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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

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AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

FEB 05 2009

DOCKETED BY

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

PROCEDURAL ORDER
And
PROTECTIVE ORDER

BY THE COMMISSION:

On July 10, 2007, Arizona Corporation Commission ("Commission") Utilities Division ("Staff") filed a Motion to consolidate the above-captioned dockets.

Docket No. T-00000D-00-0672, the "Access Charge Docket," was commenced to examine the cost of access for various companies operating in Arizona. Phase I of the Access Charge Docket, addressed Qwest Corporation's ("Qwest") access charges, and was consolidated with, and resolved, in conjunction with Qwest's rate cap review. Phase II of the Access Charge Docket is intended to address access charges for all other telephone companies that provide access services.

Docket No. RT-00000H-97-0137, the "Arizona Universal Service Fund Docket" was set up to review and revise the Arizona Universal Service Fund ("AUSF") rules in Article 12 of the Arizona Administrative Code. Changes being discussed at the Federal Communications Commission ("FCC") indicate that at the federal level access charges and universal service are being linked to some degree, at least for high-cost rural areas.

By Procedural Orders dated February 12, 2008, April 23, 2008, and August 20, 2008, the Commission ordered the parties to file a matrix or list of issues and procedural recommendations by

1 October 7, 2008, and scheduled a procedural conference for October 10, 2008, to determine the
2 procedures and set a schedule for moving forward in these consolidated dockets.

3 On October 7, 2008, Cox Arizona Telecom, LLC ("Cox"); AT&T Communications of the
4 Mountain States, Inc. and TCG Phoenix (collectively "AT&T"); Integra Telecom, Inc. ("Integra");
5 McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"); the Arizona Local Exchange
6 Carriers Association ("ALECA"); the Residential Utility Consumer Office ("RUCO"); and Verizon
7 California, Verizon, Business Services, Verizon Long Distance, and Verizon Wireless (collectively
8 "Verizon"); tw telecom of Arizona llc ("tw telecom") and XO Communications Services, Inc.
9 ("XO"); and Arizona Payphone Associations ("APA") filed statements of issues. While there was
10 some overlap in their recommendations, there was no clear consensus on how to proceed.

11 The parties and Staff appeared through counsel at a Procedural Conference on October 10,
12 2008. At that time, it was expected that the FCC would issue a decision in early November, 2008,
13 addressing intercarrier compensation, and which decision could impact these pending matters. It was
14 determined at the October 2008, Procedural Conference that the process would benefit from a
15 Protective Order to protect the exchange of information, and that pending the expected FCC order,
16 the parties should give thought to the best means to proceed--whether the Commission should
17 proceed with a rulemaking, and/or workshops or hearing, or a combination of proceedings.

18 By Procedural Order dated December 19, 2008, a Procedural Conference was scheduled for
19 January 28, 2009, with the intent to determine the best process to address the issues. In addition,
20 Staff was directed to submit a proposed form of Protective Order. The parties were directed to file
21 any comments on Staff's form of Protective Order and any proposed procedural recommendations by
22 January 23, 2009.

23 On January 16, 2009, Staff filed its Proposed Protective Order.

24 On January 23, 2003, Integra, McLeodUSA (dba PAETEC), Cox, AT&T, Qwest, RUCO and
25 ALECA filed comments on the Protective Order and made procedural recommendations.

26 On January 28, 2009, Qwest filed a Motion to Strike AT&T's Procedural Comments Relating
27 to Qwest Corporation Docket No. T-01051B-03-0454 and Qwest Corporation's Intrastate Switched
28 Access Rates ("Motion to Strike"). Qwest argues that its intrastate access rates were reduced in

1 Phase I of the Access Charge Docket in connection with its Price Cap Plan, and should not be re-
2 visited as part of Phase II.

