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BEFORE THE ARIZONA CORPORATION C

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COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

2008 APR -1 A 10:46

AZ CORP COMMISSION
DOCKET CONTROL

6/6/08

IN THE MATTER OF QWEST CORPORATION'S
PETITION FOR ARBITRATION AND
APPROVAL OF AMENDMENT TO
INTERCONNECTION AGREEMENT WITH
ARIZONA DIALTONE, INC. PURSUANT TO
SECTION 252(b) OF THE COMMUNICATIONS
ACT OF 1934 AS AMENDED BY THE
TELECOMMUNICATIONS ACT OF 1996 AND
APPLICABLE STATUTES.

DOCKET NO. T-01051B-07-0693
T-03608A-07-0693

STAFF'S NOTICE OF FILING

In accordance with the discussion at the telephonic Procedural Conference on March 31,
2008, attached is the Arizona Corporation Commission Staff's ("Staff") standard Protective
Agreement.

RESPECTFULLY SUBMITTED this 1st day of April, 2008.

Maureen A. Scott, Senior Staff Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Original and thirteen (13) copies
of the foregoing filed this
1st day of April, 2008 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Arizona Corporation Commission
DOCKETED
APR -1 2008

DOCKETED BY

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1 Copies of the foregoing mailed this
1st day of April, 2008 to:

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3 Norman G. Curtright, Corporate Counsel
4 Qwest Corporation
5 20 East Thomas Road, 16th Floor
6 Phoenix, Arizona 85012
7 Attorney for Qwest Corporation

8 Claudio E. Iannitelli, Esq.
9 Glenn B. Hotchkiss, Esq.
10 Matthew A. Klopp, Esq.
11 Chiefetz, Iannitelli & Marcolini, PC
12 Viad Tower, 19th Floor
13 1850 North Central Avenue
14 Phoenix, Arizona 85004
15 Attorneys for Arizona Dialtone, Inc.

16 Tom Bade, President
17 Arizona Dialtone, Inc.
18 7170 West Oakland
19 Chandler, Arizona 85226

20 Arizona Reporting Service, Inc.
21 2200 North Central Avenue, Suite 502
22 Phoenix, Arizona 85004-1481

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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 APPLICATION OF

DOCKET NO. _____

9 **PROTECTIVE AGREEMENT**

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11
12
13 The Arizona Corporation Commission Staff (“Staff”) has requested access to certain
14 information, some of which (ENTER COMPANY NAME) (“Company”) alleges may be of a
15 proprietary, confidential, or legally protected nature (“Confidential Information”).

16 In order to expedite the Company’s provision of information, Company, Staff, and any
17 independent contracting consultants retained by Staff for this docket (cumulatively referred to herein
18 as “the parties”) agree as follows:

19 **§1. Non-Disclosure.** Except with the prior consent of the party originally designating
20 information as confidential, or as hereinafter provided under this Agreement, no Confidential
21 Information may be disclosed to any person. This requirement does not prohibit Staff from using and
22 disclosing Confidential Information provided by Company in reports or documents that aggregate all
23 information gathered from the parties to this docket, provided that Company’s individual disclosure
24 is indiscernible from the aggregate report. In addition, where Confidential Information provided by
25 Company is confidential solely as a result of either disclosing individual customer information or
26 disclosing specific prices, this Agreement shall not prohibit Staff from the public disclosure of such

1 information in an aggregated form, where no individual customer or specific individual price can be
2 ascertained.

3 **§2. Designation of Confidential Information.** For purposes of this Agreement, any
4 information furnished to Staff that Company claims to be a trade secret, or of a proprietary,
5 confidential, or legally protected nature, shall be designated and referred to herein as “Confidential
6 Information.” Access to and review of Confidential Information shall be strictly controlled by the
7 terms of this Agreement.

