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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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COMMISSIONERS

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

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DOCKETED

MAY 12 2008

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

DOCKET NO. T-03608A-07-0694

DOCKET NO. T-01051B-07-0694

PROCEDURAL ORDER

BY THE COMMISSION:

On December 17, 2007, Qwest Corporation ("Qwest") filed with the Arizona Corporation Commission ("Commission") a Complaint against Arizona Dialtone, Inc. ("Arizona Dialtone"). The Complaint stems from a dispute between Qwest and Arizona Dialtone over implementation of the Federal Communications Commission's ("FCC's") Triennial Review Remand Order¹ ("TRRO") and amendment of the Interconnection Agreement ("ICA") between Qwest and Arizona Dialtone.

Also on December 17, 2007, Qwest filed with the Commission a Petition for Arbitration under 47 U.S.C. § 252(b) and Arizona Administrative Code ("A.A.C.") R14-2-1505 ("Petition"), arising out of the same dispute.² This matter has not been consolidated with the Arbitration matter.

On January 22, 2008, Arizona Dialtone filed its Answer to Qwest's Complaint. In its Answer, Arizona Dialtone asserted the affirmative defenses of payment, waiver, estoppel, accord and satisfaction, and setoff.

On January 30, 2008, Qwest filed a Motion for Judgment on the Pleadings in this matter ("MJP").

On January 31, 2008, Qwest filed requests for procedural conference in both the Arbitration matter and this matter. Qwest stated that it desired a procedural conference because of its MJP in this matter.

¹ *In re* Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 20 F.C.C.R. 2533 (2005)(Order on Remand).

² The Arbitration matter has been assigned to Docket No. T-01051B-07-0693 et al.

1 On February 1, 2008, Procedural Orders were issued scheduling a joint procedural conference
2 for February 6, 2008, at the Commission's offices in Phoenix, Arizona, to discuss Qwest's MJP and
3 any other relevant issues in the Arbitration matter and this matter.

4 On February 6, 2008, the joint procedural conference was held at the Commission's offices in
5 Phoenix, Arizona. Qwest, Arizona Dialtone, and Staff appeared through counsel. At the procedural
6 conference, as to this matter, it was agreed that Arizona Dialtone and Staff should be afforded an
7 opportunity to file responses to Qwest's MJP and that Qwest should have the opportunity to file a
8 reply to those responses. It was agreed that February 22, 2008, would be the deadline for the
9 responses and that February 29, 2008, would be the deadline for Qwest's reply. The parties were put
10 on notice that Qwest's MJP could only be granted through a Recommended Order to be considered
11 by the Commission at an open meeting. Because Qwest had filed only a fully redacted version of
12 Exhibit D to its Complaint, the Administrative Law Judge ("ALJ") instructed Qwest to file a
13 substantive (not fully redacted) version of Exhibit D. Qwest and Arizona Dialtone both asserted that
14 the information in Exhibit D is confidential. The ALJ informed Qwest that its MJP could not be
15 considered until there was either a waiver of confidentiality for the numbers supporting its requested
16 award on Exhibit D or a motion for a protective order. Qwest, Arizona Dialtone, and Staff agreed
17 that a protective agreement could be entered, which would allow Qwest to provide the numbers to the
18 ALJ subject to the protective order that would then be issued. The parties agreed that the protective
19 agreement would be done as quickly as possible.

20 Later on February 6, 2008, a Procedural Order was issued requiring Arizona Dialtone and
21 Staff each to file a response to Qwest's MJP by February 22, 2008, and requiring Qwest to file a
22 reply to the responses and a substantive version of Exhibit D by February 29, 2008.

23 On February 22, 2008, Arizona Dialtone filed its opposition to Qwest's MJP, and Staff filed
24 its comments on Qwest's MJP.

