



0000109341

RECEIVED

ARIZONA CORPORATION COMMISSION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WILLIAM A. MUNDEL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

Arizona Corporation Commission
DOCKETED

MAY 08 2002

DOCKETED BY

2002 MAY -8 P 2: 24

AZ CORP COMMISSION
DOCUMENT CONTROL

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

DOCKET NO. RT-00000F-02-0271

PROTECTIVE ORDER

BY THE COMMISSION:

This docket was opened by the Arizona Corporation Commission ("Commission") to investigate whether certain agreements between Qwest Corporation ("Qwest") and various Competitive Local Exchange Companies ("CLECs") should have been submitted to the Commission for review pursuant to §252 of the Telecommunications Act of 1996.

Pursuant to the procedural schedule established by the Administrative Law Judge, Qwest filed with the Commission on May 3, 2002 a Notice of Filing Protective Order ("Protective Order"). Qwest represents that the proposed Protective Order has been distributed to all parties for review and that no party objects to the issuance of the Protective Order.

Accordingly, in order to facilitate the disclosure of documents and information 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 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.

1 Subject to the restrictions of this Order, information produced subject to this Order may be used in
2 this docket and any subsequent appeal for this docket and any Federal Communications Commission
3 (the "FCC") proceeding dealing with Qwest's compliance with Section 252(e) of the
4 Telecommunications Act. Parties who are subject to and have complied with the terms of this
5 Protective Order and who are subject to and have complied with the Protective Order on Docket T-
6 00000A-97A-97-0238, or have executed a protective agreement in that docket, may refer to portions
7 of the confidential agreements provided by Qwest to the Commission, or other confidential
8 documents filed in this docket, in Docket T-00000A-97-0238, and any subsequent appeal or
9 proceeding before the FCC, consistent with the terms of this Protective Order.

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

25 (b) Use of Confidential Information -- Proceedings. All persons who may be
26 entitled to review, or who are afforded access to any Confidential Information by reason of this Order
27 shall neither use nor disclose the Confidential Information for purposes of business or competition, or
28

1 any purpose other than the purpose of preparation for and conduct of proceedings in the above-
2 captioned docket. Parties may also refer to confidential agreements and other confidential
3 information in this docket, in Docket No. T-00000A-97-0238, or before the Federal Communications
4 Commission ("FCC"), and all subsequent appeals (in Docket T-00000A-97-0238 and associated
5 proceedings). All parties shall keep the Confidential Information secure as trade secret, confidential
6 or proprietary information and in accordance with the purposes, intent and requirements of this
7 Order.

8 (c) Persons Entitled to Review. Each party that receives Confidential Information
9 pursuant to this Order must limit access to such Confidential Information to (1) attorneys employed
10 or retained by the party in Section 271 or 252(e) Proceedings and the attorneys' staff; (2) experts,
11 consultants and advisors who need access to the material to assist the party in Section 271 or 252(e)
12 Proceedings; (3) only those employees of the party who are directly involved in these Section 271 or
13 252(e) Proceedings, provided that counsel for the party represents that no such employee is engaged
14 in the sale or marketing of that party's products or services. In addition, access to Confidential
15 Information may be provided to Commissioners and all Commission Administrative Law Judges, and
16 staff members and employees of the Commission's consultants in Docket T-00000A-97-0238,
17 Doherty Company Incorporated ("DCI"), to whom disclosure is necessary.

18 (d) Nondisclosure Agreement. Any party, person, or entity that receives
19 Confidential Information pursuant to this Order shall not disclose such Confidential Information to
20 any person, except persons who are described in section 1(c) above and who have signed a
21 nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit "A."
22 Court reporters shall also be required to sign an Exhibit "A" and comply with the terms of this Order.

