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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

2008 AUG 25 P 1:18
AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

AUG 25 2008

DOCKETED BY *mn*

IN THE MATTER OF THE APPLICATION OF
DIECA COMMUNICATIONS DBA COVAD
COMMUNICATIONS COMPANY, ESCHELON
TELECOM OF ARIZONA, INC., MCLEODUSA
TELECOMMUNICATIONS SERVICES, INC.,
MOUNTAIN TELECOMMUNICATIONS, INC.,
XO COMMUNICATIONS SERVICES, INC. AND
QWEST CORPORATION'S REQUEST FOR
COMMISSION PROCESS TO ADDRESS KEY
UNE ISSUES ARISING FROM TRIENNIAL
REVIEW REMAND ORDER, INCLUDING
APPROVAL OF QWEST WIRE CENTER LISTS.

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

PROCEDURAL ORDER

BY THE COMMISSION:

On May 20, 2008, in Decision No. 70355, the Arizona Corporation Commission ("Commission") approved a Settlement Agreement between Qwest Corporation ("Qwest") and DIECA Communications, Inc., doing business as Covad Communications Company and Mountain Telecommunications, Inc. ("Covad"); Eschelon Telecom of Arizona, Inc. ("Eschelon"); McLeodUSA Telecommunications Services, Inc. ("McLeod"); and XO Communications Services, Inc. ("XO") (collectively "Joint CLECs"). The Settlement Agreement resolved issues between Qwest and the Joint CLECs concerning Qwest's initial list of unimpaired wire centers, and established procedures that would apply between the parties with respect to future Qwest filings to update the unimpaired wire center list.

On June 22, 2007, Qwest filed in this docket an application for Approval of 2007 Additions to Non-Impaired Wire Center List ("2007 Additions Application"). In its 2007 Additions Application, Qwest sought to add the following Arizona wire centers to the initial list of unimpaired wire centers:

<u>Wire Center</u>	<u>CLLI</u>	<u>TIER</u>	<u>Non-Impairment For</u>
Chandler Main	CHNDAZMA	Tier 2	DS3 Transport & DF
Chandler West	CHNDAZWE	Tier 2	DS3 Transport & DF
Phoenix Cactus	PHNXAZCA	Tier 2	DS3 Transport & DF
Phoenix Greenway	PHNXAZGR	Tier 2	DS3 Transport & DF
Phoenix Southeast	PHNXASSE	Tier 1	DS1 and DS3 Transport & DF
Phoenix Sunnyslope	PHNXAZSY	Tier 2	DS3 Transport & DF
Phoenix West	PHNXAZWE	Tier 2	DS3 Transport & DF
Superstition West	SPRSAZWE	Tier 2	DS3 Transport & DF

In Decision No. 70355, the Commission ordered the Hearing Division to convene a Procedural Conference to address procedural issues related to Qwest's 2007 Additions Application. The Commission also ordered Qwest to request a Procedural Conference when it makes future filings to update the unimpaired wire center list.

On June 5, 2008, Qwest filed a Request for Procedural Conference to make determinations related to its 2007 Additions Application, including, but not limited to, securing a protective order to be used in connection with the 2007 Additions Application and future applications.

On June 17, 2008, Qwest filed an Application for approval of 2008 Additions to Non-Impaired Wire Center List ("2008 Additions Application").

On June 26, 2008, Qwest filed a "Submission of Publicly Available Data in Support of Its Application for Approval of 2008 Additions to Non-Impaired Wire Center Designations."

In its 2008 Additions Application, Qwest seeks to add the following Arizona wire centers to the initial list of unimpaired wire centers:

<u>Wire Center</u>	<u>CLLI</u>	<u>TIER</u>	<u>Non-Impairment For</u>
Gilbert	MESAAZGI	Tier 2	DS3 Transport & DF
Deer Valley North	DRVYAZNO	Tier 1	DS1 and DS3 Transport & DF
Phoenix Southeast	PHNXAZSE	Tier 1	DS1 and DS3 Transport & DF

1 On June 30, 2008, a telephonic Procedural Conference convened to discuss procedures for the
2 administering and considering Qwest's 2007 and 2008 Additions Applications. Qwest, Joint CLECs
3 and the Commission's Utilities Division ("Staff") participated in the June 30, 2008 Procedural
4 Conference through counsel. At that Procedural Conference the parties agreed that efficiency
5 warrants reviewing and approving Qwest's 2007 Additions Application and its 2008 Additions
6 Application simultaneously.

