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BEFORE THE ARIZONA CORPORATION COMMISSION

2010 JUL 27 P 4: 20

Arizona Corporation Commission

COMMISSIONERS

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED

JUL 27 2010

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

DOCKETED BY

<p>JOINT NOTICE AND APPLICATION OF QWEST CORPORATION, QWEST COMMUNICATIONS COMPANY, LLC, QWEST LD CORP., EMBARQ COMMUNICATIONS, INC. D/B/A/ CENTURY LINK COMMUNICATIONS, EMBARQ PAYPHONE SERVICES, INC. D/B/A/ CENTURYLINK, AND CENTURYTEL SOLUTIONS, LLC FOR APPROVAL OF THE PROPOSED MERGER OF THEIR PARENT CORPORATIONS QWEST COMMUNICATIONS INTERNATIONAL INC. AND CENTURYTEL, INC.</p>	<p>DOCKET NO. T-01051B-10-0194 DOCKET NO. T-02811B-10-0194 DOCKET NO. T-04190A-10-0194 DOCKET NO. T-20443A-10-0194 DOCKET NO. T-03555A-10-0194 DOCKET NO. T-03902A-10-0194</p> <p>JOINT APPLICANTS' PROPOSED MODIFICATION TO REQUESTED PROCEDURAL ORDER TO ADD "STAFF EYES ONLY" CONFIDENTIALITY</p> <p><i>(Oral Argument Requested)</i></p>
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Snell & Wilmer

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Phoenix, Arizona 85004-2202
(602) 382-6000

I. INTRODUCTION

On May 13, 2010, the Arizona telephone operating subsidiaries of Qwest Communications International, Inc., Qwest Corporation, Qwest Communications Company LLC, and Qwest LD Corp., (collectively "Qwest") and the Arizona Telephone operating subsidiaries of CenturyLink, Inc., Embarq Communications, Inc., d/b/a CenturyLink Communications, Embarq Payphone Services, Inc., d/b/a CenturyLink, and CenturyTel Solutions LLC, (collectively "CenturyLink") submitted for Arizona Corporation Commission ("Commission") approval, a Joint Notice and Application for Expedited Approval of Proposed Merger (the "Joint Application"). On June 17, 2010,

1 Qwest and CenturyLink (the "Joint Applicants) filed a proposed form of protective order
2 to be entered in this case to govern the disclosure, use and dissemination of confidential
3 information and highly confidential information. The Joint Applicants have since
4 determined that the proposed form of protective order should be modified to include a
5 third tier providing the very highest level of confidentiality identified as "Staff Eyes
6 Only" or "SEO." Such information would be deemed competitively sensitive/highly
7 confidential information and would be disclosed only to the Utilities Division Staff
8 ("Staff") and/or staff of the Residential Utility Consumer Office ("RUCO"), and not
9 intervenors in this case. Attached hereto as Attachment 1 is a revised form of the
10 proposed protective order which incorporates the SEO level of confidentiality. Attached
11 hereto as Attachment 2, for the Commission's convenience, is a redline comparison
12 which highlights the changes made to the form of protective order that was filed June 17,
13 2010.

14 The Joint Applicants have discussed the proposed protective order with counsel
15 for several of the intervenor parties, Staff and RUCO, and the parties have been unable to
16 reach agreement on a form of the protective order. Therefore, the Joint Applicants
17 request that the Commission schedule oral argument to consider this request at the
18 earliest opportunity.

19 II. DISCUSSION

20 The protective order initially proposed by the Joint Applicants on June 17
21 contained two levels of confidential protection: Confidential Information and Highly
22 Confidential Information. However, the Joint Applicants have determined the need for a
23 third level of Staff Eyes Only confidentiality which would apply to competitively
24 sensitive information that might impose a serious business risk if disseminated without
25 heightened protections. Such information goes to the very essence of the Joint
26 Applicants' anticipated competitive strategies and actions in Arizona and elsewhere. It

1 has very high competitive value and, if disclosed to intervenors in this case, other than
2 Staff and RUCO, would cause irreparable harm to the Joint Applicants. This information
3 is contained in the following types of documents, which would be designated for Staff
4 Eyes Only:

- 5 • Strategic business plans and analysis;
- 6 • New product roll-out timelines; and
- 7 • Market share information

8 Competitively sensitive information designated as SEO would be disclosed only to
9 the Staff and/or RUCO staff. The Joint Applicants believe that any SEO-designated
10 information would have limited or no relevance to the issues the Commission will be
11 considering in this case, so the Joint Applicants believe that it is unlikely that SEO
12 information will even make its way into the record in this proceeding. Even if considered
13 relevant, the value of disclosing such information to intervenors (other than Staff and
14 RUCO) is far outweighed by the harm that could result to the Joint Applicants if such
15 highly competitively sensitive information was disclosed. Further, the Joint Applicants
16 would identify SEO documents in a privilege log to allow the intervenor parties to
17 evaluate for themselves the validity of an SEO designation. A revised form of protective
18 order is attached hereto as Attachment 1, and the Joint Applicants request that the
19 Commission enter the proposed protective order.

20 At least one other state that is considering this transaction already allows the SEO
21 designation. The Colorado Public Utilities Commission permits a party to request
22 heightened protection of information by motion, and typically restricts the distribution of
23 the information to the commission staff and the office of consumer counsel. *See, e.g.,* 4
24 Colo. Code Reg. 723-1 § 1100(a)(III), and *Public Serv. Co. v. Trigen-Nations Energy*
25 *Co.*, 982 P.2d 36 (1999). The Joint Applicants can provide additional information to the
26 Commission regarding the highly sensitive nature of SEO information in oral argument

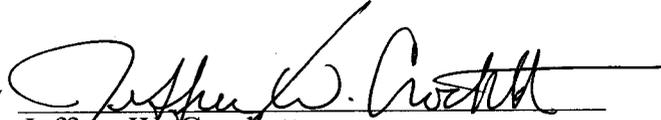
1 on this motion. Specifically, the Joint Applicants are willing to submit a representative
2 sample of the types of SEO documents to the Administrative Law Judge for an *in camera*
3 review.