23 The nondisclosure agreement (Exhibit "A") shall require the person to whom disclosure is to
24 be made to read a copy of this Protective Order and to certify in writing that they have reviewed the
25 same and have consented to be bound by its terms. The agreement shall contain the signatory's full
26 name, employer, business address and the name of the party with whom the signatory is associated.
27 Such agreement shall be delivered to counsel for the providing party before disclosure is made, and if
28

1 no objection thereto is registered to the Commission within five (5) days, then disclosure shall follow.
2 An attorney who makes Confidential Information available to any person listed in subsection (c)
3 above shall be responsible for having each such person execute an original of Exhibit "A" and a copy
4 of all such signed Exhibit "A"s shall be circulated to all other counsel of record promptly after
5 execution.

6 2. (a) Notes. Limited notes regarding Confidential Information may be taken by
7 counsel and experts for the express purpose of preparing pleadings, cross-examinations, briefs,
8 motions and argument in connection with this proceeding, or in the case of persons designated in
9 paragraph 1(c) of this Protective Order, to prepare for participation in this proceeding. Such notes
10 shall then be treated as Confidential Information for purposes of this Order, and shall be destroyed
11 after the final settlement or conclusion of the Section 271 and 252(e) Proceedings in accordance with
12 subsection 2(b) below.

13 (b) Return. All notes, to the extent they contain Confidential Information and are
14 protected by the attorney-client privilege or the work product doctrine, shall be destroyed after the
15 final settlement or conclusion of the Section 271 and 252(e) Proceedings. The party destroying such
16 Confidential Information shall advise the providing party of that fact within a reasonable time from
17 the date of destruction.

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

21 3. Highly Confidential Trade Secret Information: Any party to an agreement provided to
22 the Commission may designate certain agreements and related documents competitively sensitive
23 Confidential Information as "Highly Confidential Information" if it determines in good faith that it
24 would be competitively disadvantaged by the disclosure of such information to its competitors.
25 Highly Confidential Information includes, but is not limited to, documents, pleadings, briefs and
26 appropriate portions of deposition transcripts, which contain information regarding the market share
27 of, number of access lines served by, or number of customers receiving a specified type of service
28

1 from a particular provider or other information that relates to marketing, retail business planning or
2 business strategies.

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

8 “HIGHLY CONFIDENTIAL—USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO.
9 RT-00000F-02-0271.” Placing a “Highly Confidential” stamp on the first page of a document
10 indicates only that one or more pages contain Highly Confidential Information and will not serve to
11 protect the entire contents of a multi-page document. Each page that contains Highly Confidential
12 Information must be marked separately to indicate Highly Confidential Information, even where that
13 information has been redacted. The unredacted versions of each page containing Highly Confidential
14 Information, and provided under seal, should be submitted on paper distinct in color from non-
15 confidential information and “Confidential Information” described in section 1 of this Protective
16 Order.

17 Parties seeking disclosure of Highly Confidential Information must designate the person(s) to
18 whom they would like the Highly Confidential Information disclosed in advance of disclosure by the
19 providing party. Such designation may occur through the submission of Exhibit “A” of the non-
20 disclosure agreement identified in section 1(d). Parties seeking disclosure of Highly Confidential
21 Information shall not designate more than (1) one in-house attorney; (2) one in-house expert; and (3)
22 a reasonable number of outside counsel and outside experts to review materials marked as “Highly
23 Confidential.” Disclosure of Highly Confidential Information to Commissioners, Administrative
24 Law Judges and Staff members shall be limited to persons to whom disclosure is necessary. Prior to
25 disclosure of Highly Confidential Information to DCI, DCI shall designate the persons to whom
26 disclosure will be made and must be made for DCI to fulfill its contractual obligations. The Exhibit
27 “A” also shall describe in detail the duties or responsibilities of the person being designated to see
28

1 Highly Confidential Information and the person's role in the proceeding. Highly Confidential
2 Information may not be disclosed to persons engaged in strategic or competitive decision making for
3 any party, including the sale or marketing of products or services on behalf of any party.