7 Although Qwest and the Joint CLECs agreed amongst themselves to a process for considering
8 additions to the unimpaired wire center list, other interested entities and Staff were not bound by the
9 process agreed to in the Settlement Agreement approved by Decision No. 70355. Thus, while the
10 Settlement Agreement provides for the Joint CLECs to file any objections to Qwest's proposed
11 additions to the unimpaired wire centers list within 30 days of Qwest's filing in Decision No. 70355,
12 the Commission reserved the right to establish procedures for processing future applications which
13 might differ from those contained in the Settlement Agreement. Although the Commission is not
14 bound by the timeframes established in the Settlement Agreement, those timeframes are not
15 unreasonable, and there is some benefit for establishing procedures that are consistent and apply to all
16 interested parties. This Procedural Order establishes procedures that will govern the 2007 and 2008
17 Additions Applications. The procedures established herein are not intended to interfere with the
18 procedures established by Qwest and the Joint CLECs in the Settlement Agreement, but rather to
19 provide meaningful notice and opportunity for CLECs that did not enter into the Settlement
20 Agreement to participate in the docket as new additions to the list of unimpaired wire centers are
21 considered.

22 In its June 17, 2008 Request for Procedural Conference, Qwest attached a form of Protective
23 Order which it proposed to apply to all further proceedings in this docket, until further order of the
24 Commission. The form of Protective Order is substantively similar to the form of order attached to
25 the Settlement Agreement, which the Commission approved in Decision No. 70355. At the time of
26 the June 30, 2008, Procedural Conference, Staff had not been able to review the proposed Protective
27 Order and requested additional time to review it and file any comments. In addition, during the
28 Procedural Conference, Staff and Qwest agreed to work together to formulate a current list of CLECs

1 with interconnection agreements with Qwest in Arizona, which would be used as the service list for
2 the 2007 and 2008 Additions Applications.

3 On July 22, 2008, Staff filed its Comments on Proposed Protective Order and a proposed
4 CLEC service list. Staff preferred its standard form of Protective Order to the one Qwest and the
5 Joint CLECs proposed. Staff stated, however, that it would agree to the same form of Protective
6 Order that had been approved in the prior phase of this docket.

7 On July 28, 2008, Qwest filed a Response to Staff's Comments on Proposed Protective Order,
8 and stated that although it believes there is no defect with its proposed Protective Order, it would
9 agree to utilize the form of protective order that was entered in the first phase of this docket.

10 At this juncture, Qwest, Joint CLECs and Staff have agreed to utilize the form of Protective
11 Order that the Commission approved in the earlier phase of this proceeding. A copy of the form of
12 Protective Order is attached hereto as Exhibit A. Its terms are reasonable, and will be adopted to
13 apply to the 2007 and 2008 Additions Applications as well as any future proceedings, until further
14 order of the Commission. Parties who desire to receive the confidential supporting data for Qwest's
15 2007 and 2008 Additions Applications and future addition applications must execute a Protective
16 Order.

17 In this phase of the proceeding to consider the 2007 and 2008 Additions Applications ("Phase
18 2"), parties will have 25 calendar days from the date of this Procedural Order to execute the
19 Protective Order. Upon receipt of an executed Protective Order, Qwest will make the information
20 supporting its wire center filings available to that party within three business days. Parties will have
21 at least 30 days to review the supporting data and file an objection to Qwest's designation of a
22 particular wire center as unimpaired.