4 **III. CONCLUSION**

5 For the reasons set forth herein, the Joint Applicants respectfully request that the
6 Commission enter its Protective Order substantially in the form attached hereto as
7 Attachment 1 establishing a Staff Eyes Only level of confidentiality. Providing an SEO
8 level of confidentiality is consistent with the public interest as it will encourage
9 disclosure while ensuring that the Joint Applicants' highly sensitive information will not
10 be disclosed in a way that might result in competitive harm. The Joint Applicants request
11 that the Commission schedule oral argument on this request at the earliest opportunity.

12 RESPECTFULLY SUBMITTED this 27th day of July, 2010.

13 SNELL & WILMER L.L.P.

14
15 By 

16 Jeffrey W. Crockett
17 Bradley S. Carroll
18 One Arizona Center
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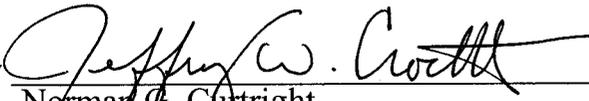
21 and

22 Kevin K. Zarling
23 (admitted *pro hac vice*)
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ORIGINAL and 13 copies filed
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COPY of the foregoing hand-delivered
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2 first class mail this 27th day of July, 2010, to:

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ATTACHMENT 1

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 COMMISSIONERS

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

9 JOINT NOTICE AND APPLICATION OF QWEST
10 CORPORATION, QWEST COMMUNICATIONS
11 COMPANY, LLC, QWEST LD CORP., EMBARQ
12 COMMUNICATIONS, INC. D/B/A/ CENTURY
13 LINK COMMUNICATIONS, EMBARQ
14 PAYPHONE SERVICES, INC. D/B/A/
15 CENTURYLINK, AND CENTURYTEL
16 SOLUTIONS, LLC FOR APPROVAL OF THE
17 PROPOSED MERGER OF THEIR PARENT
18 CORPORATIONS QWEST COMMUNICATIONS
19 INTERNATIONAL INC. AND CENTURYTEL,
20 INC.

DOCKET NO. T-01051B-10-0194
DOCKET NO. T-02811B-10-0194
DOCKET NO. T-04190A-10-0194
DOCKET NO. T-20443A-10-0194
DOCKET NO. T-03555A-10-0194
DOCKET NO. T-03902A-10-0194

PROTECTIVE ORDER
*(With "Highly Confidential" and
"Staff Eyes Only" Provisions)*

21 On May 13, 2010, the Arizona telephone operating subsidiaries of Qwest
22 Communications International, Inc., Qwest Corporation, Qwest Communications
23 Company LLC, and Qwest LD Corp., and the Arizona Telephone operating subsidiaries
24 of CenturyTel, Inc., Embarq Communications, Inc., d/b/a CenturyLink Communications,
25 Embarq Payphone Services, Inc., d/b/a CenturyLink, and CenturyTel Solutions LLC,
26 (collectively the "Joint Applicants") submitted for Arizona Corporation Commission
 ("Commission") approval, a Joint Notice and Application for Expedited Approval of
 Proposed Merger. Other parties to this proceeding include the Commission's Utilities
 Division Staff ("Staff"), the Residential Utility Consumer Office ("RUCO"), and others
 granted intervention (collectively, "Intervenors"). The Joint Applicants, Staff, RUCO
 and/or Intervenors ("Parties" or a "Party," as applicable) may require access to certain
 documents, data, studies and other materials ("Receiving Party" or "Receiving Parties" as

1 applicable), some of which may be considered by a Party ("Disclosing Party" or
2 Disclosing Parties" as applicable) to be of a proprietary, confidential or legally protected
3 nature ("Confidential Information"). Accordingly, the Commission enters this Protective
4 Order to govern the discovery and use of Confidential Information by the Parties in this
5 proceeding.

6 **1. (a) Confidential Information.** All documents, data, studies and other
7 materials furnished pursuant to any requests for information, subpoenas or other modes
8 of discovery (formal or informal), and including depositions, and other requests for
9 information, that are claimed to be Confidential Information, shall be so marked by the
10 Disclosing Party by stamping the same with a "Confidential Information" designation. In
11 addition, all notes or other materials that refer to, derive from, or otherwise contain parts
12 of the Confidential Information will be marked by the Receiving Party as Confidential
13 Information. Except for "Highly Confidential Information," described in Section 3 of
14 this Protective Order, and "Staff Eyes Only Confidential Information," described in
15 Section 4 of this Protective Order, all Confidential Information shall be provided on
16 yellow paper. Access to and review of Confidential Information shall be strictly
17 controlled by the terms of this Protective Order.

18 The Disclosing Party shall memorialize in writing any Confidential Information
19 that it verbally discloses to a Receiving Party within five (5) business days of its verbal
20 disclosure, and the writing shall be marked by the Disclosing Party with the appropriate
21 designation.

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

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

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

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

26 **(c) Persons Entitled to Review.** Each Party that receives Confidential

1 Information pursuant to this Protective Order must limit access to such Confidential
2 Information to (1) attorneys employed or retained by the Party in these proceedings and
3 the attorneys' staff; (2) experts, consultants and advisors who need access to the material
4 to assist the Party in these proceedings; (3) only those employees of the Party who are
5 directly involved in these proceedings, provided that counsel for the Party represents that
6 no such employee is engaged in the sale or marketing of that Party's products or services.
7 In addition, access to Confidential Information may be provided to Commissioners,
8 Commission Administrative Law Judges, Commission advisory staff members, and
9 employees of the Commission, to whom disclosure is necessary.

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

18 The Nondisclosure Agreement (Exhibit "A") shall require the person(s) to whom
19 disclosure is to be made to read a copy of this Protective Order and to certify in writing
20 that they have reviewed the same and have consented to be bound by its terms. The
21 agreement shall contain the signatory's full name, employer, job title and job description,
22 business address and the name of the Party with whom the signatory is associated. Such
23 agreement shall be delivered to counsel for the Disclosing Party before disclosure is
24 made, and if no objection thereto is registered to the Commission within three (3)
25 business days, then disclosure shall follow. An attorney who makes Confidential
26 Information available to any person listed in subsection 1(c) above shall be responsible

1 for having each person execute an original Exhibit "A" and a copy of all such signed
2 Exhibit "A" forms shall be circulated to all other counsel of record promptly after
3 execution.