25 On February 29, 2008, Qwest filed a motion requesting an extension of time to file a
26 substantive version of Exhibit D. Qwest explained in its motion that Arizona Dialtone had confirmed
27 that it considered the information contained in Exhibit D to be proprietary data of a competitively
28 sensitive nature that it does not consent to be released except under an appropriate protective order.

1 Qwest also explained that the parties had exchanged a proposed protective order, which was attached,
2 but that Arizona Dialtone and Staff had not yet responded to it. Therefore, Qwest requested that its
3 deadline to file Exhibit D be extended seven days, until March 7, 2008.

4 Also on February 29, 2008, a Procedural Order was issued extending Qwest's deadline to file
5 a substantive version of Exhibit D until March 14, 2008, to allow the parties adequate time to enter
6 into a protective agreement without the need to request an additional extension.

7 On March 14, 2008, Qwest filed a Motion for Protective Order ("MPO"). In addition, Qwest
8 submitted directly to the ALJ a letter addressed to the ALJ and a sealed envelope marked
9 "CONFIDENTIAL" that included an unredacted and updated version of Exhibit D. In its letter to the
10 ALJ, Qwest requested that the unredacted and updated version of Exhibit D remain under seal and
11 unavailable to the public pending a ruling on its MPO. In its MPO, Qwest explained that Arizona
12 Dialtone had stated that Qwest's proposed protective order was acceptable, but that Staff had
13 responded to Qwest on March 14, 2008, that it would not agree to a stipulation for an order other than
14 Staff's standard protective order. Qwest asserted that Staff's standard protective order was
15 problematic because it is only a two-party agreement and does not provide for how confidential
16 information may be entered into evidence, which is necessary in this matter. Qwest asserted that
17 Exhibit D contains billing information that forms the foundation of Qwest's Complaint and is
18 confidential to Qwest and Arizona Dialtone. Qwest asserted that the information is carrier
19 proprietary information within the meaning of 47 U.S.C. § 222(a) and that Qwest has both a business
20 imperative and a federal legal obligation to protect it.

21 On March 31, 2008, at the request of the ALJ, a telephonic procedural conference was held in
22 this matter. Qwest, Arizona Dialtone, and Staff appeared through counsel. In response to
23 questioning from the ALJ, Qwest stated that its position as to the confidentiality of the information in
24 Exhibit D is derivative of Arizona Dialtone's position and that Qwest believes that it has a legal duty
25 to keep the information confidential. Qwest stated that Qwest could be in violation of the federal
26 Telecommunications Act if the information is revealed. Qwest also asserted, in spite of A.R.S. § 40-
27 241(A), that it believes Staff should not be able to view the information without first having signed a
28 protective agreement. Arizona Dialtone agreed with Qwest as to Staff's ability to view the

1 information, asserted that the information is protected under 47 U.S.C. § 222, and also asserted that
2 the information should be protected under Rule 26(C) of the Arizona Rules of Civil Procedure as
3 proprietary and confidential information. Arizona Dialtone stated that public exposure of information
4 on Arizona Dialtone's usage over time could allow a competitor to understand how Arizona
5 Dialtone's business is progressing over time and what its rate is. Staff expressed doubt as to the
6 information's being protected under 47 U.S.C. § 222 if it does not actually identify customers, only
7 usage data on a month-by-month basis, but stated that Staff has generally agreed to keep usage data
8 related to a particular competitive local exchange carrier confidential. Qwest and Arizona Dialtone
9 agreed that Qwest's proposed protective agreement, filed with its MPO, should be entered into, while
10 Staff stated that it was not willing to enter into a protective agreement other than Staff's standard
11 protective agreement. Staff also stated that a protective order entered by the Hearing Division is
12 different and that Staff would not have a problem with such an order, as long as there was nothing in
13 it that Staff objects to outright. Staff also stated that it had not found anything in particular
14 objectionable in Qwest's proposed protective agreement. Qwest stated that Staff's standard
15 protective agreement was not sufficient because it did not include language related to how the
16 confidential information would be entered into the record, which Qwest stated is critical. Arizona
17 Dialtone had not reviewed Staff's standard protective agreement and thus could not comment on it.
18 When asked about their willingness to enter into a stipulation as to a protective order including the
19 language used in Docket No. T-01051B-06-0045 ("Qwest v. Cox"), Qwest and Staff both stated that
20 they would have no objection to that. As Arizona Dialtone had not reviewed the protective order in
21 Qwest v. Cox, Arizona Dialtone stated that it would review the protective order and file its position
22 the following day.

