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1 ORIGINAL

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

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AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JUL 22 2008

DOCKETED BY

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8 IN THE MATTER OF THE APPLICATION OF  
 9 DIECA COMMUNICATIONS DBA COVAD  
 10 COMMUNICATIONS COMPANY,  
 11 ESCHELON TELECOM OF ARIZONA, INC.,  
 12 MCLEODUSA TELECOMMUNICATIONS  
 13 SERVICES, INC., MOUNTAIN  
 14 TELECOMMUNICATIONS, INC. XO  
 15 COMMUNICATIONS SERVICES, INC. AND  
 16 QWEST CORPORATION REQUEST FOR  
 17 COMMISSION PROCESS TO ADDRESS KEY  
 18 UNE ISSUES ARISING FROM TRIENNIAL  
 19 REVIEW REMAN ORDER, INCLUDING  
 20 APPROVAL OF QWEST WIRE CENTER  
 21 LISTS.

- DOCKET NO. T-03632A-06-0091
- T-03406A-06-0091
- T-03267A-06-0091
- T-03432A-06-0091
- T-04302A-06-0091
- T-01051B-06-0091

**STAFF'S COMMENTS ON PROPOSED  
PROTECTIVE ORDER**

22 The Arizona Corporation Commission Staff ("Staff") files the following brief comments on  
 23 the proposed protective order filed by Qwest Corporation ("Qwest"). Apparently the form of  
 24 protective order was one agreed upon by the CLECs and Qwest in a similar Minnesota proceeding.<sup>1</sup>

25 Staff has for some time used a standard form of protective agreement in all proceedings in  
 26 which confidential treatment of information is requested by a party. Invariably, parties propose  
 27 various changes to the agreement. Because of the amount of time and Staff resources that are  
 28 required to continually review and consider proposed changes to the standard form of agreement,  
 many of which offer little value to the agreement's contents, Staff typically insists on its standard  
 form of agreement. Staff believes that it would be a rare instance indeed where its standard form of  
 agreement would need to be amended to address something not already contained in the agreement.  
 Staff also has an amendment to the agreement that it uses for highly confidential information, to  
 cover the more unusual instance where this higher degree of confidentiality is necessary. The Staff  
 has attached both its standard form of agreement and its amendment for highly confidential  
 information for informational purposes.

<sup>1</sup> See Qwest June 17, 2008 Application for Approval of 2008 Additions to Non-Impaired Wire Center List, Motion for Expedited Issuance of Protective Order and Motion for Procedural Conference, p. 2

1 In lieu of Qwest's new form of agreement or order, Staff suggests use of its standard form of  
2 agreement with an insert for highly confidential information. Another suitable alternative in Staff's  
3 opinion would be to put in place the same protective order that was approved for prior phases of this  
4 proceeding since it has apparently worked well in the past.

5 RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of July, 2008.

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8 

9 Maureen A. Scott, Senior Staff Counsel  
10 Legal Division  
11 1200 West Washington Street  
12 Phoenix, Arizona 85007  
13 (602) 542-3402

14 Original and thirteen (13) copies  
15 of the foregoing were filed this  
16 22<sup>nd</sup> day of July, 2008 with:

17 Docket Control  
18 Arizona Corporation Commission  
19 1200 West Washington Street  
20 Phoenix, Arizona 85007

21 Copies of the foregoing mailed this  
22 23<sup>rd</sup> day of July, 2008 to:

23 Greg Diamond  
24 COVAD COMMUNICATIONS COMPANY  
25 7901 E. Lowry Blvd.  
26 Denver, CO 80230

27 William Haas  
28 MCLEODUSA TELECOMMUNICATIONS  
SERVICES, INC.  
6400 C Street SW  
PO Box 3177  
Cedar Rapids, IA 52406-3 177

Rex Knowles  
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111 East Broadway, Suite 1000  
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2 ROSHKA, DEWULF & PATTEN  
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5 Attorneys for Covad Communications

6 Brad VanLeur, President  
7 OrbitCom  
8 1701 North Louise Avenue  
9 Sioux Falls, SD 57107

10 Gary Joseph, Vice President  
11 National Brands, Inc.  
12 dba Sharenet Communications Company  
13 4633 W. Polk Street  
14 Phoenix, AZ 85043