23 To avoid multiple deadlines, the Commission will establish deadlines based on a date certain.
24 Under this approach, CLECs will have at least 30 days following the last day to execute the
25 Protective Order in which to review the underlying data. Thus, those CLECs that execute the
26 Protective Order sooner, rather than later, will have longer than 30 days to analyze the data.
27 Thereafter, Staff shall have at least fifteen calendar days following the deadline for CLECs to file
28 objections to Qwest's filing in which to file a Staff Report or its own objection to Qwest's

1 designations.

2 Thus, based on the foregoing, the Commission establishes the following deadlines for
3 responding to Qwest's 2007 and 2008 Additions Applications:

4	Deadline to Execute Protective Order	September 26, 2008
5	Deadline to File Objection to Qwest designation	October 27, 2008
6	Deadline for Staff Report or Objection	November 12, 2008

7 If there are no objections to Qwest's designations, the Commission may issue an Order
8 approving the addition(s) to the unimpaired wire center list without a hearing. In the event there is an
9 objection to any of Qwest's designations, or if circumstances warrant a hearing, a Procedural
10 Conference will be scheduled to establish the procedures that will apply to the Commission's
11 resolution of the dispute.

12 **This Procedural Order is being sent to all CLECs with current interconnection**
13 **agreements with Qwest (as identified in the July 22, 2008 filing) and will serve as notice to such**
14 **CLECs of their opportunity to participate in this docket.** Because of the extensive list of CLECs
15 with interconnection agreements with Qwest, CLECs who wish to remain on the service list with
16 respect to the 2007 and 2008 Addition Applications, and to continue to receive copies of filings in
17 this matter, must make an affirmative request to remain on the service list. **Failure to make such**
18 **request will result in that entity not receiving future filings made in connection with the 2007**
19 **and 2008 updates to the unimpaired wire center list.** A request to remain on the service list does
20 not obligate an entity to make future filings in this matter. Those parties who have already made a
21 request to remain on the service list need not file an additional request to do so and will continue to
22 receive all filings in this matter. To date the following parties are on record as desiring to receive
23 filings in this matter: Covad, McLead, Mountain Telecommunications, XO, Qwest, Eschelon,
24 Arizona Dialtone, Inc., National Brands, Inc. dba Sharnet Communications and Orbitcom.

25 IT IS THEREFORE ORDERED that the Protective Order attached hereto as Exhibit A, and
26 incorporated herein by reference, is approved and shall apply to Qwest's 2007 Additions Application,
27 its 2008 Additions Application and all future Additions Applications until further order of the
28 Commission.

1 IT IS FURTHER ORDERED that the list of CLECs with interconnection agreements with
2 Qwest in Arizona that was filed on July 22, 2008, **shall constitute the initial service list for Phase 2**
3 **of this docket.**

4 IT IS FURTHER ORDERED that this Procedural Order is notice to those on the service list
5 that Qwest has filed its 2007 and 2008 designations to the initial unimpaired wire centers list, and that
6 any entity on the service list who wishes to continue to receive copies of filings in this docket shall
7 file an affirmative statement indicating such interest, including therein a current address and contact
8 name where service should be sent.

9 IT IS FURTHER ORDERED that in order to receive at least 30 days to review the data
10 supporting Qwest's 2007 and 2008 designations of unimpaired Arizona wire centers, interested
11 parties shall **execute a copy of the Protective Order** in connection with Phase 2 by **September 26,**
12 **2008.** Parties may execute the Protective Order after September 26, 2008, however, their time to
13 review the supporting information will consequently be less than 30 days.

14 IT IS FURTHER ORDERED that interested parties shall **file objections** to Qwest's 2007 and
15 2008 Additions Applications by **October 27, 2008.**

16 IT IS FURTHER ORDERED that Staff shall file its **Staff Report or Objections** to Qwest's
17 2007 and 2008 Additions Applications by **November 12, 2008.**

18 IT IS FURTHER ORDERED that in the event there are no objections filed to any of Qwest's
19 designations, the Commission may issue an order approving the addition(s) to the unimpaired wire
20 center list without a hearing, however, a hearing is not precluded in any circumstance if it is
21 determined holding such hearing is required by due process or the public interest.