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

11 **(b) Return.** All notes, to the extent they contain Confidential
12 Information shall be destroyed after the final settlement or conclusion of these
13 proceedings. The Party destroying such Confidential Information shall advise the
14 Disclosing Party of that fact within a reasonable time from the date of destruction.

15 **3. Highly Confidential Information.**

16 **(a)** Parties involved in this proceeding may include competitors, or
17 potential competitors of the Joint Applicants. Moreover, information relevant to the
18 resolution of this matter is expected to include sensitive competitive information.
19 Disclosing Parties to this proceeding may receive discovery requests that call for the
20 disclosure of highly confidential documents, data, studies or other materials or
21 information ("Highly Confidential Information"), the disclosure of which imposes a
22 highly significant risk of competitive harm to the Disclosing Party or third parties. Thus,
23 Disclosing Parties may designate documents or information they consider to be Highly
24 Confidential Information and such documents or information will be disclosed only in
25 accordance with the provisions of this Section 3.

26 **(b)** Disclosing Parties must carefully scrutinize responsive documents

1 and information and strictly limit the amount of information they designate as Highly
2 Confidential Information to only information that truly might impose a serious business
3 risk if disseminated without the heightened protections provided in this Section 3. The
4 first page and individual pages of a document determined in good faith to include Highly
5 Confidential Information must be marked by a stamp that reads: "HIGHLY
6 CONFIDENTIAL — USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET
7 NOS. T-01051B-10-0194, ET. AL."

8 (c) Placing a "Highly Confidential" stamp on the first page of a
9 document indicates only that one or more pages contains Highly Confidential
10 Information and will not serve to protect the entire contents of a multi-page document.
11 Each page that contains Highly Confidential Information must be marked separately to
12 indicate where Highly Confidential Information is redacted. The unredacted versions of
13 each page containing Highly Confidential Information and provided under this Section 3
14 must be stamped with a "Highly Confidential" stamp and submitted on pink paper with
15 references (*i.e.*, highlighting or other markings) to show where Highly Confidential
16 Information is redacted in the original document.

17 (d) Intervenor Parties who seek access to or disclosure of Highly
18 Confidential Information must designate one outside counsel and not more than one
19 outside consultant, legal or otherwise, to receive and review materials marked "HIGHLY
20 CONFIDENTIAL — USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET
21 NOS. T-01051B-10-0194, ET. AL." For each person for whom access to Highly
22 Confidential Information is sought, the Receiving Party must submit to the Disclosing
23 Party that designated the material as Highly Confidential Information and file with the
24 Commission, a Highly Confidential Information Nondisclosure Agreement, in the form
25 attached as Exhibit "B" to this Protective Order, certifying that the person requesting
26 access to the Highly Confidential Information:

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- (1) Is not now involved, and will not for a period of two years involve themselves in, competitive decision making with respect to which the documents or information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with the Disclosing Party or business organization from whom they seek disclosure of Highly Confidential Information with respect to the pricing, marketing, and sales of telecommunications services in the state of Arizona; and
- (2) Has read and understands, and agrees to be bound by, the terms of the Protective Order in this proceeding, including this Section of the Protective Order.

(e) The provisions and restrictions in subsection 3(d) above also apply to Staff and RUCO and any experts or consultants they retain to review the Highly Confidential Information. However, one copy of Highly Confidential Information may also be given to Staff and RUCO's designated in-house attorney and a designated Staff and RUCO in-house analyst.

(f) Any Disclosing Party may object in writing to the designation of any individual counsel or consultant as a person who may review Highly Confidential Information within five (5) days after receipt of a Highly Confidential Information Nondisclosure Agreement. Any such objection must demonstrate good cause, supported by affidavit, to exclude the challenged counsel or consultant from the review of the Highly Confidential Information. Written response to any objection must be returned within five (5) days after receipt of the objection. If, after receiving a written response to a Party's objection, the objecting Party still objects to disclosure of the Highly Confidential Information to the challenged individual, the Administrative Law Judge shall determine whether the Highly Confidential Information must be disclosed to the challenged individual.

(g) Intervenor outside counsel designated in the manner described in

1 subsection 3(d) above, may provide one (1) copy of the Highly Confidential Information
2 to their outside consultants or experts who have been designated to receive Highly
3 Confidential Information in the manner described in subsection 3(d) above. Designated
4 outside counsel and consultants (including Staff and RUCO pursuant to subsection 3(e)
5 above) will each maintain the Highly Confidential Information and any notes reflecting
6 their contents in a secure location to which only designated counsel and consultants have
7 access. No additional copies will be made, except for use as part of prefiled testimonies
8 or exhibits or during the hearing, and then such copies shall also be subject to the
9 provisions of this Protective Order.

10 **(h)** Staff of designated outside counsel and staff of designated outside
11 consultants who are authorized to review Highly Confidential Information (including
12 Staff and RUCO pursuant to subsection 3(e) above) may have access to Highly
13 Confidential Information for purposes of processing the case, including but not limited to
14 receiving and organizing discovery, and preparing prefiled testimony, hearing exhibits,
15 and briefs. Outside counsel and consultants are responsible for appropriate supervision
16 of their staff to ensure the protection of all Highly Confidential Information consistent
17 with the terms of this Protective Order.

18 **(i)** Any testimony or exhibits prepared that include or reflect Highly
19 Confidential Information must be maintained in the secure location until filed with the
20 Commission or removed to the hearing room for production under seal and under
21 circumstances that will ensure continued protection from disclosure to persons not
22 entitled to review Highly Confidential Information. Counsel will provide prior notice (at
23 least one business day) of any intention to introduce Highly Confidential Information at
24 hearing, or refer to such Highly Confidential Information in cross-examination of a
25 witness. The Administrative Law Judge will determine the process for including such
26 Highly Confidential Information following consultation with the Parties.

1 (j) The designation of any document or information as Highly
2 Confidential Information may be challenged by motion and the classification of the
3 document or information as Highly Confidential Information will be considered in
4 chambers by the Administrative Law Judge. The Party contending that a document or
5 information is Highly Confidential Information bears the burden of proving that such
6 designation is necessary.