3 On January 29, 2009,¹ the parties appeared through counsel at a telephonic Procedural
4 Conference. Division of opinion continues on how to proceed, with AT&T advocating a schedule for
5 evidentiary hearing and a process that includes all carriers;² the CLECs recommending to wait for
6 FCC direction and that CLEC access charges not be examined at this time; and the incumbent carriers
7 (excluding Qwest) advocating workshops that would address issues such as how FCC action might
8 impact a state decision and which carriers should be included in the inquiry, among other things. At
9 the Procedural Conference, Staff recommended a series of at least two workshops, one to address
10 access charge issues and the other to address Universal Service Fund reform. Staff believed that the
11 Commission should press on with these dockets as it has already waited for years for FCC action on
12 the issues, which action has not materialized; but Staff believes it is premature to schedule
13 evidentiary hearings, as critical policy matters need to be determined first.

14 There remain some critical preliminary matters to decide in these matters, including at a basic
15 level which carriers should be included in the investigation, as well as other policy issues. The
16 workshop process appears to be the best way to address these issues. With Staff's guidance, the
17 parties may be able to make greater progress in narrowing the issues and coming to consensus on
18 further proceedings (e.g. a rulemaking or evidentiary hearings) than has been evident in the past.
19 There appears to be consensus that having Arizona- and carrier-specific data will assist the process,
20 although there was no agreement which carriers should be included in the inquiry. Staff's suggested
21 approach that initially data requests should be sent to all incumbent carriers in Arizona is a
22 reasonable start. Whether CLECs should then be included in Phase II should be addressed as part of
23 the workshop process, and as a result, the inquiry for additional carrier information could be
24 expanded.

25 Qwest's access charges were reduced in Phase I, but several years have passed since those
26 reductions, the last of which reduced access revenues by \$12 million in 2006.³ AT&T has argued that

27 ¹ The Procedural Conference was continued one day to accommodate a scheduling conflict.

28 ² AT&T also proposed date requests designed to obtain carrier-specific information on access charges.

³ Decision No. 68604.

1 the earlier reductions do not preclude further inquiry into whether Qwest's access charges are
2 currently at appropriate levels, and that Qwest should be included in Phase II. Whether Qwest's rates
3 will be included as part of Phase II should be addressed prior to the workshops. Therefore, the
4 parties are directed to file any recommendations about including Qwest's access charges in this Phase
5 II. In the meantime, until further Order, Qwest's motion to Strike will be held in abeyance, and
6 further, Staff should refrain from including Qwest in any data requests until the issue is decided.

7 Staff has agreed to issue the data requests as proposed by AT&T. The incumbent carriers
8 object to the proposed request for 2008 information as they claim it would be burdensome for small
9 companies and they have already compiled most, if not all, of the information for 2007 and earlier,
10 which they argue, should be sufficient to provide the information needed to proceed. To address the
11 incumbents' concerns, the proposed data request should encompass calendar year 2007, or the most
12 recent period available. Staff, however, can use its discretion to further modify or expand the data
13 request to obtain the information needed to make the workshops a meaningful process.

14 The parties, including Staff, agreed that the proposed modifications to Staff's proposed
15 Protective Order, as set forth in their filed comments, were reasonable and should be adopted. The
16 proposed modifications are minor, but add clarity to the intent of the order. The Protective Order
17 attached hereto as Exhibit A, incorporates the proposed modifications and is adopted for this
18 proceeding.

19 **IT IS THEREFORE ORDERED that Staff shall schedule a series of workshops** as
20 discussed during the January 29, 2009 Procedural Conference, and propound data requests to the
21 incumbent Arizona carriers designed to elicit the carrier-specific data deemed necessary to formulate
22 policy and procedural recommendations in these consolidated dockets. Staff should refrain from
23 issuing such data requests to Qwest, unless and until it is determined that Qwest's access charges will
24 be addressed as part of Phase II of this proceeding.

25 **IT IS FURTHER ORDERED that within 30 days after the conclusion of the final**
26 **workshop, Staff shall file a request for Procedural Conference** to discuss the next steps in these
27 dockets.

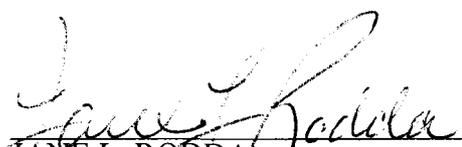
1 IT IS FURTHER ORDERED that the parties shall file any **recommendations** concerning
2 whether **Qwest's intrastate access rates should be included as part of this Phase II** inquiry by
3 **February 18, 2009**, and any **Responsive Comments** to those recommendations by **March 5, 2009**.

