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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL

COMMISSIONERS

- KRISTIN K. MAYES, Chairman
- GARY PIERCE
- PAUL NEWMAN
- SANDRA D. KENNEDY
- BOB STUMP

IN THE MATTER OF THE REVIEW AND
POSSIBLE REVISION OF ARIZONA
UNIVERSAL SERVICE FUND RULES,
ARTICLE 12 OF THE ARIZONA
ADMINISTRATIVE CODE

DOCKET NO. RT-00000H-97-0137

IN THE MATTER OF THE INVESTIGATION
OF THE COST OF TELECOMMUNICATIONS
ACCESS

DOCKET NO. T-00000D-00-0672

STAFF'S NOTICE OF FILING PROPOSED
PROTECTIVE ORDER

Staff of the Arizona Corporation Commission ("Staff") hereby files its proposed Protective Order as required by the Hearing Division's December 19, 2008 Procedural Order.

RESPECTFULLY SUBMITTED this 16th day of January, 2009.

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

Original and fifteen (15) copies
of the foregoing filed this
16th day of January 2009 with:

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

Arizona Corporation Commission

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JAN 16 2009

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1 Copies of the foregoing mailed this
16th day of January 2009 to:

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1 under this Agreement. Information that is publicly available from any other source shall not be
2 claimed as Confidential Information under this Agreement. Any party shall have the right to
3 challenge at any time the Company's designation of any document or portion thereof as
4 "Confidential" in accordance with the procedures described in Section 6 of this Agreement.

5
6 (b) **Use of Confidential Information - Proceedings.** All persons who may be
7 entitled to review, or who are afforded access to any Confidential Information by reason of this Order
8 shall neither use nor disclose the Confidential Information for purposes of business or competition, or
9 any purpose other than the purpose of preparation for and conduct of proceedings in the above-
10 captioned docket and all subsequent appeals, and shall keep the Confidential Information secure as
11 confidential or proprietary information and in accordance with the purposes, intent and requirements
12 of this Order.

13 This Order does not prohibit a party, including Staff, from using and disclosing Confidential
14 Information provided by Company in reports or documents that aggregate all information gathered
15 from the parties to this docket, provided that Company's individual disclosure is indiscernible from
16 the aggregate report. In addition, where Confidential Information provided by Company is
17 confidential solely as a result of either disclosing individual customer information or disclosing
18 specific prices, this Agreement shall not prohibit a party, including Staff, from the public disclosure
19 of such information in an aggregated form, where no individual customer or specific individual price
20 can be ascertained.

21 (c) **Persons Entitled to Review.** Each party that receives Confidential
22 Information pursuant to this Order must limit access to such Confidential Information to (1) attorneys
23 employed or retained by the party in these proceedings and the attorneys' staff; (2) experts,
24 consultants and advisors who need access to the material to assist the party in these proceedings; (3)
25 only those employees of the party who are directly involved in these proceedings, provided that
26 counsel for the party represents that no such employee is engaged in the sale or marketing of that
27 party's products or services. In addition, access to Confidential Information may be provided to
28 Commissioners and all Commission Administrative Law Judges, and Commission advisory staff

1 members and employees of the Commission to whom disclosure is necessary. In states where
2 Commission Staff act as advocates in a trial or adversarial role, disclosure of both Confidential
3 Information and Highly Confidential Information to Staff members and consultants employed by the
4 Staff shall be under the same terms and conditions as described herein for parties.

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

12 The nondisclosure agreement (Exhibit "A") shall require the person(s) to whom disclosure is
13 to be made to read a copy of this Protective Order and to certify in writing that they have reviewed
14 the same and have consented to be bound by its terms. The agreement shall contain the signatory's
15 full name, employer, job title and job description, business address and the name of the party with
16 whom the signatory is associated. Such agreement shall be delivered to counsel for the providing
17 party before disclosure is made, and if no objection thereto is registered to the Commission within
18 three (3) business days, then disclosure shall follow. An attorney who makes Confidential
19 Information available to any person listed in subsection (c) above shall be responsible for having each
20 person execute an original Exhibit "A" and a copy of all such signed Exhibit "A's" shall be circulated
21 to all other counsel of record promptly after execution.

22 2. (a) **Notes.** Limited notes regarding Confidential Information may be taken by
23 counsel and experts for the express purpose of preparing pleadings, cross-examinations, briefs,
24 motions and argument in connection with this proceeding, or in the case of persons designated in
25 section 1(c) of this Protective Order, to prepare for participation in this proceeding. Such notes shall
26 then be treated as Confidential Information for purposes of this Order, and shall be destroyed after the
27 final settlement or conclusion of these proceedings in accordance with subsection 2(b) below.
28

1 (b) **Return.** All notes, to the extent they contain Confidential Information shall
2 be destroyed after the final settlement or conclusion of these proceedings. The party destroying such
3 Confidential Information shall advise the providing party of that fact within a reasonable time from
4 the date of destruction.