7 **4. Staff Eyes Only Confidential Information.**

8 (a) In addition to requests for information and/or documents deemed
9 Confidential Information or Highly Confidential Information, Parties to this proceeding
10 may receive discovery requests that call for the disclosure of even more sensitive
11 confidential documents or information, the disclosure of which imposes a greater risk of
12 competitive harm to the Disclosing Party or third parties than the disclosure of
13 Confidential Information or Highly Confidential Information. This information, which
14 would cause irreparable harm to the Disclosing Party, is contained in the following types
15 of documents:

- 16 • Strategic business plans and analysis
- 17 • New product roll-out timelines
- 18 • Market share information

19 In order to protect such highly sensitive information and documents from
20 disclosure to competitors, a Party may designate the documents and information for
21 review by Staff and RUCO only ("Staff Eyes Only Confidential Information"), and such
22 documents or information will be disclosed only in accordance with the provisions of this
23 Section 4.

24 (b) A Disclosing Party shall carefully scrutinize responsive documents
25 and information and strictly limit the amount of information designated as Staff Eyes
26 Only Confidential Information to only information that truly might impose a serious

1 business risk if disseminated without the heightened protections provided in this Section
2 4. The first page and individual pages of a document determined in good faith to include
3 Staff Eyes Only Confidential Information must be marked by a stamp that reads: "STAFF
4 EYES ONLY CONFIDENTIAL INFORMATION—USE RESTRICTED PER
5 PROTECTIVE ORDER IN DOCKET NOS. T-01051B-10-0194, ET AL." A Disclosing
6 Party shall list information and documents identified as Staff Eyes Only Confidential
7 Information in a privilege log which shall be provided to the Receiving Party in order that
8 the Receiving Party may evaluate the validity of the Staff Eyes Only designation. A Staff
9 Eyes Only designation may be challenged pursuant to Sections 4(h) and 6 below.

10 (c) Placing a Staff Eyes Only Confidential Information stamp on the
11 first page of a document indicates only that one or more pages contains Staff Eyes Only
12 Confidential Information and will not serve to protect the entire contents of a multi-page
13 document. Each page that contains Staff Eyes Only Confidential Information must be
14 marked separately to indicate where Staff Eyes Only Confidential Information is
15 redacted. The unredacted versions of each page containing Staff Eyes Only Confidential
16 Information must be stamped as set forth in Section 4(b) and submitted on light green
17 paper with references (*i.e.*, highlighting or other markings) to show where Staff Eyes
18 Only Confidential Information is redacted in the original document.

19 (d) Only Staff and RUCO, and their respective employees and outside
20 consultants assigned to this case, may receive, review, or use Staff Eyes Only
21 Confidential Information. Staff and RUCO shall submit the Staff Eyes Only Confidential
22 Information Nondisclosure Agreement in the form attached as Exhibit "C" to this
23 Protective Agreement for each person who will have access to Staff Eyes Only
24 Confidential Information and any external experts or consultants they wish to have
25 review the Staff Eyes Only Confidential Information.

26 (e) A Disclosing Party may object in writing to the designation by Staff

1 or RUCO of any outside consultant as a person who may review Staff Eyes Only
2 Confidential Information within five (5) days after receipt of a Staff Eyes Only
3 Confidential Information Nondisclosure Agreement. Any such objection must
4 demonstrate good cause, supported by affidavit, to exclude the challenged outside
5 consultant from the review of the Staff Eyes Only Confidential Information. Written
6 response to any objection must be returned by Staff or RUCO within five (5) days after
7 receipt of the objection. If, after receiving a written response from Staff or RUCO, a
8 Disclosing Party still objects to disclosure of the Staff Eyes Only Confidential
9 Information to the challenged individual, the Administrative Law Judge shall determine
10 whether the Staff Eyes Only Confidential Information must be disclosed to the
11 challenged individual.

12 (f) Staff and RUCO shall each maintain the Staff Eyes Only
13 Confidential Information and any notes reflecting their contents in a secure location to
14 which only designated counsel and consultants have access. Staff of any Staff-retained
15 outside consultants or RUCO-retained outside consultants who are authorized to review
16 Staff Eyes Only Confidential Information may have access to Staff Eyes Only
17 Confidential Information for purposes of processing this case, including but not limited to
18 receiving and organizing discovery, and preparing prefiled testimony, hearing exhibits,
19 and briefs; provided, however, that Staff-retained outside consultants and RUCO-retained
20 outside consultants are responsible for appropriate supervision of their staffs to ensure the
21 protection of all Staff Eyes Only Confidential Information consistent with the terms of
22 this Protective Order.

23 (g) Any testimony or exhibits prepared that include or reflect Staff Eyes
24 Only Confidential Information must be maintained in a secure location that will ensure
25 continued protection from disclosure to persons not entitled to review Staff Eyes Only
26 Confidential Information. Counsel for Staff and/or counsel for RUCO shall provide prior

1 notice to the Disclosing Party (at least one business day) of any intention to introduce
2 Staff Eyes Only Confidential Information at hearing, or refer to such Staff Eyes Only
3 Confidential Information in cross-examination of a witness. The Administrative Law
4 Judge shall determine the process for including such Staff Eyes Only Confidential
5 Information following consultation with the parties.

6 (h) Except for Staff and RUCO, no Parties shall be entitled to any
7 information or documents identified as Staff Eyes Only Confidential Information;
8 provided, however, that any information or documents identified as Staff Eyes Only
9 Confidential Information may be challenged by motion, and the classification of the
10 information or document as Staff Eyes Only Confidential Information will be considered
11 in chambers by the Administrative Law Judge. The Disclosing Party bears the burden of
12 proving that such designation is necessary.

13 5. **Objections to Admissibility.** The furnishing of any document, data, study
14 or other materials pursuant to this Protective Order shall in no way limit the right of the
15 Disclosing Party to object to its relevance or admissibility in proceedings before the
16 Commission.