23 On April 1, 2008, Arizona Dialtone filed its statement of position, in which it stated that
24 Qwest's proposed protective order is the appropriate protective order for use in this matter. Arizona
25 Dialtone stated that the Qwest v. Cox protective order allows confidential information to be reviewed
26 only by employees of a party who are not engaged in the sale or marketing of the party's products or
27 services, which is overly restrictive and would hinder Arizona Dialtone's ability to share confidential
28 information with the employees whose assistance it needs in this matter. In addition, Arizona

1 Dialtone stated that the Qwest v. Cox protective order is generally more restrictive than necessary
2 given the very limited amount of confidential information at issue in this matter.

3 On April 2, 2008, Staff filed a copy of its standard protective agreement.

4 As Qwest, Arizona Dialtone, and Staff have been unable to agree upon the language of a
5 protective agreement and proposed protective order, and a protective order is needed in this matter to
6 allow consideration of the information contained in the substantive version of Exhibit D and
7 potentially other information that may be forthcoming, it is appropriate to enter a protective order at
8 this time. It is also appropriate to tailor that protective order so that it will not foreclose Arizona
9 Dialtone from sharing the confidential information with its employees as needed to assist it with this
10 matter, even if those employees are involved in the sale or marketing of Arizona Dialtone's products
11 and services.

12 IT IS THEREFORE ORDERED that, in order to facilitate the disclosure of documents and
13 information during the course of this proceeding and to protect confidential information, the
14 Commission now issues the Protective Order attached hereto as Exhibit 1 to govern these
15 proceedings.

16 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
17 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission
18 *pro hac vice*.

19 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113—Unauthorized
20 Communications) applies to this proceeding and shall remain in effect until the Commission's
21 Decision in this matter is final and non-appealable.

22 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
23 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

24 DATED this 12th day of May, 2008.

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27 
28 SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

1 Copies of the foregoing mailed/delivered
2 this 12th day of May, 2008, to:

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

8 Glenn B. Hotchkiss, Esq.
9 CHIEFETZ, IANNITELLI & MARCOLINI, P.C.
10 Viad Tower, 19th Floor
11 1850 North Central Avenue
12 Phoenix, AZ 85004
13 Attorney for Arizona Dialtone, Inc.

14 Tom Bade, President
15 ARIZONA DIALTONE, INC.
16 7170 West Oakland
17 Chandler, AZ 85226

18 Janice Alward, Chief Counsel
19 Maureen Scott, Staff Attorney
20 Legal Division
21 ARIZONA CORPORATION COMMISSION
22 1200 West Washington Street
23 Phoenix, AZ 85007

24 Ernest G. Johnson, Director
25 Utilities Division
26 ARIZONA CORPORATION COMMISSION
27 1200 West Washington Street
28 Phoenix, AZ 85007

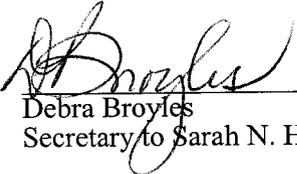
By: 
Debra Broyles
Secretary to Sarah N. Harpring

EXHIBIT 1

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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

DOCKET NO. T-03608A-07-0694

DOCKET NO. T-01051B-07-0694

PROTECTIVE ORDER

BY THE COMMISSION:

The purpose of this Protective Order ("Order") is to facilitate the exchange of information among Arizona Corporation Commission Utilities Division Staff ("Staff"), Qwest Corporation ("Qwest"), and Arizona Dialtone, Inc. ("Arizona Dialtone") and the use and entry into the record in the proceedings under this docket of information that any party claims to be a trade secret, proprietary, confidential, or legally protected.