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

12 Copies of Highly Confidential Information shall be provided to the in-house attorney, outside
13 counsel and outside experts. The in-house expert may inspect and review the in-house attorney's
14 copies of Highly Confidential Information.

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

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

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

27 5. Challenge to Confidentiality. This Order establishes a procedure for the expeditious
28

1 handling of information that a party claims is Confidential or Highly Confidential. It shall not be
2 construed as an agreement or ruling on the confidentiality of any document. Any party may
3 challenge the characterization of any information, document, data or study claimed by the providing
4 party to be confidential in the following manner:

- 5
- 6 (a) A party seeking to challenge the confidentiality of any materials pursuant to
7 this Order shall first contact counsel for the providing party and attempt to
8 resolve any differences by stipulation;
- 9 (b) In the event that the parties cannot agree as to the character of the information
10 challenged, any party challenging the confidentiality shall do so by appropriate
11 pleading. This pleading shall:
- 12 (1) Designate the document, transcript or other material challenged in a
13 manner that will specifically isolate the challenged material from other
14 material claimed as confidential; and
- 15 (2) State with specificity the grounds upon which the documents, transcript
16 or other material are deemed to be non-confidential by the challenging
17 party.
- 18 (c) A ruling on the confidentiality of the challenged information, document, data
19 or study shall be made by a Administrative Law Judge after proceedings in
20 camera, which shall be conducted under circumstances such that only those
21 persons duly authorized hereunder to have access to such confidential
22 materials shall be present. This hearing shall commence no earlier than five
23 (5) business days after service on the providing party of the pleading required
24 by subsection 5(b) above.
- 25 (d) The record of said in camera hearing shall be marked "CONFIDENTIAL-
26 SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. T-00000F-02-
27 0271." Court reporter notes of such hearing shall be transcribed only upon
28 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 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.

1 7. (a) Receipt into Evidence. Provision is hereby made for receipt into evidence in
2 this proceeding materials claimed to be confidential in the following manner:
3

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

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

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

13 (4) Only one (1) copy of the documents designated by the providing party
14 to be placed in a sealed record shall be made.

15 (5) The copy of the documents to be placed in the sealed record shall be
16 tendered by counsel for the providing party to the Commission, and
17 maintained in accordance with the terms of this Order.

18 (b) Seal. While in the custody of the Commission, materials containing
19 Confidential Information shall be marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE
20 ORDER IN DOCKET NO. RT-00000F-02-0271" and Highly Confidential Information shall be
21 marked "HIGHLY CONFIDENTIAL—USE RESTRICTED PER PROTECTIVE ORDER IN
22 DOCKET NO. RT-00000F-02-0271" and shall not be examined by any person except under the
23 conditions set forth in this Order.

24 (c) In Camera Hearing. Any Confidential Information that must be orally
25 disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing,
26 attended only by persons authorized to have access to the information under this Order. Similarly,
27 any cross-examination on or substantive reference to Confidential Information (or that portion of the
28 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

1 be limited to the Administrative Law Judge and persons who are entitled to review Confidential
2 Information pursuant to subsection 1(c) above and have signed an Exhibit "A," unless such
3 information is released from the restrictions of this Order either through agreement of the parties or
4 after notice to the parties and hearing, pursuant to the ruling of an Administrative Law Judge, the
5 order of the Commission and/or final order of a court having final jurisdiction.

6 (e) Appeal/Subsequent Proceedings. Sealed portions of the record in this
7 proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal or to
8 the FCC for purposes of a Section 271 or 252e proceeding, but under seal as designated herein for the
9 information and use of the court or the FCC. If a portion of the record is forwarded to a court or the
10 FCC, the providing party shall be notified which portion of the sealed record has been designated by
11 the appealing party as necessary to the record on appeal or for use at the FCC.

