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BEFORE THE ARIZONA CORPORATION COMMISSION

2002 MAY -3 P 4: 16

WILLIAM MUNDELL
Chairman
JAMES M. IRVIN
Commissioner
MARC SPITZER
Commissioner

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE QWEST
CORPORATION'S COMPLIANCE WITH
SECTION 252(e) OF THE
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. RT-00000F-02-0271

**QWEST CORPORATION'S NOTICE
OF FILING PROTECTIVE ORDER**

Qwest Corporation ("Qwest"), through its undersigned counsel, hereby submits the attached proposed protective order pursuant to the Arizona Corporation Commission's ("Commission") April 18, 2002, Procedural Order. The parties held a conference call to discuss the proposed protective order on April 30, 2002. Thereafter, the proposed protective order was distributed to the parties for review. Qwest has incorporated all revisions to the protective order submitted to Qwest by the parties as of the time of this filing. Furthermore, no party has stated any objection to the proposed protective order.

DATED this 3rd day of May, 2002.

FENNEMORE CRAIG, P.C.

Arizona Corporation Commission

DOCKETED

MAY 03 2002

DOCKETED BY

By
Timothy Berg
Theresa Dwyer
3003 N. Central Ave, Suite 2600
Phoenix, Arizona 85012
(602) 916-5421
Attorneys for Qwest Corporation

1 ORIGINAL and 10 copies of the
2 foregoing hand-delivered for
filing this 3rd day of May, 2002 to:

3 Docket Control
4 ARIZONA CORPORATION COMMISSION
1200 West Washington
5 Phoenix, Arizona 85007

6 COPY of the foregoing hand-delivered
this 3rd day of May, 2002 to:

7 Lyn Farmer, Chief Administrative Law Judge
Jane Rodda, Administrative Law Judge
8 ARIZONA CORPORATION COMMISSION
Legal Division
9 1200 West Washington
Phoenix, Arizona 850

10 Chris Kempley, Chief Counsel
11 Maureen Scott, Counsel
ARIZONA CORPORATION COMMISSION
12 Legal Division
1200 West Washington
13 Phoenix, Arizona 85007

14 Ernest G. Johnson
Director, Utilities Division
15 ARIZONA CORPORATION COMMISSION
1200 West Washington
16 Phoenix, Arizona 85007

17 COPY of the foregoing mailed
this 3rd day of May, 2002 to:

18 Scott S. Wakefield, Chief Counsel
19 RUCO
20 2828 N. Central Ave., Ste. 1200
Phoenix, AZ 85004

21 Dennis D. Ahlers
22 Eschelon Telecom
730 Second Avenue South
23 Suite 1200
24 Minneapolis, MN 55402

25

26

1 Mr. Steven Strickland
SBC Telecom, Inc.
2 5800 Northwest Parkway, Room 1T40
3 San Antonio, Texas 78249

4 Mr. Rodney Joyce
Shook, Hardy & Bacon, LLP
5 Attorneys for Network Access Solutions
Hamilton Square
6 600 14th Street, NW, Suite 800
7 Washington, DC 20005-2004

8 Ms. Megan Doberneck
COVAD COMMUNICATIONS COMPANY
9 7901 Lowry Boulevard
10 Denver, CO 80230

11 Thomas H. Campbell
LEWIS and ROCA
12 40 N. Central Ave
Phoenix, Arizona 85004

13
14 Andrea Harris, Senior Manager
ALLEGIANCE TELECOM INC OF ARIZONA
15 2101 Webster, Ste. 1580
Oakland, CA 94612

16
17 Mr. Dennis Doyle
Arch Communications Group
Vice President, Communications
18 1800 West Park Drive, Suite 250
19 Westborough, MA 01581-3912

20 Mr. Michael Grant
Gallagher & Kennedy
21 2575 East Camelback Road
22 Phoenix, AZ 85016-9225

23 Mr. David M. Kaufman
Director of Regulatory Affairs
24 e.spire Communications, Inc.
343 West Manhattan Avenue
25 Santa Fe, NM 87501