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

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

2 Execution of this Agreement by the parties and performance of their obligations hereunder shall not
3 result in waiver of any claim, issue, or dispute concerning the trade secret, proprietary, confidential,
4 or legally protected nature of the Confidential Information provided. Neither the limited provision of
5 Confidential Information by Company pursuant to this Agreement nor the limited provision by Staff
6 of Confidential Information pursuant to §6 of this Agreement constitutes public disclosure.

7 **§4. Access to Confidential Information.** Prior to reviewing any Confidential

8 Information, any Commission Staff members or independent contracting consultants shall first be
9 required to read a copy of this Protective Agreement and to certify by their signatures on Exhibit A of
10 this Agreement that they have reviewed the same and have consented to be bound by its terms.
11 Exhibit A of this Agreement shall contain the signatory's full name, business address, employer, and
12 the signatory's position with or relationship to the Arizona Corporation Commission
13 ("Commission"). Upon their execution, any and all Exhibits shall be promptly provided to counsel
14 for Company.

15 **§5. Use of Confidential Information.** All persons who are signatories to this Agreement

16 shall neither use nor disclose the Confidential Information for purposes of business or competition, or
17 for any purposes other than those necessary for the disposition of this docket, including the
18 preparation for and conduct of any administrative or legal proceeding. All persons afforded access to
19 Confidential Information shall keep it secure as trade secret, confidential, or legally protected
20 information in accordance with the purposes and intent of this Agreement.

21 **§6. Non-Signatories Entitled to Review.** To the extent that disclosure is necessary to the

22 disposition of this docket, any Commission signatory to this Agreement may provide Confidential
23 Information under seal to the Commissioners and their Staffs, to other members of the Commission
24 Staff who are advising the Commissioners and their Staffs, or to any Commission administrative law
25 judge ("ALJ").

26 **§7. Disclosure of Information to the Public.** The Confidential Information provided

27 pursuant to this Agreement shall not be disclosed, nor shall it be made a part of the public record in

1 this docket, or in any other administrative or legal proceeding unless Staff provides Company five (5)
2 business days written notice that information designated by Company as Confidential Information
3 shall be subject to disclosure as a public record. Upon the expiration of five (5) business days from
4 the date written notice is received by Company, any Confidential Information identified in the notice
5 as subject to disclosure shall become part of the public record in this docket, unless Company
6 initiates a protective proceeding under the terms of this Agreement.

7 **§8. Protective Proceedings to Prevent Disclosure to the Public.** In the event that
8 Company seeks to prevent public disclosure of Confidential Information pursuant to §7 above,
9 Company shall file within five (5) business days of receipt of Staff's written notice a motion
10 presenting the specific grounds upon which it claims that the Confidential Information should not be
11 disclosed or should not be made a part of the public record. Staff shall have an opportunity to
12 respond to the motion. Company's motion may be ruled upon by either the Commission or an
13 assigned Commission ALJ. Company may provide to the Commission or the ALJ the Confidential
14 Information referenced in the motion without waiver that the information should remain confidential
15 under the terms of this Agreement. Any Confidential Information so provided shall be kept under seal
16 for the purpose of permitting inspection by the Commission or the ALJ prior to ruling on the motion.

17 Notwithstanding any determination by the ALJ or the Commission that any Confidential
18 Information provided pursuant to this Agreement should be made a part of the public record or
19 otherwise disclosed, public disclosure shall not occur for a period of five (5) calendar days so that
20 Company may seek judicial relief from the ALJ's or the Commission's decision. Upon expiration of
21 the five (5) day period, the Commission shall release the information to the public unless Company
22 has received a stay or determination from a court of competent jurisdiction that the information is
23 proprietary and is not a public record subject to disclosure under A.R.S. § 39-101 et seq.

24 **§9. Judicial Proceedings Related to NonParty's Request for Disclosure.** Where the
25 Commission, ALJ, or Staff determine that disclosure is not appropriate, the Company as the real
26 party in interest shall join as a co-defendant in any judicial action brought against the Commission
27 and/or Commissioners by the party seeking disclosure of the information, unless the Company is

1 already specifically named in the action. Company also agrees to indemnify and hold the
2 Commission harmless from any assessment of expenses, attorneys' fees, or damages resulting from
3 the Commission's denial of access to the information found to be non-confidential.