IT IS THEREFORE ORDERED THAT access to and use of such information shall be strictly controlled by the following terms and conditions.

1. **Definitions.** As used herein, the following terms have the following meanings:

"Confidential information" means a document or information that a party claims to be a trade secret, proprietary, confidential, or otherwise legally protected.

"Disclosing party" means the party that originally designates information as confidential information.

"Party" means Qwest, Arizona Dialtone, or Staff.

"Receiving party" means the party to whom confidential information is provided.

2. **Non-Disclosure.** Except with the prior consent of the disclosing party, or as provided in this Order, no confidential information may be disclosed to any person. This requirement does not prohibit a receiving party from using and disclosing a disclosing party's confidential information in reports or documents that aggregate all information gathered from the parties to this docket, provided

1 that the disclosing party's confidential information is indiscernible in the aggregate report. In
2 addition, where confidential information is claimed to be such solely because it reveals either
3 individual customer information or specific prices, this requirement does not prohibit a receiving
4 party from disclosing the information in an aggregated form, from which no individual customer or
5 specific individual price can be ascertained.

6 3. **Designation of Confidential Information.** All confidential information provided
7 pursuant to this Order, in whatever physical form, shall be marked "CONFIDENTIAL" by the
8 disclosing party, who shall also indicate thereon whether the information is claimed to be a trade
9 secret, proprietary, confidential, or otherwise legally protected. To the extent reasonably practicable,
10 an electronic file shall also be identified internally, in a conspicuous manner, as "CONFIDENTIAL"
11 and shall include an indication whether the information is claimed to be a trade secret, proprietary,
12 confidential, or otherwise legally protected.

13 4. **Verbal Disclosures.** A disclosing party shall memorialize in writing any confidential
14 information that the party verbally discloses to a receiving party, within five business days after the
15 verbal disclosure; shall mark the writing "CONFIDENTIAL"; and shall record thereon whether the
16 information is claimed to be a trade secret, proprietary, confidential, or otherwise legally protected.
17 The disclosing party shall specifically state that the information is confidential information and on
18 what basis at the time that it is verbally disclosed.

19 5. **Exercise of Good Faith.** Each party shall carefully consider the basis upon which any
20 document or information is claimed to be confidential information and shall designate as confidential
21 information only a document or information that it can, in good faith, claim to be a trade secret,
22 proprietary, confidential, or otherwise legally protected from disclosure. Where only a portion of a
23 document or only a portion of information may reasonably be claimed to be a trade secret,
24 proprietary, confidential, or otherwise legally protected, a party shall designate as confidential
25 information only that portion of the document or information. A party shall not claim that any
26 document or information publicly available from another source is confidential information.

27 6. **Right to Challenge Designation.** Mere designation of a document or information as
28 confidential information does not mean that it is, in fact or in law, a trade secret, proprietary,

1 confidential, or otherwise legally protected. A receiving party has the right to challenge a disclosing
2 party's designation of any document or information as a trade secret, proprietary, confidential, or
3 otherwise legally protected, in the following manner:

- 4 a. A party seeking to challenge the designation of any document or information shall first
5 contact counsel for the disclosing party and attempt to resolve any differences by
6 stipulation.
- 7 b. If the parties cannot agree as to the character of the document or information
8 challenged, the party challenging the confidentiality shall file a pleading identifying
9 the challenged document or information in a manner that specifically isolates the
10 challenged document or information from other documents or information designated
11 as confidential information.
- 12 c. No earlier than seven business days after service on the disclosing party of the
13 pleading identifying the challenged document or information, an ALJ shall hold an *in*
14 *camera* proceeding, attended only by those persons authorized to have access to
15 confidential information under this Order. During this proceeding, the disclosing
16 party shall bear the burden of showing that the challenged document or information is
17 in fact a trade secret, proprietary, confidential, or otherwise legally protected.
- 18 d. The record of the *in camera* proceeding shall be marked as provided under Section 16
19 and shall be prepared and kept as provided under Sections 17-19.
- 20 e. If the ALJ rules that the challenged document or information, or any portion thereof, is
21 not a trade secret, proprietary, confidential, or otherwise legally protected and should
22 not be protected as confidential information under this Order, the disclosing party has
23 five business days to seek a stay or other relief from the ALJ's order, during which
24 time no person shall disclose the challenged document or information, or any portion
25 thereof, unless authorized to do so by the disclosing party.

26 7. **Performance Under Order Does Not Result in Waiver or Public Disclosure.**

27 Disclosure of confidential information under this Order shall not result in waiver of any claim, issue,
28 or dispute concerning whether confidential information is actually a trade secret, proprietary,

1 confidential, or otherwise legally protected and shall not be deemed to constitute public disclosure.

2 8. **Access to Confidential Information.** Except as provided in Section 10 and this
3 Section, before reviewing any confidential information, a person shall first read a copy of this Order
4 and certify, by completing Exhibit A to this Order, that the person has reviewed this Order and
5 consents to be bound by its terms. To be complete, Exhibit A must include the person's full name,
6 employer or firm name, business address, job title, and dated signature. The completed Exhibit A
7 shall promptly be provided to counsel for the disclosing party, who shall provide access to the
8 confidential information requested. Access to confidential information under this Section may only
9 be afforded to (1) attorneys employed or retained by a party in the proceedings under this docket; (2)
10 staff members of attorneys employed or retained by a party in the proceedings under this docket; (3)
11 experts, consultants, and advisors who need access to the information to assist a party in the
12 proceedings; (4) those employees of a party who are directly involved in the proceedings or who need
13 access to the information to assist the party in the proceedings; and (5) court reporters who are
14 involved in the transcription of the record of the proceedings under this docket. ALJs,
15 Commissioners, staff members of Commissioners, and members of Staff who are advising
16 Commissioners or staff members of Commissioners are not required to complete Exhibit A before
17 reviewing confidential information.

18 9. **Use of Confidential Information.** Any person who is afforded access to confidential
19 information as a result of this Order shall not use or disclose the confidential information for
20 purposes of business or competition or for any purpose other than the disposition of the proceedings
21 under this docket. Any person who is afforded access to confidential information as a result of this
22 Order shall keep the confidential information secure as a trade secret or proprietary, confidential, or
23 otherwise legally protected information in accordance with the purpose and intent of this Order.

24 10. **Non-Signatories Entitled to Review.** Confidential information may be reviewed by
25 any ALJ, any Commissioner, a staff member of a Commissioner, or a member of Staff who is
26 advising a Commissioner or a staff member of a Commissioner, although those individuals have not
27 completed Exhibit A. To the extent that disclosure is necessary to the disposition of the proceedings
28 under this docket, any Commission employee who has completed Exhibit A may provide confidential

1 information under seal to any ALJ, any Commissioner, a staff member of a Commissioner, or a
2 member of Staff who is advising a Commissioner or a staff member of a Commissioner.

3 11. **Disclosure of Information to the Public.** Except as provided in this Section,
4 confidential information received under this Order shall not be disclosed to the public in any manner,
5 including as a part of the public record under this docket or as a part of the public record in any other
6 administrative or legal proceeding. Any person intending to publicly disclose confidential
7 information received under this Order shall provide the disclosing party written notice five business
8 days before the public disclosure is to be made. The written notice shall identify as subject to public
9 disclosure the confidential information that the person intends to publicly disclose and the manner in
10 which the person intends to publicly disclose it. Unless the disclosing party initiates a protective
11 proceeding as provided under Section 12 within five business days after the date written notice is
12 received by the disclosing party, any confidential information identified in the written notice as
13 subject to public disclosure shall be disclosed to the public in accordance with the written notice.