26

- 1 Michael Patten
ROSHKA, HEYMAN & DEWULF
- 2 400 E. Van Buren, Ste. 900
- 3 Phoenix, AZ 85004-3906

- 4 Steven M. Sager
McLeodUSA Telecommunications Services, Inc.
- 5 215 South State Street
- 6 Salt Lake City Utah 84111

- 7 McLeodUSA Telecommunications Services, Inc.
Attention: Law Group
- 8 McLeodUSA Technology Park
6400 C Street SW
- 9 Post Office Box 3177
Cedar Rapids, IA 52406-3177

- 10
- 11 Ms. Diane Peters
Manager, Access Services
- 12 Global Crossing
180 South Clinton Avenue
- 13 Rochester, NY 14646

- 14 MAP Mobile Communications, Inc.
Mr. Gerry Morrison
- 15 840 Greenbrier Circle
- 16 Chesapeake, VA 23320

- 17 Frederick Joyce, Esq.
Alston & Bird, LLP
- 18 601 Pennsylvania Avenue, NW
- 19 Washington, DC 20004-2601

- 20 Metrocall, Inc.
6677 Richmond Highway
- 21 Alexandria, VA 22306

- 22 Frederick Joyce, Esq.
Alston & Bird, LLP
- 23 601 Pennsylvania Avenue, NW
- 24 Washington, DC 20004-2601
- 25
- 26

1 Mr. John E. Munger
Munger Chadwick
2 Attorneys for Mountain Telecommunications, Inc.
National Bank Plaza
3 333 North Wilmot
Tucson, AZ 85711

4 Richard S. Wolters
5 AT&T Communications of the Mountain States, Inc.
1875 Lawrence Street, Suite 1575
6 Denver, Colorado 80202

7 Jeffrey W. Crockett, Esq.
8 SNELL & WILMER
Attorneys for Voicestream PCS III
9 One Arizona Center
10 Phoenix, Arizona 85004-2202

11 Eric S. Heath
100 Spear Street, Suite 930
12 San Francisco, CA 94105

13 Steven J. Duffy
RIDGE & ISAACSON
14 3101 North Central Avenue, Suite 1090
Phoenix, AZ 85012-2639

15 Daniel F. Burns
16 Scindo Networks, Inc,
8400 E. Crescent Parkway, Suite 600
17 Greenwood Village, CO 80111

18 Richard Sampson
19 Z-TEL COMMUNICATIONS, INC.
601 S. Harbour Island, Ste. 220
20 Tampa, FL 33602

21 Brian Thomas, VP Reg. - West
Time Warner Telecom, Inc.
22 520 SW 6th Avenue, Suite 300
23 Portland, Oregon 97204

24

25

26

1 Greg Kopta
Mary S. Steele
2 Davis Wright Tremaine L.L.P.
3 Attorneys for XO
2600 Century Square
4 1501 Fourth Avenue
Seattle, WA 98101-16

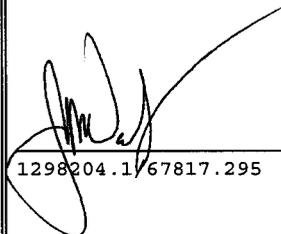
5 Jeffrey W. Crockett, Esq.
6 SNELL & WILMER
7 Attorneys for Western Wireless Corporation
One Arizona Center
8 Phoenix, Arizona 85004-2202

9 Deborah Harwood, General Counsel
Integra Telecom of Arizona, Inc.
10 19545 NW Von Newmann Drive, Suite 200
Beaverton, OR 97006

11 Paul Masters
12 ERNEST COMMUNICATIONS, INC.
6475 Jimmy Carter Boulevard, Suite 300
13 Norcross, GA 30071

14 Bob Edgerly
Senior Manager, Industry Affairs
15 Nextel West Corporation
2001 Edmund Halley Drive
16 Reston, VA 20131

17 Mr. Bob McCoy
18 General Counsel
William Local Network, Inc.
19 4100 One Williams Center
Tulsa, Oklahoma 74172

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21
22
23 
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25
26