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

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

19 “HIGHLY CONFIDENTIAL – USE RESTRICTED PER PROTECTIVE ORDER IN
20 DOCKET NO. RT-00000H-97-0137”

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

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

16 Any party providing either Confidential Information or Highly Confidential Information may
17 object to the designation of any individual as a person who may review Confidential Information
18 and/or Highly Confidential Information. Such objection shall be made in writing to counsel
19 submitting the challenged individual's Exhibit "A" or "B" within three (3) business days after
20 receiving the challenged individual's signed Exhibit "A" or "B". Any such objection must
21 demonstrate good cause to exclude the challenged individual from the review of the Confidential
22 Information or Highly Confidential Information. Written response to any objection shall be made
23 within three (3) business days after receipt of an objection. If, after receiving a written response to a
24 party's objection, the objecting party still objects to disclosure of either Confidential Information or
25 Highly Confidential Information to the challenged individual, the Commission shall determine
26 whether Confidential Information or Highly Confidential Information must be disclosed to the
27 challenged individual.
28

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

5 Persons authorized to review the Highly Confidential Information will maintain the
6 documents and any notes reflecting their contents in a secure location to which only designated
7 counsel and experts have access. No additional copies will be made, except for use during hearings
8 and then such disclosure and copies shall be subject to the provisions of Section 6. Any testimony or
9 exhibits prepared that reflect Highly Confidential Information must be maintained in the secure
10 location until removed to the hearing room for production under seal. Unless specifically addressed
11 in this section, all other sections of this Protective Order applicable to Confidential Information also
12 apply to Highly Confidential Information. Execution of this Agreement by the parties and
13 performance of their obligations hereunder shall not result in waiver of any claim, issue, or dispute
14 concerning the trade secret, proprietary, confidential, or legally protected nature of the Confidential
15 Information provided.

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

19 5. **Small Company Exemption.** Notwithstanding the restrictions in sections 1 and 3
20 applicable to persons who may access Confidential Information or Highly Confidential Information,
21 a Small Company may designate any employee or in-house expert to review Confidential
22 Information and/or Highly Confidential Information if the producing party, upon request, gives prior
23 written authorization for that person to review Confidential Information and/or Highly Confidential
24 Information. If the producing party refuses to give such written authorization, the reviewing party
25 may, for good cause shown, request an order from the Administrative Law Judge allowing a
26 prohibited person(s) to review Confidential Information and/or Highly Confidential Information.
27 The producing party shall be given the opportunity to respond to the Small Company's request
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1 before an order is issued. "Small Company" means a party with fewer than 5000 employees,
2 including the employees of affiliates' U.S. ILEC, CLEC, and IXC operations within a common
3 holding company.

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

- 9
- 10 (a) A party seeking to challenge the confidentiality of any materials pursuant to this Order
11 shall first contact counsel for the providing party and attempt to resolve any
12 differences by stipulation;
- 13 (b) In the event that the parties cannot agree as to the character of the information
14 challenged, any party challenging the confidentiality shall do so by appropriate
15 pleading. This pleading shall:
- 16 (1) Designate the document, transcript or other material challenged in a manner
17 that will specifically isolate the challenged material from other material
18 claimed as confidential; and
- 19 (2) State with specificity the grounds upon which the documents, transcript or
20 other material are deemed to be non-confidential by the challenging party.
- 21 (c) A ruling on the confidentiality of the challenged information, document, data or study
22 shall be made by an Administrative Law Judge after proceedings in camera, which
23 shall be conducted under circumstances such that only those persons duly authorized
24 hereunder to have access to such confidential materials shall be present. This hearing
25 shall commence no earlier than five (5) business days after service on the providing
26 party of the pleading required by subsection 6(b) above.
- 27 (d) The record of said in camera hearing shall be marked "CONFIDENTIAL – SUBJECT
28 TO PROTECTIVE ORDER IN DOCKET NO. RT-00000H-97-0137". 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

1 the public record for five (5) business days unless authorized by the providing party to
2 do so. The provisions of this subsection are intended to enable the providing party to
3 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.

4 7. (a) **Receipt into Evidence.** Provision is hereby made for receipt into evidence in
5 this proceeding materials claimed to be confidential in the following manner:
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- 7 (1) Prior to the use of or substantive reference to any Confidential Information, the
8 parties intending to use such Information shall make that intention known to
9 the providing party.
- 10 (2) The requesting party and the providing party shall make a good-faith effort to
11 reach an agreement so that the Information can be used in a manner which will
12 not reveal its confidential or proprietary nature.
- 13 (3) If such efforts fail, the providing party shall separately identify which portions,
14 if any, of the documents to be offered or referenced shall be placed in a sealed
15 record.
- 16 (4) Only one (1) copy of the document designated by the providing party to be
17 placed in sealed record shall be made.
- 18 (5) The copy of the documents to be placed in the sealed record shall be tendered
19 by counsel for the providing party to the Commission, and maintained in
20 accordance with the terms of this Order.

21 (b) **Seal.** While in the custody of the Commission, materials containing
22 Confidential Information shall be marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE
23 ORDER IN DOCKET NO. RT-00000H-97-0137" and Highly Confidential Information shall be
24 marked "HIGHLY CONFIDENTIAL – USE RESTRICTED PER PROTECTIVE ORDER IN
25 DOCKET NO. RT-00000H-97-0137" and shall not be examined by any person except under the
26 conditions set forth in this Order.

27 (c) **In Camera Hearing.** Any Confidential Information or Highly Confidential
28 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

1 Confidential Information or Highly Confidential Information or references thereto) shall be received
2 in an in camera hearing, and shall be marked and treated as provided herein.

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

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

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

22 In the event that the Commission becomes legally compelled (by deposition, interrogatory,
23 request for documents, subpoena, civil investigative demand, or similar process) to disclose any of
24 the Confidential Information, the Commission shall provide Company with prompt written notice of
25 such requirement so that Company may seek an appropriate remedy and/or waive compliance.

26 ...

27 ...

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

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

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

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

25 11. **Non-Termination.** The provisions of this Agreement shall not terminate at the
26 conclusion of this proceeding.
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**EXHIBIT A
CONFIDENTIAL INFORMATION**

I have read the foregoing Protective Order dated _____, 2009, in Docket No. RT-00000H-97-0137 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

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EXHIBIT B
HIGHLY CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated _____, 2009, in Docket No. RT-00000H-97-0137 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