15 Mike Hazel  
16 MOUNTAIN TELECOMMUNICATIONS  
17 1430 West Broadway, Suite 206  
18 Tempe, AZ 85282

19 Norman G. Curtright  
20 QWEST CORPORATION  
21 20 E. Thomas Road, 16<sup>th</sup> Floor  
22 Phoenix, AZ 85012

23 Douglas Denney  
24 Eschelon Telecom of Arizona, Inc  
25 Senior Attorney  
26 730 Second Avenue South, Ste. 900  
27 Minneapolis, MN 55402

28 Tom Bade  
Arizona Dialtone, Inc.  
7170 West Oakland Street  
Chandler, Arizona 85226

Arizona Reporting Service, Inc.  
2627 North Third Street, Suite Three  
Phoenix, Arizona 85004-1126

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1 confidential, or legally protected nature, shall be designated and referred to herein as "Confidential  
2 Information." Access to and review of Confidential Information shall be strictly controlled by the  
3 terms of this Agreement.

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

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

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

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

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

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

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

3       **§8. Protective Proceedings to Prevent Disclosure to the Public.** In the event that  
4 Company seeks to prevent public disclosure of Confidential Information pursuant to §7 above,  
5 Company 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 shall have an opportunity to  
8 respond to the motion. Company's motion may be ruled upon by either the Commission or an  
9 assigned Commission ALJ. Company may provide to the Commission or the ALJ the Confidential  
10 Information referenced in the motion without waiver that the information should remain confidential  
11 under the terms of this Agreement. Any Confidential Information so provided shall be kept under seal  
12 for the purpose of permitting inspection by the Commission or the ALJ prior to ruling on the motion.

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

20       **§9. Judicial Proceedings Related to NonParty's Request for Disclosure.** Where the  
21 Commission, ALJ, or Staff determine that disclosure is not appropriate, the Company as the real  
22 party in interest shall join as a co-defendant in any judicial action brought against the Commission  
23 and/or Commissioners by the party seeking disclosure of the information, unless the Company is  
24 already specifically named in the action. Company also agrees to indemnify and hold the  
25 Commission harmless from any assessment of expenses, attorneys' fees, or damages resulting from  
26 the Commission's denial of access to the information found to be non-confidential.

27       In the event that the Commission becomes legally compelled (by deposition, interrogatory,  
28 request for documents, subpoena, civil investigative demand, or similar process) to disclose any of

1 the Confidential Information, the Commission shall provide Company with prompt written notice of  
2 such requirement so that Company may seek an appropriate remedy and/or waive compliance.  
3 Company agrees that, upon receipt of such notice, Company will either undertake to oppose  
4 disclosure of the Confidential Information or waive compliance with this Agreement. In the event  
5 that disclosure of the Confidential Information is ordered, the Commission agrees to furnish only that  
6 portion of the Confidential Information that is legally required.

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

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

14       **§12. Return of Confidential Information.** Within ninety (90) days of the final disposition  
15 of any administrative or legal proceeding arising in or from this docket, Company shall submit a  
16 written request for the return of all Confidential Information, copies thereof, and notes made by  
17 signatories to this Agreement. If such a request is not received within the stated 90 days, Staff shall  
18 destroy all Confidential Information, copies thereof, and notes made by signatories to this  
19 Agreement, or return to Company all Confidential Information, copies thereof, and notes made by  
20 signatories to this Agreement, following written notice to Company of Staff's intent to return. If this  
21 Protective Agreement is entered into in order to facilitate the provision of Confidential Information in  
22 connection with an informational filing made pursuant to a Commission Administrative Rule or  
23 Commission Order, this provision providing for the return or destruction of Confidential Information  
24 shall not apply. Commission Staff shall retain any Confidential Information provided in connection  
25 with such an informational filing for whatever time period it deems appropriate. Should the  
26 Commission Staff determine that it no longer needs such Confidential Information to fulfill the  
27 purposes of the related Commission Administrative Rule or Commission Order, the Confidential  
28 Information shall be returned to the Company or destroyed, at the Commission Staff's discretion.