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL

Chairman

JIM IRVIN

Commissioner

MARC SPITZER

Commissioner

IN THE MATTER OF
QWEST CORPORATION'S COMPLIANCE
WITH SECTION 252e OF THE
TELECOMMUNICATIONS ACT OF 1996

Docket No. RT-00000F-02-0271

PROTECTIVE ORDER

Pursuant to the request of the Arizona Corporation Commission (the "Commission"), Qwest Corporation ("Qwest") produced agreements between Qwest and various CLECs to the Commission. The Hearing Division subsequently opened this docket to review whether those agreements should have been submitted for review by the Commission pursuant to §252 of the Telecommunications Act of 1996. To facilitate the disclosure of these agreements and other documents during the course of this proceeding and to protect trade secret and other confidential information not in the public domain, the Commission now issues this Protective Order ("Order") to govern these proceedings.

1. (a) Confidential Information. All agreements, documents, data information, studies and other materials furnished pursuant to the Commission's request for agreements, or 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 of a trade secret, proprietary or confidential nature (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. Subject to the restrictions of this Order, information produced subject to this Order may be used in this docket and any subsequent appeal for this docket and any Federal Communications Commission (the "FCC") proceeding dealing with Qwest's compliance with Section 252(e) of the Telecommunication's Act. Parties who are subject to and have complied with the terms of this Protective Order and who are subject to and have complied with the Protective Order on Docket T-00000A-97A-97-0238, or have executed a protective agreement in that docket, may refer to portions of the confidential agreements provided by Qwest to the Commission, or other confidential documents filed in this docket, in Docket T-00000A-97-0238, and any subsequent appeal or proceeding before the FCC, consistent with the terms of this Protective Order.

Qwest has been ordered to submit the agreements between Qwest and CLECs to the Hearing Division by May 10, 2002. If any party to any of those agreements objects to: (1) the inclusion of an agreement in the confidential portion of the record in this docket as set forth in this Order or; (2) the provision of an agreement to any party to this docket who complies with the provisions of this Order, that company objecting shall provide written notice to Qwest and all other parties to this docket by noon on May 9, 2002, of its objection to the submission of an agreement in this docket and the disclosure of that agreement to the other parties in the docket. If Qwest receives an objection to the submission and disclosure of an agreement, it will submit that agreement separately to the Hearing Division under seal with a notice to the Administrative Law Judge that the other party to the Agreement objects to its submission and disclosure. Any party to an agreement objecting to disclosure shall have ten (10) days to file a motion seeking an order that denied disclosure to a party to this Docket. If the party to the agreement does not file a motion within 10 days or files a motion which is denied, Qwest shall provide a copy of the agreement to all parties complying with the provisions of this Order. The Administrative Law Judge shall provide a copy of the agreement to counsel opposing the motion in order for opposing counsel to respond to the motion.

(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. Parties may also refer to confidential agreements and other confidential information in this docket, in Docket No. T-00000A-97-0238, or before the Federal Communications Commission ("FCC"), and all subsequent appeals (in Docket T-00000A-97-0238 and associated proceedings). All parties shall keep the Confidential Information secure as trade secret, 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 and the attorneys' staff; (2) experts, consultants and advisors who need access to the material to assist the party in Section 271 or 252(e) Proceedings; (3) only those employees of the party who are directly involved in these Section 271 or 252(e) 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 Hearing Officers, and staff members and employees of the Commission's consultants in Docket T-00000A-97-0238, Doherty Company Incorporated ("DCI"), to whom disclosure is necessary.

(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 the terms of this Order.