17 6. **Challenge to Confidentiality.** This Protective Order establishes a
18 procedure for the expeditious handling of information that a Party claims is Confidential
19 Information, Highly Confidential Information or Staff Eyes Only confidential
20 Information. It shall not be construed as an agreement or ruling on the confidentiality of
21 any document. Any Party may challenge the characterization of any information,
22 document, data or study claimed by the Disclosing Party to be confidential in the
23 following manner:

24 (a) A Party seeking to challenge the confidentiality of any materials
25 pursuant to this Protective Order shall first contact counsel for the
26 Disclosing Party and attempt to resolve any differences by stipulation;

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- (b) In the event that the Parties cannot agree as to the character of the information challenged, any Party challenging the confidentiality shall do so by appropriate pleading. This pleading shall:
 - (1) Designate the document, transcript or other material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential; and
 - (2) State with specificity the grounds upon which the documents, transcript or other material are deemed to be non-confidential by the challenging Party.
- (c) A ruling on the confidentiality of the challenged information, document, data or study shall be made by an Administrative Law Judge after proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential materials shall be present. This hearing shall commence no earlier than five (5) business days after service on the Disclosing Party of the pleading required by subsection 6(b) above.
- (d) The record of said in camera hearing shall be marked "CONFIDENTIAL, HIGHLY CONFIDENTIAL, OR STAFF EYES ONLY (as the case may be) — SUBJECT TO PROTECTIVE ORDER IN DOCKET NOS. T-01051B-10-0194, ET. AL." Court reporter notes of such hearing shall be transcribed only upon agreement by the Parties or Order of the Administrative Law Judge and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Protective 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 Protective 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 Disclosing Party to do so. The provisions of this subsection are intended to enable the Disclosing Party to seek a stay or other relief from an order removing the restriction of this Protective Order from materials claimed by the Disclosing Party to be confidential.

7. (a) Receipt into Evidence. Provision is hereby made for receipt into

1 evidence in this proceeding materials claimed to be confidential in the following manner:

- 2 (1) Prior to the use of or substantive reference to any
3 Confidential Information, Highly Confidential Information or
4 Staff Eyes Only Confidential Information, the Parties
5 intending to use such information shall make that intention
6 known to the Disclosing Party.
7
8 (2) The Requesting Party and the Disclosing Party shall make a
9 good-faith effort to reach an agreement so that the
10 Confidential Information, Highly Confidential Information or
11 Staff Eyes Only Confidential Information can be used in a
12 manner which will not reveal its confidential or proprietary
13 nature.
14
15 (3) If such efforts fail, the Disclosing Party shall separately
16 identify which portions, if any, of the documents to be offered
17 or referenced shall be placed in a sealed record.
18
19 (4) Only one (1) copy of the document designated by the
20 Disclosing Party to be placed in sealed record shall be made.
21
22 (5) The copy of the documents to be placed in the sealed record
23 shall be tendered by counsel for the Disclosing Party to the
24 Commission, and maintained in accordance with the terms of
25 this Protective Order.
26

(b) **Seal.** While in the custody of the Commission, materials
containing: (1) Confidential Information shall be marked "CONFIDENTIAL —
SUBJECT TO PROTECTIVE ORDER IN DOCKET NOS. T-01051B-10-0194, ET.
AT;" (2) Highly Confidential Information shall be marked "HIGHLY CONFIDENTIAL
— USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NOS. T-01051B-10-
0194, ET. AL;" and (3) Staff Eyes Only Confidential Information shall be marked
"STAFF EYES ONLY CONFIDENTIAL INFORMATION — USE RESTRICTED PER
PROTECTIVE ORDER IN DOCKET NOS. T-01051B-10-0194, ET. AL," and shall not
be examined by any person except under the conditions set forth in this Protective Order.

(c) **In Camera Hearing.** Any Confidential Information, Highly
Confidential Information or Staff Eyes Only Confidential Information that must be orally

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

9 (d) **Access to Record.** Access to sealed testimony, records and
10 information shall be limited to the Administrative Law Judge, Commissioners, and their
11 respective staffs, and persons who are entitled to review Confidential Information,
12 Highly Confidential Information, or Staff Eyes Only Confidential Information pursuant
13 to subsections 1(c), 3(d) and 4(d) above and have signed Exhibit "A," "B" or "C" forms,
14 unless such information is released from the restrictions of this Protective Order either
15 through agreement of the Parties or after notice to the Parties and hearing, pursuant to the
16 ruling of an Administrative Law Judge, the order of the Commission and/or final order of
17 a court having final jurisdiction.

18 (e) **Appeal/Subsequent Proceedings.** Sealed portions of the record in
19 this proceeding may be forwarded to any court of competent jurisdiction for purposes of
20 an appeal but under seal as designated herein for the information and use of the court or
21 the Federal Communications Commission. If a portion of the record is forwarded to a
22 court, the Disclosing Party shall be notified which portion of the sealed record has been
23 designated by the appealing Party as necessary to the record on appeal.

24 (f) **Judicial Proceedings Related to Non-Party's Request for**
25 **Disclosure.** Where the Commission, or any Receiving Party determines that disclosure is
26 not appropriate, the Disclosing Party as the real party in interest shall join as a co-

1 defendant in any judicial action brought against the Commission and/or Commissioners
2 by the Party seeking disclosure of the information, unless the Disclosing Party is already
3 specifically named in the action. Disclosing Party also agrees to indemnify and hold the
4 Commission harmless from any assessment of expenses, attorneys' fees, or damages
5 resulting from the Commission's denial of access to the information found to be non-
6 confidential.

7 In the event that the Commission becomes legally compelled (by deposition,
8 interrogatory, request for documents, subpoena, civil investigative demand, or similar
9 process) to disclose any of the Confidential Information, Highly Confidential Information
10 or Staff Eyes Only Confidential Information, the Commission shall provide Disclosing
11 Party with prompt written notice of such requirement so that Disclosing Party may seek
12 an appropriate remedy and/or waive compliance.

13 (g) **Return.** Unless otherwise ordered, Confidential Information,
14 Highly Confidential Information and Staff Eyes Only Confidential Information, including
15 transcripts of any depositions to which a claim of confidentiality is made, shall remain
16 under seal, shall continue to be subject to the protective requirements of this Protective
17 Order, and shall, at the Disclosing Party's discretion, be returned to counsel for the
18 Disclosing Party, or destroyed by the Receiving Party, within thirty (30) days after final
19 settlement or conclusion of these proceedings. If the Disclosing Party elects to have
20 Confidential Information, Highly Confidential Information or Staff Eyes Only
21 Confidential Information destroyed rather than returned, counsel for the Receiving Party
22 shall verify in writing that the material has in fact been destroyed.