12 (f) Return. Unless otherwise ordered, Confidential Information and Highly
13 Confidential Information, including transcripts of any depositions to which a claim of confidentiality
14 is made, shall remain under seal, shall continue to be subject to the protective requirements of this
15 Order, and shall be returned to counsel for the providing party within thirty (30) days after final
16 settlement or conclusion of the Section 271 or 252(e) Proceedings.

17 8. Use in Pleadings. Where references to Confidential Information in the sealed record
18 or with the providing party is required in pleadings, briefs, arguments or motions (except as provided
19 in section 5), it shall be by citation of title or exhibit number or some other description that will not
20 disclose the substantive Confidential Information contained therein. Any use of or substantive
21 references to Confidential Information shall be placed in a separate section of the pleading or brief
22 and submitted to the Administrative Law Judge or the Commission under seal. This sealed section
23 shall be served only on counsel of record and parties of record who have signed the nondisclosure
24 agreement set forth in Exhibit "A." All of the restrictions afforded by this Order apply to materials
25 prepared and distributed under this section.

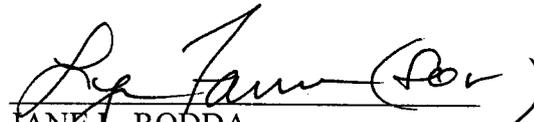
26 9. Summary of Record. If deemed necessary by the Hearing Officer, the providing party
27 shall prepare a written summary of the Confidential Information referred to in the Order to be placed
28

1 on the public record.

2 IT IS THEREFORE ORDERED that the provisions of this Order are specifically intended to
3 apply to all data, documents, information, studies, and other material designated as confidential or
4 highly confidential by any party to Docket No. RT-00000F-02-0271.

5 IT IS FURTHER ORDERED that this Protective Order shall continue in force and effect after
6 this Docket is closed.

7 DATED this 8th day of May, 2002.

8
9
10 
11 JANE L. RODDA
12 ADMINISTRATIVE LAW JUDGE

13 Copies of the foregoing mailed/delivered
14 this 8th day of May, 2002 to:

15 QWEST Corporation
1801 California Street, #5100
Denver, Colorado 80202

16 Maureen Arnold
U S WEST Communications, Inc.
3033 N. Third Street, Room 1010
17 Phoenix, Arizona 85012

18 Michael M. Grant
GALLAGHER AND KENNEDY
2575 East Camelback Road
19 Phoenix, Arizona 85016-9225

20 Timothy Berg
FENNEMORE CRAIG
3003 N. Central Ave., Suite 2600
21 Phoenix, Arizona 85016

22 Mark Dioguardi
TIFFANY AND BOSCO PA
500 Dial Tower
23 1850 N. Central Avenue
Phoenix, Arizona 85004

24 Nigel Bates
ELECTRIC LIGHTWAVE, INC.
4400 NE 77th Avenue
25 Vancouver, Washington 98662

26 Thomas L. Mumaw
Jeffrey W. Crockett
SNELL & WILMER
27 One Arizona Center
Phoenix, Arizona 85004-0001

Darren S. Weingard
Stephen H. Kukta
SPRINT COMMUNICATIONS CO L.P.
1850 Gateway Drive, 7th Floor
San Mateo, California 94404-2467

Thomas H. Campbell
LEWIS & ROCA
40 N. Central Avenue
Phoenix, Arizona 85007

Andrew O. Isar
TRI
4312 92nd Avenue, N.W.
Gig Harbor, Washington 98335

Bradley Carroll
Cox Arizona Telcom, L.L.C.
20401 N. 29th Avenue, Suite 100
Phoenix, Arizona 85027

Richard M. Rindler
Morton J. Posner
SWIDER & BERLIN
3000 K Street, N.W. Suite 300
Washington, DC 20007

Michael W. Patten
ROSHKA HEYMAN & DEWULF
400 E. Van Buren, Suite 800
Phoenix, Arizona 85004

Charles Kallenbach
AMERICAN COMMUNICATIONS SERVICES INC
131 National Business Parkway
Annapolis Junction, Maryland 20701