4 IT IS FURTHER ORDERED that Qwest's Motion to Strike shall be held in abeyance pending
5 further Order.

6 IT IS FURTHER ORDERED that that the **Protective Order attached hereto as Exhibit A**,
7 and incorporated herein by reference, **is approved** and shall apply to these proceedings and to all
8 future phases of these dockets until further Order of the Commission.

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

11 DATED this 3rd day of February, 2009.


12
13
14 JANE L. RODDA
15 ADMINISTRATIVE LAW JUDGE

16 Copies of the foregoing mailed
this 3rd day of February, 2009 to:

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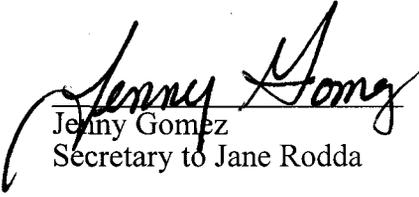
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By:


Jenny Gomez
Secretary to Jane Rodda

- Parties marked with an "*" have agreed to accept service electronically.

1 EXHIBIT A

2 BEFORE THE ARIZONA CORPORATION COMMISSION

3 COMMISSIONERS

4 KRISTIN K. MAYES - Chairman
5 GARY PIERCE
6 PAUL NEWMAN
7 SANDRA D. KENNEDY
8 BOB STUMP

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

DOCKET NO. RT-00000H-97-0137

11 IN THE MATTER OF THE INVESTIGATION
12 OF THE COST OF TELECOMMUNICATIONS
13 ACCESS

DOCKET NO. T-00000D-00-0672

13 PROTECTIVE ORDER

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

22 The Company shall memorialize in writing any Confidential Information that it verbally
23 discloses to Staff or another party within five (5) business days of its verbal disclosure, and the
24 writing shall be marked by the Company with the appropriate designation.

25 Company agrees that it will carefully consider the basis upon which any information is
26 claimed to be trade secret, proprietary, confidential, or otherwise legally protected. Company shall
27 designate as Confidential Information only such information as it may claim in good faith to be
28 legally protected. Where only a part of a document, or only a part of an informational submittal may

1 reasonably be considered to be trade secret, proprietary, confidential, or otherwise legally protected,
2 Company shall designate only that part of such information submittal as Confidential Information
3 under this Agreement. Information that is publicly available from any other source shall not be
4 claimed as Confidential Information under this Agreement. Any party shall have the right to
5 challenge at any time the Company's designation of any document or portion thereof as
6 "Confidential" in accordance with the procedures described in Section 6 of this Agreement.
7

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

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

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

1 party's products or services. In addition, access to Confidential Information may be provided to
2 Commissioners and all Commission Administrative Law Judges, and Commission advisory staff
3 members and employees of the Commission to whom disclosure is necessary. Where Commission
4 Staff acts as an advocate in a trial or adversarial role, disclosure of both Confidential Information and
5 Highly Confidential Information to Staff members and consultants employed by the Staff shall be
6 under the same terms and conditions as described herein for parties.

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

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

24 2. (a) **Notes.** Limited notes regarding Confidential Information may be taken by
25 counsel and experts for the express purpose of preparing pleadings, cross-examinations, briefs,
26 motions and argument in connection with this proceeding, or in the case of persons designated in
27 section 1(c) of this Protective Order, to prepare for participation in this proceeding. Such notes shall
28

1 then be treated as Confidential Information for purposes of this Order, and shall be destroyed after the
2 final settlement or conclusion of these proceedings in accordance with subsection 2(b) below.

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

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

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

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

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

1 and "Confidential Information" described in section 1 of this Protective Order.
2

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

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

1 whether Confidential Information or Highly Confidential Information must be disclosed to the
2 challenged individual.