23 **8. Use in Pleadings.** Where references to Confidential Information, Highly
24 Confidential Information or Staff Eyes Only Confidential Information in the sealed
25 record or with the Disclosing Party is required in pleadings, briefs, arguments or motions
26 (except as provided in Section 6), it shall be by citation of title or exhibit number or some

1 other description that will not disclose the substantive Confidential Information, Highly
2 Confidential Information or Staff Eyes Only Confidential Information contained therein.
3 Any use of or substantive references to Confidential Information, Highly Confidential
4 Information or Staff Eyes Only Confidential Information shall be placed in a separate
5 section of the pleading or brief and submitted to the Administrative Law Judge or the
6 Commission under seal. This sealed section shall be served only on counsel of record
7 and Parties of record who have signed, as applicable, the attached "Exhibit A –
8 Confidential Information Nondisclosure Agreement," "Exhibit B – Highly Confidential
9 Information Nondisclosure Agreement" or "Exhibit C – Staff Eyes Only Confidential
10 Information Nondisclosure Agreement." All of the restrictions afforded by this
11 Protective Order apply to materials prepared and distributed under this Section.

12 **9. Summary of Record.** If deemed necessary by the Commission, the
13 Disclosing Party shall prepare a written summary of the Confidential Information, Highly
14 Confidential Information or Staff Eyes Only Confidential Information referred to in the
15 Protective Order to be placed on the public record.

16 **10. Breach of Agreement.** A Disclosing Party, in any legal action or
17 complaint that it files in any court alleging breach of this Protective Order shall, at the
18 written request of the Commission, name the Arizona Corporation Commission as a
19 Defendant therein.

20 **11. Non-Termination.** The provisions of this Protective Order shall not
21 terminate at the conclusion of this proceeding.

22 **12. Effective Date.** The effective date of this Protective Order shall be August
23 ____, 2010.

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EXHIBIT A

CONFIDENTIAL INFORMATION NONDISCLOSURE AGREEMENT

I have read the foregoing Protective Order dated August __, 2010, in Docket Nos. T-01051B-10-0194, T-02811B-10-0194, T-04190A-10-0194, T-20443A-10-0194, T-03555A-10-0194 and T-03902A-10-0194 and agree to be bound by the terms and conditions of the Protective Order.

Name

Employer

Job title and Job Description

Business Address

Party

Signature

Date

Role in Proceeding

1 **EXHIBIT B**
2 **HIGHLY CONFIDENTIAL INFORMATION NONDISCLOSURE AGREEMENT**
3 Docket Nos. T-01051B-10-0194, T-02811B-10-0194, T-04190A-10-0194, T-20443A-10-
4 0194, T-03555A-10-0194 and T-03902A-10-0194.

5 I, _____, as

- 6 Staff/RUCO Attorney
7 Staff/RUCO Expert/Analyst
8 Staff/RUCO Outside Expert/Consultant
9 Intervenor Outside Counsel
10 Intervenor Outside Expert/Consultant

11 in this proceeding for _____ (a Party to this
12 proceeding) hereby declare under penalty of perjury under the laws of the State of Arizona
13 that the following are true and correct:

14 a. I am not now involved in, and will not for a period of two years involve
15 myself in, competitive decision making with respect to which the documents or information
16 protected by this Non Disclosure Agreement may be relevant, by or on behalf of any
17 company or business organization that competes, or potentially competes, with the company
18 or business organization from whom they seek disclosure of Highly Confidential Information
19 with respect to the pricing, marketing, and sales of telecommunications services; and

20 b. I have read and understand, and agree to be bound by, the terms of the
21 Protective Order dated August ____, 2010, in this proceeding, including Section 3 of the
22 Protective Order.

23 _____
24 Signature

_____ Date

25 _____
26 City/State where this Agreement was signed

_____ Employer

_____ Position and Responsibilities

_____ Permanent Address

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The following portion is to be completed by the Disclosing Party and filed with the Commission within ten (10) days of receipt. Failure to do so will constitute a waiver and the above-named person will be deemed a person having access to Highly Confidential Information under the terms and conditions of the Protective Order.

_____ No objection.

_____ Objection. _____ (Disclosing Party) objects to the above-named person having access to Highly Confidential Information. The Disclosing Party shall file a motion with the Commission, supported by affidavit, setting forth the basis for objection and asking exclusion of the person from access to Highly Confidential Information.

Signature

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EXHIBIT C
STAFF EYES ONLY CONFIDENTIAL INFORMATION NONDISCLOSURE AGREEMENT

Docket Nos. T-01051B-10-0194, T-02811B-10-0194, T-04190A-10-0194, T-20443A-10-0194, T-03555A-10-0194 and T-03902A-10-0194.

I, _____, as

- ___ Staff/RUCO Attorney
- ___ Staff/RUCO Expert/Analyst
- ___ Staff/RUCO Outside Expert/Consultant

in this proceeding for _____ (a Party to this proceeding) hereby declare under penalty of perjury under the laws of the State of Arizona that the following are true and correct:

a. I am not now involved in, and will not for a period of two years involve myself in, competitive decision making with respect to which the documents or information protected by this Non Disclosure Agreement may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with the company or business organization from whom they seek disclosure of Staff Eyes Only Confidential Information with respect to the pricing, marketing, and sales of telecommunications services; and

b. I have read and understand, and agree to be bound by, the terms of the Protective Order dated August ____, 2010, in this proceeding, including Section 4 of the Protective Order.

Signature Date

City/State where this Agreement was signed

Employer

Position and Responsibilities Permanent Address

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The following portion is to be completed by the Disclosing Party and filed with the Commission within ten (10) days of receipt. Failure to do so will constitute a waiver and the above-named person will be deemed a person having access to Staff Eyes Only Confidential Information under the terms and conditions of the Protective Order.