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

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

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1 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
2 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
3 Rules of the Arizona Supreme Court). Representation before the Commission includes the obligation
4 to appear at all hearings and procedural conferences, as well as all Open Meetings for which the
5 matter is scheduled for discussion, unless counsel has previously been granted permission to
6 withdraw by the Administrative Law Judge.

7 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
8 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
9 hearing.

10 Dated this 25th day of August, 2008.

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JANE V. RODDA
ADMINISTRATIVE LAW JUDGE

15

16

Copies of the foregoing mailed/delivered
this 25th day of August, 2008 to:

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7 Brad VanLeur, President
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10 360networks (USA), INC.
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11 Louisville, CO 80027
12 AboveNet Communications, Inc.
13 Attn: Tax Dept.
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14 White Plains, NY 10601
15 ACN Communications Services, Inc.
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16 Farmington, MI 78334
17 American Fiber Network, Inc.
18 9401 Indian Creek Pkwy, Ste. 140
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20 American Fiber Systems, Inc.
100 Meridian Centre, Ste. 250
21 Rochester, NY 14618
22 Andiamo Telecom, LLC
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23 Scottsdale, AZ 85259
24 Arizona Dial Tone, Inc.
25 7170 W. Oakland St.
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1	CityNet Arizona, LLC 709 Beechurst Ave., Ste. 14-A	DIECA Communications, Inc. 7901 Lowry Blvd., 2nd Fl.
2	Morgantown, WV 26505	Denver, CO 80230
3	CM Tel (USA), LLC 700 Wilshire Blvd., Ste. 750	DSLnet Communications, LLC 50 Barnes Park North, Ste. 104
4	Los Angeles, CA 90017	Wallingford, CT 06492
5	Comcast Phone of Arizona, LLC	Electric Lightwave, LLC
6	Attn: Lisa Moglia One Comcast Center	1201 NE Lloyd Blvd., Ste. 500
7	Philadelphia, PA 19103	Portland, OR 97232
8	CommPartners, LLC 3291 N. Buffalo Dr., Ste. 150	Ernest Communications, Inc. 5275 Triangle Parkway, Ste. 150
9	Las Vegas, NV 89129	Norcross, GA 30092
10	Comtel Telcom Assets LP	Eschelon Telecom of Arizona
11	dba Excel Telecommunications	c/o Integra Telecom
12	Attn: Deena Falk 433 E. Las Colinas Blvd., Ste. 1300	730 Second Ave. South, Ste. 900
13	Irving, TX 75039	Minneapolis, NM 55402
14	Comtel Telcom Assets LP	Frontier Communications of America, Inc.
15	dba VarTec Telecom	P.O. Box 708970
16	Attn: Deena Falk 433 E. Las Colinas Blvd., Ste. 1300	Sandy, UT 84070-8970
17	Irving, TX 75039	Frontier Communications of the White Mountains, Inc.
18	Cordia Communications, Corp.	P.O. Box 708970
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24	Cox Arizona Telcom, LLC	Global Connection Inc. or America
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26	Phoenix, AZ 85027	Atlanta, GA 30340
27	Cypress Communications Operating Co., Inc.	Global Crossing Local Services, Inc.
28	15 Piedmont Center, Ste. 610	Attn: Teresa Reff
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By: 
for Debbi Person
Secretary to Jane L. Rodda

EXHIBIT A

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 APPLICATION OF
DIECA COMMUNICATIONS DBA COVAD
COMMUNICATIONS COMPANY, ESCHELON
TELECOM OF ARIZONA, INC., MCLEODUSA
TELECOMMUNICATIONS SERVICES, INC.,
MOUNTAIN TELECOMMUNICATIONS, INC.,
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PROTECTIVE ORDER

1. (a) Confidential Information. All documents, data, studies and other materials furnished pursuant to any requests for information, subpoenas or other modes of discovery (formal or informal), and including depositions, and other requests for information, that are claimed to be proprietary or confidential (herein referred to as "Confidential Information"), shall be so marked by the providing party by stamping the same with a "Confidential" designation. In addition, all notes or other materials that refer to, derive from, or otherwise contain parts of the Confidential Information will be marked by the receiving party as Confidential Information. Access to and review of Confidential Information shall be strictly controlled by the terms of this Order.