The nondisclosure agreement (Exhibit "A") shall require the person 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, 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 within five (5) 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 such person execute an original of 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 paragraph 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 the Section 271 and 252e 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 the Section 271 and 252e Proceedings. The party destroying such Confidential Information shall advise the providing party of that fact within a reasonable time from the date of destruction.

DCI shall return all Confidential Information at the end of the Section 271 Proceedings or the termination of their engagement, whichever is earlier. For purposes of this paragraph, return of Confidential Information shall be made to Staff.

3. Highly Confidential Trade Secret Information: Any party to an agreement provided to the Commission may designate certain agreements and related documents 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 marketing, retail 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.RT-00000F-02-0271.” 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 disclosed in advance of disclosure by the providing party. Such designation may occur through the submission of Exhibit A of the non-disclosure agreement identified in section 1(d). Parties seeking disclosure of Highly Confidential Information shall not designate more than (1) one in-house attorney; (2) one in-house expert; 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, Hearing Officers and Staff members shall be limited to persons

to whom disclosure is necessary. Prior to disclosure of Highly Confidential Information to DCI, DCI shall designate the persons to whom disclosure will be made and must be made for DCI to fulfill its contractual obligations. The Exhibit "A" also shall describe in detail the 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 the sale or marketing of products or services on behalf of any party.

Any person, whether a party or non-party, may object in writing to the designation of any individual as a person who may review Highly Confidential Information within three (3) business days after receiving a signed Exhibit "A". Any such objection must demonstrate good cause to exclude the challenged individual from the review of the 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 the providing party's objection, the providing party still declines to produce the requested information, the Commission Hearing Division shall determine whether the Highly Confidential Information must be disclosed to the challenged individual.

Copies of Highly Confidential Information shall be provided to the in-house attorney, outside counsel and outside experts. The in-house expert may inspect and review 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. 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 and under circumstances that will ensure continued protection from disclosure to persons not entitled to review Highly Confidential Information.

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, information, 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. 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 a Hearing Officer 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 5(b) above.
- (d) The record of said in camera hearing shall be marked "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. RT-00000F-02-0271." Court reporter notes of such hearing shall be transcribed only upon agreement by the parties or Order of the Hearing Officer 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 Hearing Officer 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 the Information can be used in a manner which will not reveal its trade secret, 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 documents designated by the providing party to be placed in a 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. RT-00000F-02-0271" and Highly Confidential Information shall be marked "HIGHLY CONFIDENTIAL—USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. RT-00000F-02-0271" and shall not be examined by any person except under the conditions set forth in this Order.

(c) In Camera Hearing. Any 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 that portion of the record containing 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 Hearing Officer and persons who are entitled to review Confidential Information pursuant to subsection 1(c) above and have signed an Exhibit "A," 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 a Hearing Officer, the order of the Commission and/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 for purposes of a Section 271 or 252e proceeding, 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 be returned to counsel for the providing party within thirty (30) days after final settlement or conclusion of the Section 271 or 252e Proceedings.

8. Use in Pleadings. Where references to Confidential Information in the sealed record or with the providing party is required in pleadings, briefs, arguments or motions (except as provided in section 5), it shall be by citation of title or exhibit number or some other description that will not disclose the substantive Confidential Information contained therein. Any use of or substantive references to Confidential Information shall be placed in a separate

section of the pleading or brief and submitted to the Hearing Officer 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." All of the restrictions afforded by this Order apply to materials prepare and distributed under this section.

9. Summary of Record. If deemed necessary by the Hearing Officer, 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, information, studies, and other material designated as confidential or highly confidential by any party to Docket No. RT-00000F-02-0271.

11. This Protective Order shall continue in force and effect after this Docket is closed.

Dated this ___ day of _____, 2002.

Jane Rodda
Administrative Law Judge

EXHIBIT "A"

I have read the foregoing Protective Order dated _____, 2002, in Docket Nos. RT-00000F-02-0271 and agree to be bound by the terms and conditions of this Order.

Name

Employer

Business Address

Party

Signature

Date

PHX/1298320.1/67817.295