4 In the event that the Commission becomes legally compelled (by deposition, interrogatory,
5 request for documents, subpoena, civil investigative demand, or similar process) to disclose any of
6 the Confidential Information, the Commission shall provide Company with prompt written notice of
7 such requirement so that Company may seek an appropriate remedy and/or waive compliance.
8 Company agrees that, upon receipt of such notice, Company will either undertake to oppose
9 disclosure of the Confidential Information or waive compliance with this Agreement. In the event
10 that disclosure of the Confidential Information is ordered, the Commission agrees to furnish only that
11 portion of the Confidential Information that is legally required.

12 **§10. No Preclusion of Evidentiary Objections.** In the event that public disclosure of
13 Confidential Information occurs, the provision of such information by Company pursuant to this
14 Agreement shall not limit the right of Company to object to its relevance or admissibility in
15 proceedings before the Commission.

16 **§11 Use of Confidential Information in Other Commission Dockets.** The Staff agrees
17 that it shall not use the confidential information obtained in this docket for purposes of any other
18 Commission dockets or other proceedings without the express consent of the Company.

19 **§12. Return of Confidential Information.** Within ninety (90) days of the final disposition
20 of any administrative or legal proceeding arising in or from this docket, Company shall submit a
21 written request for the return of all Confidential Information, copies thereof, and notes made by
22 signatories to this Agreement. If such a request is not received within the stated 90 days, Staff shall
23 destroy all Confidential Information, copies thereof, and notes made by signatories to this
24 Agreement, or return to Company all Confidential Information, copies thereof, and notes made by
25 signatories to this Agreement, following written notice to Company of Staff's intent to return. If this
26 Protective Agreement is entered into in order to facilitate the provision of Confidential Information in
27 connection with an informational filing made pursuant to a Commission Administrative Rule or

1 Commission Order, this provision providing for the return or destruction of Confidential Information
2 shall not apply. Commission Staff shall retain any Confidential Information provided in connection
3 with such an informational filing for whatever time period it deems appropriate. Should the
4 Commission Staff determine that it no longer needs such Confidential Information to fulfill the
5 purposes of the related Commission Administrative Rule or Commission Order, the Confidential
6 Information shall be returned to the Company or destroyed, at the Commission Staff's discretion.

7 **§13. No Admission of Privileged or Confidential Status.** By participating in this
8 Agreement, Staff and its contracting consultants are neither admitting nor agreeing with Company
9 that any of the information designated as Confidential Information is, either in fact or as a matter of
10 law, a trade secret or of a proprietary, confidential, or legally protected nature. The Company shall
11 have the burden of proof at all times to demonstrate that any information it has designated as
12 Confidential Information is either in fact or as a matter of law, a trade secret or of a proprietary,
13 confidential, or legally protected nature.

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

17 **§15. Non-Termination.** The provisions of this Agreement shall not terminate at the
18 conclusion of this proceeding.

19
20 DATED this _____ day of _____ 2007.

21 ARIZONA CORPORATION COMMISSION _____ (ENTER FIRM/COMPANY NAME)
22

23
24 By _____ By _____
25 Enter Assigned Attorney's Name (Enter Company's Attorney Name)
26 Attorney, Legal Division (Enter Attorney's address)
Arizona Corporation Commission (Enter Attorney's Phone Number)
27 1200 West Washington Street
Phoenix, AZ 85007 Attorney for (Enter Company Name)

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(602) 542-3402

Attorney for Arizona Corporation
Commission Staff

EXHIBIT "A"

I have read the foregoing Protective Agreement dated _____, 2007,
(ENTER FULL CAPTION LANGUAGE) - Docket No. (ENTER DOCKET NO.) 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

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