(b) Use of Confidential Information – Proceedings. All persons who may be entitled to review, or who are afforded access to any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than the purpose of preparation for and conduct of proceedings in the above-

captioned docket or before the Federal Communications Commission (“FCC”), and all subsequent appeals, and shall keep the Confidential Information secure as confidential or proprietary information and in accordance with the purposes, intent and requirements of this Order.

(c) Persons Entitled to Review. Each party that receives Confidential Information pursuant to this Order must limit access to such Confidential Information to (1) attorneys employed or retained by the party in these proceedings and the attorneys’ staff; (2) experts, consultants and advisors who need access to the material to assist the party in these proceedings; (3) only those employees of the party who are directly involved in these proceedings, provided that counsel for the party represents that no such employee is engaged in the sale or marketing of that party’s products or services. In addition, access to Confidential Information may be provided to Commissioners and all Commission Administrative Law Judges, and Commission advisory staff members and employees of the Commission to whom disclosure is necessary. In states where Commission Staff act as advocates in a trial or adversarial role, disclosure of both Confidential Information and Highly Confidential Information to staff members and consultants employed by the staff shall be under the same terms and conditions as described herein for parties.

(d) Nondisclosure Agreement. Any party, person, or entity that receives Confidential Information pursuant to this Order shall not disclose such Confidential Information to any person, except persons who are described in section 1(c) above and who have signed a nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit “A”. Court reporters shall also be required to sign an Exhibit “A” and comply with terms of this Order. Commissioners, Administrative Law Judges, and their respective staff members are not required to sign an Exhibit “A” form.

The nondisclosure agreement (Exhibit “A”) shall require the person(s) to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and have consented to be bound by its terms. The agreement shall contain the signatory’s full name, employer, job title and job description, business address and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the providing party before disclosure is made, and if no objection thereto is registered to the Commission with in

three (3) business days, then disclosure shall follow. An attorney who makes Confidential Information available to any person listed in subsection (c) above shall be responsible for having each person execute an original Exhibit "A" and a copy of all such signed Exhibit "A's" shall be circulated to all other counsel of record promptly after execution.

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

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

3. Highly Confidential Information. Any person, whether a party or non-party, may designate certain competitively sensitive Confidential Information as "Highly Confidential Information" if it determines in good faith that it would be competitively disadvantaged by the disclosure of such information to its competitors. Highly Confidential Information includes, but is not limited to, documents, pleadings, briefs, and appropriate portions of deposition transcripts, which contain information regarding the market share of, number of access lines served by, or number of customers receiving a specified type of service from a particular provider or other information that relates to a particular provider's network facility location detail, revenues, costs, and marketing, business planning or business strategies.

Parties must scrutinize carefully responsive documents and information and limit their designations as Highly Confidential Information to information that truly might impose a serious 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:

“HIGHLY CONFIDENTIAL – USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. T-03632A-06-0091 ET AL.”

Placing a “Highly Confidential” stamp on the first page of a document indicates only that one or more pages contain Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly Confidential Information must be marked separately to indicate Highly Confidential Information, even where that information has been redacted. The unredacted versions of each page containing Highly Confidential Information, and provided under seal, should be submitted on paper distinct in color from non-confidential information and “Confidential Information” described in section 1 of this Protective Order.

Parties seeking disclosure of Highly Confidential Information must designate the person(s) to whom they would like the Highly Confidential Information disclosure in advance of disclosure by the providing party. Such designation may occur through the submission of Exhibit “B” of the non-disclosure agreement identified in section 1(d). Parties seeking disclosure of Highly Confidential Information shall not designate more than (1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Confidential Information; (2) five in-house experts; and (3) a reasonable number of outside counsel and outside experts to review materials marked as “Highly Confidential”. Disclosure of Highly Confidential Information to Commissioners, Administrative Law Judges and Commission Advisory Staff members shall be limited to persons to whom disclosure is necessary. Commissioners, Administrative Law Judges, and their respective staff members are not required to sign an Exhibit “B” form. The Exhibit “B” also shall describe in detail the job duties or responsibilities of the person being designated to see Highly Confidential Information and the person’s role in the proceeding. Highly Confidential Information may not be disclosed to persons engaged in strategic or competitive decision making for any party, including, but not limited to, the sale or marketing or pricing of products or services on behalf of any party.

