal proceeding unless the party intending to do so
24 provides the disclosing party five (5) business days written notice that information designated by
25 disclosing party as Confidential Information shall be subject to disclosure as a public record. Upon
26 the expiration of five (5) business days from the date written notice is received by disclosing party,
27 any Confidential Information identified in the notice as subject to disclosure shall become part of the
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1 public record in this docket, unless disclosing party initiates a protective proceeding under the terms
2 of this Agreement.

3 **§8. Protective Proceedings to Prevent Disclosure to the Public.** In the event that
4 disclosing party seeks to prevent public disclosure of Confidential Information pursuant to §7 above,
5 disclosing party 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 and other parties shall have an
8 opportunity to respond to the motion. Disclosing party's motion may be ruled upon by either the
9 Commission or an assigned Commission ALJ. Disclosing party may provide to the Commission or
10 the 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 Disclosing party may seek judicial relief from the ALJ's or the Commission's decision. Upon
18 expiration of the five (5) day period, the Commission shall release the information to the public
19 unless Disclosing party has received a stay or determination from a court of competent jurisdiction
20 that the information is proprietary and is not a public record subject to disclosure under A.R.S. § 39-
21 101 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, the Disclosing party as the
24 real party in interest shall join as a co-defendant in any judicial action brought against the
25 Commission and/or Commissioners by the party seeking disclosure of the information, unless the
26 disclosing party is already specifically named in the action. Disclosing party also agrees to
27 indemnify and hold the Commission harmless from any assessment of expenses, attorneys' fees, or
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1 damages resulting from the Commission's denial of access to the information found to be non-
2 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
5 the Confidential Information, the Commission shall provide disclosing party with prompt written
6 notice of such requirement so that disclosing party may seek an appropriate remedy and/or waive
7 compliance. Disclosing party agrees that, upon receipt of such notice, disclosing party will either
8 undertake to oppose disclosure of the Confidential Information or waive compliance with this
9 Agreement. In the event that disclosure of the Confidential Information is ordered, the Commission
10 agrees to furnish only that portion of the Confidential Information that is legally required.

11 **§10. No Preclusion of Evidentiary Objections.** The furnishing of any document, data,
12 study or other materials pursuant to this Agreement shall in no way limit the right of the providing
13 party to object to its relevance or admissibility in proceedings before this Commission. In the event
14 that public disclosure of Confidential Information occurs, the provision of such information by
15 disclosing party pursuant to this Agreement shall not limit the right of disclosing party to object to its
16 relevance or admissibility in proceedings before the Commission.

17 **§11. (a) Receipt into Evidence.** Provision is hereby made for receipt of Confidential
18 Information into evidence in this proceeding:

- 19 (1) Prior to the use of or substantive reference to any Confidential
20 Information the parties intending to use such Confidential Information shall
21 make that intention known to the providing party.
- 22 (2) The requesting party and the providing party shall make a good-faith
23 effort to reach an agreement so the Confidential Information can be used in a
24 manner which will not reveal its confidential or proprietary nature.
- 25 (3) If such efforts fail, the providing party shall separately identify which
26 portions, if any, of the documents to be offered or referenced shall be placed in
27 a sealed record.
- 28 (4) Only one (1) copy of the documents designated by the providing party to

1 be placed in a sealed record shall be made.

2 (5) The copy of the documents to be placed in the sealed record shall be
3 tendered by counsel for the providing party to the Commission, and maintained
4 in accordance with the terms of this Agreement.

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6 (b) **Seal.** While in the custody of the Commission, materials containing
7 Confidential Information shall be marked "CONFIDENTIAL -- UNDER PROTECTIVE
8 AGREEMENT" IN DOCKET NOS. _ T-01051B-07-0694 and T-03608A-07-0694 " and shall not be
9 examined by any person except under the conditions set forth in this Agreement.

10 (c) **In Camera Hearing.** Any Confidential Information that must be orally
11 disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing,
12 attended only by persons authorized to have access to the information under this Agreement.
13 Similarly, any cross-examination on or substantive reference to Confidential Information or that
14 portion of the record containing Confidential Information or references thereto shall be received in an
15 in camera hearing, and shall be marked and treated as provided herein.

16 (d) **Access to Record.** Access to sealed testimony, records and information shall
17 be limited to the Administrative Law Judge, Commissioners, and their respective staffs, and persons
18 who are entitled to review Confidential Information pursuant to Section 4 above, unless such
19 information is released from the restrictions of this Agreement either through agreement of the parties
20 or after notice to the parties and hearing, pursuant to the ruling of a Administrative Law Judge, the
21 order of the Commission and/or final order of a court having final jurisdiction.

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

1 **§12. Use of Confidential Information in Other Commission Dockets.** The parties agree
2 that the confidential information obtained in this docket shall not be used for purposes of any other
3 Commission dockets or other proceedings without the express consent of the providing party.

4 **§13. Return of Confidential Information.** Within ninety (90) days of the final disposition
5 of any administrative or legal proceeding arising in or from this docket, disclosing party shall submit
6 a written request for the return of all Confidential Information, copies thereof, and notes made by
7 signatories to this Agreement. If such a request is not received within the stated 90 days, receiving
8 parties shall destroy all Confidential Information, copies thereof, and notes made by signatories to
9 this Agreement, or return to disclosing party all Confidential Information, copies thereof, and notes
10 made by signatories to this Agreement, following written notice to disclosing party. Commission
11 Staff shall retain any Confidential Information provided in connection with such an informational
12 filing for whatever time period it deems appropriate.

13 **§14. No Admission of Privileged or Confidential Status.** By participating in this
14 Agreement, the receiving party, including without limitation Staff and its contracting consultants, are
15 neither admitting nor agreeing with disclosing party that any of the information designated as
16 Confidential Information is, either in fact or as a matter of law, a trade secret or of a proprietary,
17 confidential, or legally protected nature. The disclosing party shall have the burden of proof at all
18 times to demonstrate that any information it has designated as Confidential Information is either in
19 fact or as a matter of law, a trade secret or of a proprietary, confidential, or legally protected nature.

20 **§15. Breach of Agreement.** Disclosing party, in any legal action or complaint that it files
21 in any court alleging breach of this Agreement shall, at the written request of the Commission, name
22 the Arizona Corporation Commission as a Defendant therein.

23 **§16. Non-Termination.** The provisions of this Agreement shall not terminate at the
24 conclusion of this proceeding.

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DATED this _____ day of February 2008.

ARIZONA CORPORATION COMMISSION

QWEST CORPORATION

By _____

By _____

Maureen A. Scott
Senior Staff Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-3402

Norman G. Curtright
20 East Thomas Road
16th Floor
Phoenix, AZ 85012
(602) 630-2187

Attorney for Arizona Corporation
Commission Staff

Attorney for Qwest Corporation

ARIZONA DIALTONE, INC.

By: _____

Claudio E. Iannitelli, Esq.
Cheifetz, Iannitelli & Marcoline P.C.
1850 North Central Avenue, 19th Floor
Phoenix, Arizona 85004

Attorney for Arizona Dialtone, Inc.

EXHIBIT "A"

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I have read the foregoing Protective Agreement dated _____, 2008, IN
**THE MATTER OF THE FORMAL COMPLAINT OF QWEST CORPORATION AGAINST
ARIZONA DIALTONE, INC. TO ENFORCE ITS INTERCONNECTION AGREEMENT,
DOCKET NO. T-01051B-07-0694, T-03608A-07-0694,** and agree to be bound by the terms and
conditions of such Agreement.

Name

Signature

Employer or Firm

Business Address

Position or relationship with the
Arizona Corporation Commission

Date