_____ No objection.

_____ Objection. _____ (Disclosing Party) objects to the above-named person having access to Staff Eyes Only Confidential Information. The Disclosing Party shall file a motion with the Commission, supported by affidavit, setting forth the basis for objection and asking exclusion of the person from access to Staff Eyes Only Confidential Information.

Signature

Date

11587140.8

ATTACHMENT 2

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 COMMISSIONERS

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

9 JOINT NOTICE AND APPLICATION OF QWEST
10 CORPORATION, QWEST COMMUNICATIONS
11 COMPANY, LLC, QWEST LD CORP., EMBARQ
12 COMMUNICATIONS, INC. D/B/A/ CENTURY
13 LINK COMMUNICATIONS, EMBARQ
14 PAYPHONE SERVICES, INC. D/B/A/
CENTURYLINK, AND CENTURYTEL
SOLUTIONS, LLC FOR APPROVAL OF THE
PROPOSED MERGER OF THEIR PARENT
CORPORATIONS QWEST COMMUNICATIONS
INTERNATIONAL INC. AND CENTURYTEL,
INC.

DOCKET NO. T-01051B-10-0194
DOCKET NO. T-02811B-10-0194
DOCKET NO. T-04190A-10-0194
DOCKET NO. T-20443A-10-0194
DOCKET NO. T-03555A-10-0194
DOCKET NO. T-03902A-10-0194

PROTECTIVE ORDER

*(With "Highly Confidential" and
"Staff Eyes Only" Provisions)*

15 On May 13, 2010, the Arizona telephone operating subsidiaries of Qwest
16 Communications International, Inc., Qwest Corporation, Qwest Communications
17 Company LLC, and Qwest LD Corp., and the Arizona Telephone operating subsidiaries
18 of CenturyTel, Inc., Embarq Communications, Inc., d/b/a CenturyLink Communications,
19 Embarq Payphone Services, Inc., d/b/a CenturyLink, and CenturyTel Solutions LLC,
20 (collectively the "Joint Applicants") submitted for Arizona Corporation Commission
21 ("Commission") approval, a Joint Notice and Application for Expedited Approval of
22 Proposed Merger. Other parties to this proceeding include the Commission's Utilities
23 Division Staff ("Staff"), the Residential Utility Consumer Office ("RUCO"), and others
24 granted intervention (collectively, "Intervenors"). The Joint Applicants, Staff, RUCO
25 and/or Intervenors ("Parties" or a "Party," as applicable) may require access to certain
26 documents, data, studies and other materials ("Receiving Party" or "Receiving Parties" as

1 applicable), some of which may be considered by a Party ("Disclosing Party" or
2 Disclosing Parties" as applicable) to be of a proprietary, confidential or legally protected
3 nature ("Confidential Information"). Accordingly, the Commission enters this Protective
4 Order to govern the discovery and use of Confidential Information by the Parties in this
5 proceeding.

6 **1. (a) Confidential Information.** All documents, data, studies and other
7 materials furnished pursuant to any requests for information, subpoenas or other modes of
8 discovery (formal or informal), and including depositions, and other requests for
9 information, that are claimed to be Confidential Information, shall be so marked by the
10 Disclosing Party by stamping the same with a "Confidential Information" designation. In
11 addition, all notes or other materials that refer to, derive from, or otherwise contain parts
12 of the Confidential Information will be marked by the Receiving Party as Confidential
13 Information. Except for "Highly Confidential Information," described in Section 3 of this
14 Protective Order, and "Staff Eyes Only Confidential Information," described in Section 4
15 of this Protective Order, all Confidential Information shall be provided on yellow paper.
16 Access to and review of Confidential Information shall be strictly controlled by the terms
17 of this Protective Order.

18 The Disclosing Party shall memorialize in writing any Confidential Information
19 that it verbally discloses to a Receiving Party within five (5) business days of its verbal
20 disclosure, and the writing shall be marked by the Disclosing Party with the appropriate
21 designation.

22 Each Disclosing Party agrees that it will carefully consider the basis upon which
23 any information is claimed to be trade secret, proprietary, confidential, or otherwise
24 legally protected. A Disclosing Party shall designate as Confidential Information only
25 such information as it may claim in good faith to be legally protected. Where only a part
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1 of a document, or only a part of an informational submittal, may reasonably be considered
2 to be trade secret, proprietary, confidential, or otherwise legally protected, the Disclosing
3 Party shall designate only that part of such information submittal as Confidential
4 Information under this Protective Order. Information that is publicly available from any
5 other source shall not be claimed as Confidential Information under this Protective Order.
6 Any Party shall have the right to challenge at any time the Disclosing Party's designation
7 of any document or portion thereof as Confidential Information in accordance with the
8 procedures described in Section 56 of this Protective Order.

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

18 This Protective Order does not prohibit a Receiving Party from using and
19 disclosing Confidential Information provided by a Disclosing Party in reports or
20 documents that aggregate all information gathered from the Parties to this docket,
21 provided that a Disclosing Party's individual disclosure is indiscernible from the
22 aggregate report. In addition, where Confidential Information provided by a Disclosing
23 Party is confidential solely as a result of either disclosing individual customer information
24 or disclosing specific prices, this Protective Order shall not prohibit a Receiving Party
25 from the public disclosure of such information in an aggregated form where no individual
26 customer or specific individual price can be ascertained.

1 (c) **Persons Entitled to Review.** Each Party that receives Confidential
2 Information pursuant to this Protective Order must limit access to such Confidential
3 Information to (1) attorneys employed or retained by the Party in these proceedings and
4 the attorneys' staff; (2) experts, consultants and advisors who need access to the material
5 to assist the Party in these proceedings; (3) only those employees of the Party who are
6 directly involved in these proceedings, provided that counsel for the Party represents that
7 no such employee is engaged in the sale or marketing of that Party's products or services.
8 In addition, access to Confidential Information may be provided to Commissioners,
9 Commission Administrative Law Judges, Commission advisory staff members, and
10 employees of the Commission, to whom disclosure is necessary. ~~Where a Receiving~~
11 ~~Party acts as an advocate in a trial or adversarial role, disclosure of both Confidential~~
12 ~~Information and Highly Confidential Information to such Receiving Party and consultants~~
13 ~~employed by the Receiving Party shall be under the same terms and conditions as~~
14 ~~described in this Protective Order.~~

15 (d) **Nondisclosure Agreement.** Any Party, person, or entity that
16 receives Confidential Information pursuant to this Protective Order shall not disclose such
17 Confidential Information to any person, except persons who are described in subsection
18 1(c) above and who have signed a Nondisclosure Agreement in the form which is
19 attached hereto and incorporated herein as Exhibit "A." Court reporters shall also be
20 required to sign an Exhibit "A" and comply with terms of this Protective Order.
21 Commissioners, Administrative Law Judges, and their respective staff members are not
22 required to sign an Exhibit "A."