Any party providing either Confidential Information or Highly Confidential Information may object to the designation of any individual as a person who may review Confidential Information

and/or Highly Confidential Information. Such objection shall be made in writing to counsel submitting the challenged individual's Exhibit "A" or "B" within three (3) business days after receiving the challenged individual's signed Exhibit "A" or "B". Any such objection must demonstrate good cause to exclude the challenged individual from the review of the Confidential Information or Highly Confidential Information. Written response to any objection shall be made within three (3) business days after receipt of an objection. If, after receiving a written response to a party's objection, the objecting party still objects to disclosure of either Confidential Information or Highly Confidential Information to the challenged individual, the Commission shall determine whether Confidential Information or Highly Confidential Information must be disclosed to the challenged individual.

Copies of Highly Confidential Information may be provided to in-house attorneys, outside counsel and outside experts who have signed Exhibit "B". The in-house experts who have signed Exhibit "B" may inspect, review and make notes from the in-house attorney's copies of Highly Confidential Information.

Persons authorized to review the Highly Confidential Information will maintain the documents and any notes reflecting their contents in a secure location to which only designated counsel and experts have access. No additional copies will be made, except for use during hearings and then such disclosure and copies shall be subject to the provisions of Section 6. Any testimony or exhibits prepared that reflect Highly Confidential Information must be maintained in the secure location until removed to the hearing room for production under seal. Unless specifically addressed in this section, all other sections of this Protective Order applicable to Confidential Information also apply to Highly Confidential Information.

4. Objections to Admissibility. The furnishing of any document, data, study or other materials pursuant to this Protective Order shall in no way limit the right of the providing party to object to its relevance or admissibility in proceedings before this Commission.

5. Small Company Exemption. Notwithstanding the restrictions in sections 1 and 3 applicable to persons who may access Confidential Information or Highly Confidential Information, a Small Company may designate any employee or in-house expert to review Confidential

Information and/or Highly Confidential Information if the producing party, upon request, gives prior written authorization for that person to review Confidential Information and/or Highly Confidential Information. If the producing party refuses to give such written authorization, the reviewing party may, for good cause shown, request an order from the Administrative Law Judge allowing a prohibited person(s) to review Confidential Information and/or Highly Confidential Information. The producing party shall be given the opportunity to respond to the Small Company's request before an order is issued. "Small Company" means a party with fewer than 5000 employees, including the employees of affiliates' U.S. ILEC, CLEC, and IXC operations within a common holding company.

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

- (a) A party seeking to challenge the confidentiality of any materials pursuant to this Order shall first contact counsel for the providing party and attempt to resolve any differences by stipulation;
- (b) In the event that the parties cannot agree as to the character of the information challenged, any party challenging the confidentiality shall do so by appropriate pleading. This pleading shall:
 - (1) Designate the document, transcript or other material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential; and
 - (2) State with specificity the grounds upon which the documents, transcript or other material are deemed to be non-confidential by the challenging party.
- (c) A ruling on the confidentiality of the challenged information, document, data or study shall be made by an Administrative Law Judge after proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential materials shall be present. This hearing shall commence no earlier than five (5) business days after service on the providing party of the pleading required by subsection 6(b) above.

- (d) The record of said in camera hearing shall be marked “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. T-03632A-06-0091 ET AL.”. Court reporter notes of such hearing shall be transcribed only upon agreement by the parties or Order of the Administrative Law Judge and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order.
- (e) In the event that the Administrative Law Judge should rule that any information, document, data or study should be removed from the restrictions imposed by this Order, no party shall disclose such information, document, data or study or use it in the public record for five (5) business days unless authorized by the providing party to do so. The provisions of this subsection are intended to enable the providing party to seek a stay or other relief from an order removing the restriction of this Order from materials claimed by the providing party to be confidential.