14 12. **Protective Proceeding to Prevent Public Disclosure.** A disclosing party who seeks
15 to prevent public disclosure of confidential information shall, within five business days after
16 receiving written notice as described under Section 11, file a motion presenting the specific grounds
17 upon which it claims the confidential information should not be publicly disclosed. Each other party
18 shall have an opportunity to respond to the motion. The disclosing party's motion may be ruled upon
19 by an ALJ or by the Commission. The disclosing party may reveal the confidential information at
20 issue to Commissioners or the ALJ without waiving its position that the information should not be
21 publicly disclosed. Any confidential information so provided shall be kept under seal for the purpose
22 of permitting inspection by the Commission or the ALJ prior to ruling on the motion. If the
23 Commission or ALJ rules that the confidential information should be made a part of the public record
24 or otherwise publicly disclosed, the disclosing party shall be allowed five calendar days (during
25 which time public disclosure shall not occur) to seek judicial relief from the Commission's or ALJ's
26 decision. Upon expiration of the five-day period, the Commission shall release the information to the
27 public unless the disclosing party has received a stay or determination from a court of competent
28 jurisdiction that the information is proprietary and is not a public record subject to disclosure under

1 A.R.S. § 39-101 *et seq.*

2 13. **Judicial Proceedings Related to Non-Party's Request for Disclosure.** Where the
3 Commission, ALJ, or Staff rules that public disclosure is not appropriate, the disclosing party (as the
4 real party in interest) shall join as a co-defendant in any judicial action brought against the
5 Commission and/or Commissioners by the person seeking public disclosure of the information,
6 unless the disclosing party is already specifically named in the action. The disclosing party shall
7 indemnify and hold the Commission and/or Commissioners harmless from any assessment of
8 expenses, attorney's fees, or damages resulting from the Commission's denial of access to
9 information found not to be a trade secret, proprietary, confidential, or otherwise legally protected. If
10 the Commission becomes legally compelled (by deposition, interrogatory, request for documents,
11 subpoena, civil investigative demand, or similar process) to disclose any confidential information, the
12 Commission shall provide the disclosing party with prompt written notice of such requirement so that
13 the disclosing party may seek an appropriate remedy and/or waive confidentiality. Upon receipt of
14 such notice, a disclosing party shall either undertake to oppose disclosure of the confidential
15 information or waive confidentiality. If the Commission is ordered to disclose confidential
16 information, the Commission shall furnish only that portion of confidential information that is legally
17 required.

18 14. **No Preclusion of Evidentiary Objections.** The furnishing of any document or
19 information pursuant to this Order shall not limit the right of the disclosing party to object to its
20 relevance or admissibility in proceedings before the Commission under this docket.

21 15. **Receipt into Evidence.** Before using or making substantive reference to any
22 confidential information in proceedings under this docket, a receiving party intending to use the
23 confidential information shall make that intention known to the disclosing party. The receiving party
24 and the disclosing party shall make a good faith effort to reach an agreement so that confidential
25 information can be used in a manner that will not reveal that it is confidential information. If such
26 efforts fail, the disclosing party shall specifically identify which portions, if any, of documents or
27 information to be offered or referenced are confidential information. Only one copy of each
28 document containing confidential information shall be made, and it shall be placed in a sealed record.

1 The copy to be placed in the sealed record shall be tendered to the Commission via the ALJ by
2 counsel for the disclosing party and shall be maintained in accordance with the terms of this Order.

3 16. **Seal.** While in the custody of the Commission, materials containing confidential
4 information shall be marked "CONFIDENTIAL—UNDER PROTECTIVE ORDER IN DOCKET
5 NOS. T-03608A-07-0694 AND T-01051B-07-0694" and shall not be examined by any person except
6 as set forth in this Order.