1	Karen L. Clauson Thomas F. Dixon MCI TELECOMMUNICATIONS CORP 707 17th Street, #3900 Denver, Colorado 80202	Mark P. Trinchero DAVIS WRIGHT TREMAINE LLP 1300 S.W. Fifth Avenue, Suite 2300 Portland, Oregon 97201
2		
3	Richard S. Wolters AT&T & TCG 1875 Lawrence Street, Room 1575 Denver, Colorado 80202	Jon Loehman Managing Director-Regulatory SBC Telecom, Inc. 5800 Northwest Parkway Suite 135, Room 1.S.40 San Antonio, Texas 78249
4		
5	Joyce Hundley UNITED STATES DEPARTMENT OF JUSTICE Antitrust Division 1401 H Street NW, Suite 8000 Washington, DC 20530	Lyndall Nipps Director, Regulatory Allegiance Telecom, Inc. 845 Camino Sure Palm Springs, California 92262
6		
7	Joan Burke OSBORN MALEDON 2929 N. Central Avenue, 21st Floor P.O. Box 36379 Phoenix, Arizona 85067-6379	M. Andrew Andrade 5261 S. Quebec Street, Suite 150 Greenwood Village, CO 80111 Attorney for TESS Communications, Inc.
8		
9	Scott S. Wakefield, Chief Counsel RUCO 2828 N. Central Avenue, Suite 1200 Phoenix, Arizona 85004	Todd C. Wiley GALLAGHER & KENNEDY 2575 E. Camelback Road Phoenix, Arizona 85016-9225
10		
11	Gregory Hoffman 795 Folsom Street, Room 2159 San Francisco, CA 94107-1243	Laura Izon COVAD COMMUNICATIONS CO 4250 Burton Street Santa Clara, California 95054
12		
13	Daniel Waggoner DAVIS WRIGHT TREMAINE 2600 Century Square 1501 Fourth Avenue Seattle, WA 98101-1688	Al Sterman ARIZONA CONSUMERS COUNCIL 2849 E 8th Street Tucson Arizona 85716
14		
15	Douglas Hsiao Jim Scheltema Blumenfeld & Cohen 1625 Massachusetts Ave. N.W., Suite 300 Washington, DC 20036	Brian Thomas TIME WARNER TELECOM, INC. 520 S.W. 6 th Avenue, Suite 300 Portland, Oregon 97204
16		
17	Raymond S. Heyman Randall H. Warner ROSHKA HEYMAN & DeWULF 400 E. Van Buren, Suite 800 Phoenix, Arizona 85004	Jon Poston ACTS 6733 E. Dale Lane Cave Creek, Arizona 85331-6561
18		
19	Diane Bacon, Legislative Director COMMUNICATIONS WORKERS OF AMERICA 5818 North 7 th Street, Suite 206 Phoenix, Arizona 85014-5811	Christopher Kempley, Chief Counsel Legal Division ARIZONA CORPORATION COMMISSION 1200 West Washington Street Phoenix, Arizona 85007
20		
21	Mark N. Rogers Excell Agent Services, L.L.C. 2175 W. 14 th Street Tempe, Arizona 85281	Ernest G. Johnson, Director Utilities Division ARIZONA CORPORATION COMMISSION 1200 West Washington Street Phoenix, Arizona 85007
22		
23	Robert S. Tanner DAVIS WRIGHT TREMAINE LLP 17203 n. 42 ND Street Phoenix, Arizona 85032	ARIZONA REPORTING SERVICE, INC. 2627 N. Third Street, Suite Three Phoenix, Arizona 85004-1003
24		
25		
26		
27		
28		

EXHIBIT "A"

I have read the foregoing Protective Order dated May __, 2002, in Docket No. RT-00000F-02-0271 and agree to be bound by the terms and conditions of this Order.

Name

Employer

Business Address

Party

Signature

Date

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28