**EXHIBIT "A"**

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I have read the foregoing Protective Agreement dated \_\_\_\_\_, 2008,  
(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

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **MIKE GLEASON**  
3 **CHAIRMAN**  
4 **WILLIAM A. MUNDELL**  
5 **COMMISSIONER**  
6 **MARC SPITZER**  
7 **COMMISSIONER**  
8 **JEFF HATCH-MILLER**  
9 **COMMISSIONER**  
10 **KRISTIN K. MAYES**  
11 **COMMISSIONER**

12 IN THE MATTER OF THE

DOCKET NO.

**FIRST AMENDMENT TO  
PROTECTIVE AGREEMENT  
WITH STAFF**

13 The Arizona Corporation Commission Staff ("Staff") and \_\_\_\_\_ ("Company")  
14 entered into a Protective Agreement ("Agreement") in this matter signed \_\_\_\_\_, 2005. In  
15 order to expedite the provision of Highly Confidential information in this matter the Company  
16 and Staff (cumulatively referred to herein as "the parties"), amend the Agreement to include the  
17 following:

18 Highly Confidential Trade Secret Information: Any party may designate certain  
19 agreements and related documents as "Highly Confidential Information" if it determines in good  
20 faith that it would be competitively disadvantaged by the disclosure of such information to its  
21 competitors. Highly Confidential Information includes, but is not limited to, documents,  
22 pleadings, briefs and appropriate portions of deposition transcripts, which contain information  
23 regarding the market share of, or number of customers receiving a specified type of service from  
24 a particular provider or other information that relates to marketing, retail business planning or  
25 business strategies.

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

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2           “HIGHLY CONFIDENTIAL.” Placing a “Highly Confidential” stamp on the first page  
3 of a document indicates only that one or more pages contain Highly Confidential Information  
4 and will not serve to protect the entire contents of a multi-page document. Each page that  
5 contains Highly Confidential Information must be marked separately to indicate Highly  
6 Confidential Information, even where that information has been redacted. The unredacted  
7 versions of each page containing Highly Confidential Information, and provided under seal,  
8 should be submitted on paper distinct in color from non-confidential information and  
9 “Confidential Information” described in section 2 of this Protective Agreement.

10           With regard to Highly Confidential Information, Staff must designate the person(s) to  
11 whom they would like the Highly Confidential Information disclosed in advance of disclosure by  
12 identifying the party. Such designation may occur through the submission of Exhibit A of the  
13 non-disclosure agreement identified in section 4. Parties seeking disclosure of Highly  
14 Confidential Information shall not designate more that (1) two in-house attorneys;(2) two in-  
15 house experts; and (3) a reasonable number of outside counsel and outside experts to review  
16 materials marked as “Highly Confidential.” Disclosure of Highly Confidential Information to  
17 Staff employees shall be limited to persons to whom disclosure is necessary. Prior to disclosure  
18 of Highly Confidential Information to Staff Consultant, Staff Consultant shall designate the  
19 persons to whom disclosure will be made and must be made for Staff Consultant to fulfill its  
20 contractual obligations. The Exhibit “A” also shall describe in detail the duties or  
21 responsibilities of the person being designated to see Highly Confidential Information and the  
22 person’s role in the proceeding. Highly Confidential Information may not be disclosed to  
23 persons engaged in strategic or competitive decision making for any party, including the sale or  
24 marketing of products or services on behalf of any party.

25           Any person, whether a party or non-party, may object in writing to the designation of any  
26 individual as a person who may review Highly Confidential Information within three (3)  
27 business days after receiving a signed Exhibit “A.” Any such objection must demonstrate good  
28 cause to exclude the challenged individual from the review of the Highly Confidential

1 Information. Written response to any objection shall be made within three (3) business days  
2 after receipt of an objection. If after receiving a written response to the providing party's  
3 objection, the providing party still declines to produce the requested information, the  
4 Commission Hearing Division shall determine whether the Highly Confidential Information  
5 must be disclosed to the challenged individual.

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

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

15 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

17 ARIZONA CORPORATION COMMISSION

18  
19 By: \_\_\_\_\_  
20 Name  
21 Attorney, Legal Division  
22 Arizona Corporation Commission  
23 1200 West Washington Street  
24 Phoenix, Arizona 85007

23 CORPORATION

25 By: \_\_\_\_\_

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**EXHIBIT "B"**

**HIGHLY CONFIDENTIAL**

I have read the foregoing Protective Agreement dated \_\_\_\_\_, 2005, in the  
\_\_\_\_\_ Application in 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