7 17. **In Camera Hearing.** If examination of a witness will involve disclosure of or
8 substantive reference to confidential information, either orally or through an exhibit, such
9 examination shall occur during an *in camera* hearing, attended only by persons authorized under this
10 Order to have access to confidential information. The party counsel that expects to elicit the
11 disclosure of confidential information through examination shall inform the ALJ of that expectation
12 before the examination commences. The transcribed record of an *in camera* hearing, including any
13 exhibits thereto, shall be prepared and bound separately from the remainder of the hearing record and
14 shall be kept under seal.

15 18. **Use in Pleadings, Etc.** When reference to confidential information is required in
16 pleadings, briefs, arguments, or motions, the reference shall be, to the extent possible, made by
17 citation of title or exhibit number or some other description that does not disclose the substantive
18 confidential information. Any use of substantive confidential information shall be placed in a
19 separate section of a pleading, brief, argument, or motion and submitted to the ALJ or the
20 Commission under seal. The sealed section shall be served only on parties and counsel of record who
21 have signed Exhibit A. All of the protections under this Order apply to confidential information
22 contained in pleadings, briefs, arguments, or motions prepared in accordance with this Section.

23 19. **Access to Record.** Access to sealed portions of the record of proceedings under this
24 docket or other sealed information under this docket shall be limited to ALJs, Commissioners, staff
25 members of Commissioners, members of Staff who are advising Commissioners or Staff members of
26 Commissioners, and persons entitled to review confidential information pursuant to Section 8 of this
27 Order, unless such information is released from the restrictions of this Order either through
28 agreement of the parties or, after notice to the parties and hearing, pursuant to the ruling of an ALJ or

1 the Commission or a final order of a court of competent jurisdiction.

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

8 21. **Use of Confidential Information in Other Commission Dockets/Other**
9 **Proceedings.** The confidential information disclosed in the proceedings under this docket shall not
10 be used in any other Commission docket or any other proceeding without the express consent of the
11 disclosing party.

12 22. **Return/Destruction of Confidential Information.** Within 90 days after the final
13 disposition of the proceedings under this docket, a disclosing party shall submit to each receiving
14 party other than Staff a written request for the return of all confidential information, including notes
15 with substantive references to confidential information and any copies of documents containing
16 confidential information. If a receiving party other than Staff does not receive such a request within
17 90 days after the final disposition of the proceedings under this docket, the receiving party shall either
18 (1) destroy all such information, notes, and copies in the party's possession or (2) return all such
19 information, notes, and copies in the party's possession to the disclosing party after first sending the
20 disclosing party written notice that the materials will be returned. Staff shall retain confidential
21 information provided in connection with the proceedings under this docket for whatever time period
22 is required by law or by Commission policy.

23 23. **No Admission of Status.** Compliance with this Order by a receiving party shall not
24 be deemed an admission that information designated by the disclosing party as confidential
25 information is a trade secret, proprietary, confidential, or otherwise legally protected. The disclosing
26 party has the burden of proof at all times to demonstrate that any information it has designated as
27 confidential information is a trade secret, proprietary, confidential, or otherwise legally protected.

28 24. **Breach of Order.** If a disclosing party files in any court a legal action or complaint

1 alleging breach of this Order, the disclosing party shall, upon written request of the Commission,
2 name the Commission as a defendant therein.

3 25. **Non-Termination.** The provisions of this Order shall not terminate at the conclusion
4 of the proceedings under this docket.

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EXHIBIT A

NONDISCLOSURE AGREEMENT

I have read the foregoing Protective Order, dated May 12, 2008, in Docket Nos. T-03608A-07-0694 and T-01051B-07-0694 and agree to be bound by the terms and conditions of such Order.

Full Name

Employer or Firm Name

Business Address

Job Title

Signature

Date