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

- (1) Prior to the use of or substantive reference to any Confidential Information, the parties intending to use such Information shall make that intention known to the providing party.
- (2) The requesting party and the providing party shall make a good-faith effort to reach an agreement so that the Information can be used in a manner which will not reveal its confidential or proprietary nature.
- (3) If such efforts fail, the providing party shall separately identify which portions, if any, of the documents to be offered or referenced shall be placed in a sealed record.
- (4) Only one (1) copy of the document designated by the providing party to be placed in sealed record shall be made.
- (5) The copy of the documents to be placed in the sealed record shall be tendered by counsel for the providing party to the Commission, and maintained in accordance with the terms of this Order.

(b) Seal. While in the custody of the Commission, materials containing Confidential Information shall be marked “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. T-03632A-06-0091 ET AL.” and Highly Confidential Information shall be marked “HIGHLY CONFIDENTIAL – USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. T-03632A-06-0091 ET AL.” and shall not be examined by any person except under

the conditions set forth in this Order.

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

(d) Access to Record. Access to sealed testimony, records and information shall be limited to the Administrative Law Judge, Commissioners, and their respective staffs, and persons who are entitled to review Confidential Information or Highly Confidential Information pursuant to subsection 1(c) above and have signed Exhibit "A" or "B", unless such information is released from the restrictions of this Order either through agreement of the parties or after notice to the parties and hearing, pursuant to the ruling of an Administrative Law Judge, the order of the Commission an/or final order of a court having final jurisdiction.

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

(f) Return. Unless otherwise ordered, Confidential Information and Highly Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall, at the providing party's discretion, be returned to counsel for the providing party, or destroyed by the receiving party, within thirty (30) days after final settlement or conclusion of these proceedings. If the providing party elects to have Confidential Information or Highly Confidential Information destroyed rather than returned, counsel for the receiving party shall verify in writing that

the material has in fact been destroyed.

8. Use in Pleadings. Where references to Confidential Information or Highly Confidential Information in the sealed record or with the providing party is required in pleadings, briefs, arguments or motions (except as provided in section 6), it shall be by citation of title or exhibit number or some other description that will not disclose the substantive Confidential Information or Highly Confidential Information contained therein. Any use of or substantive references to Confidential Information or Highly Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Administrative Law Judge or the Commission under seal. This sealed section shall be served only on counsel of record and parties of record who have signed the nondisclosure agreement set forth in Exhibit "A" or "B." All of the restrictions afforded by this Order apply to materials prepared and distributed under this section.

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

10. The provisions of this Order are specifically intended to apply to all data, documents, studies, and other material designated as confidential or highly confidential by any party to Docket No. T-03632A-06-0091 ET AL. The provisions are also intended to apply to all data, documents, studies, and other material designated as confidential or highly confidential by any non-party that provides such material in response to data requests in this docket, whether it is provided voluntarily or pursuant to subpoena.

11. This Protective Order shall continue in force and effect after these Dockets are closed.

**EXHIBIT A
CONFIDENTIAL INFORMATION**

I have read the foregoing Protective Order dated _____, 2008, in Docket Nos. T-03632A-06-0091, T-03406A-06-0091, T-03267A-06-0091, T-03432A-06-0091, T-04302A-06-0091, T-01051B-06-0091 and agree to be bound by the terms and conditions of this Order.

Name

Employer

Job title and Job Description

Business Address

Party

Signature

Date

EXHIBIT B
HIGHLY CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated _____, 2008, in Docket Nos. T-03632A-06-0091, T-03406A-06-0091, T-03267A-06-0091, T-03432A-06-0091, T-04302A-06-0091, T-01051B-06-0091 and agree to be bound by the terms and conditions of this Order.

Name

Employer

Job title and Job Description

Business Address

Party

Signature

Date