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

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

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

21 5. **Small Company Exemption.** Notwithstanding the restrictions in sections 1 and 3
22 applicable to persons who may access Confidential Information or Highly Confidential Information,
23 a Small Company may designate any employee or in-house expert to review Confidential
24 Information and/or Highly Confidential Information if the producing party, upon request, gives prior
25 written authorization for that person to review Confidential Information and/or Highly Confidential
26 Information. If the producing party refuses to give such written authorization, the reviewing party
27 may, for good cause shown, request an order from the Administrative Law Judge allowing a
28

1 prohibited person(s) to review Confidential Information and/or Highly Confidential Information.
2 The producing party shall be given the opportunity to respond to the Small Company's request
3 before an order is issued. "Small Company" means a party with fewer than 5000 employees,
4 including the employees of affiliates' U.S. ILEC, CLEC, and IXC operations within a common
5 holding company; provided, however, that no company that is classified as a Class A telephone
6 utility under Commission Rule 1-3 shall qualify as a "Small Company" for purposes of this Order.

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

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

1 terms of this Order.

2 (e) In the event that the Administrative Law Judge should rule that any information,
3 document, data or study should be removed from the restrictions imposed by this
4 Order, no party shall disclose such information, document, data or study or use it in
5 the public record for five (5) business days unless authorized by the providing party to
6 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 7. (a) **Receipt into Evidence.** Provision is hereby made for receipt into evidence in
8 this proceeding materials claimed to be confidential in the following manner:

9
10 (1) Prior to the use of or substantive reference to any Confidential Information, the
11 parties intending to use such Information shall make that intention known to
the providing party.

12 (2) The requesting party and the providing party shall make a good-faith effort to
13 reach an agreement so that the Information can be used in a manner which will
not reveal its confidential or proprietary nature.

14 (3) If such efforts fail, the providing party shall separately identify which portions,
15 if any, of the documents to be offered or referenced shall be placed in a sealed
16 record.

17 (4) Only one (1) copy of the document designated by the providing party to be
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.

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

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

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

20 (f) **Judicial Proceedings Related to NonParty's Request for Disclosure.**
21 Where the Commission, ALJ, or Staff determines that disclosure is not appropriate, the Company as
22 the real party in interest shall join as a co-defendant in any judicial action brought against the
23 Commission and/or Commissioners by the party seeking disclosure of the information, unless the
24 Company is already specifically named in the action. Company also agrees to indemnify and hold
25 the Commission harmless from any assessment of expenses, attorneys' fees, or damages resulting
26 from 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,
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1 request for documents, subpoena, civil investigative demand, or similar process) to disclose any of
2 the Confidential Information, the Commission shall provide Company with prompt written notice of
3 such requirement so that Company may seek an appropriate remedy and/or waive compliance.

4 (g) **Return.** Unless otherwise ordered, Confidential Information and Highly
5 Confidential Information, including transcripts of any depositions to which a claim of confidentiality
6 is made, shall remain under seal, shall continue to be subject to the protective requirements of this
7 Order, and shall, at the providing party's discretion, be returned to counsel for the providing party, or
8 destroyed by the receiving party, within thirty (30) days after final settlement or conclusion of these
9 proceedings. If the providing party elects to have Confidential Information or Highly Confidential
10 Information destroyed rather than returned, counsel for the receiving party shall verify in writing that
11 the material has in fact been destroyed. Notwithstanding the provisions of paragraphs 3 and 7, the
12 Receiving Party and any person executing Exhibit B may maintain and retain electronic copies of
13 Highly Confidential materials, but only if such electronic copies are generated, maintain and
14 subsequently destroyed subject to systems backup (i.e., non-manual and computer system generated).

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

25 9. **Summary of Record.** If deemed necessary by the Commission, the providing party
26 shall prepare a written summary of the Confidential Information referred to in the Order to be placed
27 on the public record.
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1 10. **Breach of Agreement.** Company, in any legal action or complaint that it files in any
2 court alleging breach of this Agreement shall, at the written request of the Commission, name the
3 Arizona Corporation Commission as a Defendant therein.

4 11. **Non-Termination.** The provisions of this Agreement shall not terminate at the
5 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 (Consolidated) 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 (Consolidated) 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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