23 The Nondisclosure Agreement (Exhibit "A") shall require the person(s) to
24 whom disclosure is to be made to read a copy of this Protective Order and to certify in
25 writing that they have reviewed the same and have consented to be bound by its terms.
26

1 The agreement shall contain the signatory's full name, employer, job title and job
2 description, business address and the name of the Party with whom the signatory is
3 associated. Such agreement shall be delivered to counsel for the Disclosing Party before
4 disclosure is made, and if no objection thereto is registered to the Commission within
5 three (3) business days, then disclosure shall follow. An attorney who makes
6 Confidential Information available to any person listed in subsection 1(c) above shall be
7 responsible for having each person execute an original Exhibit "A" and a copy of all such
8 signed Exhibit "A" forms shall be circulated to all other counsel of record promptly after
9 execution.

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

17 **(b) Return.** All notes, to the extent they contain Confidential
18 Information shall be destroyed after the final settlement or conclusion of these
19 proceedings. The Party destroying such Confidential Information shall advise the
20 Disclosing Party of that fact within a reasonable time from the date of destruction.

21 **3. Highly Confidential Information.**

22 **(a)** Parties involved in this proceeding may include competitors, or
23 potential competitors of the Joint Applicants. Moreover, information relevant to the
24 resolution of this matter is expected to include sensitive competitive information.
25 Disclosing Parties to this proceeding may receive discovery requests that call for the
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1 disclosure of highly confidential documents, data, studies or other materials or
2 information ("Highly Confidential Information"), the disclosure of which imposes a
3 highly significant risk of competitive harm to the Disclosing Party or third parties. Thus,
4 Disclosing Parties may designate documents or information they consider to be Highly
5 Confidential Information and such documents or information will be disclosed only in
6 accordance with the provisions of this Section 3.

7 **(b)** Disclosing Parties must carefully scrutinize responsive documents
8 and information and strictly limit the amount of information they designate as Highly
9 Confidential Information to only information that truly might impose a serious business
10 risk if disseminated without the heightened protections provided in this Section 3. The
11 first page and individual pages of a document determined in good faith to include Highly
12 Confidential Information must be marked by a stamp that reads: "HIGHLY
13 CONFIDENTIAL — USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET
14 NOS. T-01051B-10-0194, ET. AL."

15 **(c)** Placing a "Highly Confidential" stamp on the first page of a
16 document indicates only that one or more pages contains Highly Confidential Information
17 and will not serve to protect the entire contents of a multi-page document. Each page that
18 contains Highly Confidential Information must be marked separately to indicate where
19 Highly Confidential Information is redacted. The unredacted versions of each page
20 containing Highly Confidential Information and provided under seal ~~also~~ this Section 3
21 must be stamped with a "Highly Confidential" stamp and submitted on pink paper with
22 references (*i.e.*, highlighting or other markings) to show where Highly Confidential
23 Information is redacted in the original document.

24 **(d)** Intervenor Parties who seek access to or disclosure of Highly
25 Confidential Information must designate one outside counsel and not more than one
26

1 outside consultant, legal or otherwise, to receive and review materials marked "HIGHLY
2 CONFIDENTIAL — USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET
3 NOS. T-01051B-10-0194, ET. AL." For each person for whom access to Highly
4 Confidential Information is sought, the Receiving Party must submit to the Disclosing
5 Party that designated the material as Highly Confidential Information and file with the
6 Commission, a Highly Confidential Information Nondisclosure Agreement, in the form
7 attached as Exhibit "B" to this Protective Order, certifying that the person requesting
8 access to the Highly Confidential Information:

- 9
- 10 (1) Is not now involved, and will not for a period of two years
11 involve themselves in, competitive decision making with
12 respect to which the documents or information may be
13 relevant, by or on behalf of any company or business
14 organization that competes, or potentially competes, with the
15 Disclosing Party or business organization from whom they
16 seek disclosure of Highly Confidential Information with
17 respect to the pricing, marketing, and sales of
18 telecommunications services in the state of Arizona; and
 - 19 (2) Has read and understands, and agrees to be bound by, the
20 terms of the Protective Order in this proceeding, including
21 this Section of the Protective Order.

22 (e) The provisions and restrictions in subsection 3(d) above also apply to
23 Staff and RUCO and any experts or consultants they retain to review the Highly
24 Confidential Information. However, one (1) copy of Highly Confidential Information
25 may also be given to Staff and RUCO's designated in-house attorney and a designated
26 Staff and RUCO in-house analyst.

(f) Any Disclosing Party may object in writing to the designation of any
individual counsel or consultant as a person who may review Highly Confidential
Information within five (5) days after receipt of a Highly Confidential Information
Nondisclosure Agreement. Any such objection must demonstrate good cause, supported

1 by affidavit, to exclude the challenged counsel or consultant from the review of the
2 Highly Confidential Information. Written response to any objection must be returned
3 within five (5) days after receipt of the objection. If, after receiving a written response to
4 a Party's objection, the objecting Party still objects to disclosure of the Highly
5 Confidential Information to the challenged individual, the Administrative Law Judge
6 shall determine whether the Highly Confidential Information must be disclosed to the
7 challenged individual.

8 (g) Intervenor outside counsel designated in the manner described in
9 subsection 3(d) above, may provide one (1) copy of the Highly Confidential Information
10 to their outside consultants or experts who have been designated to receive Highly
11 Confidential Information in the manner described in subsection 3(d) above. Designated
12 outside counsel and consultants (including Staff and RUCO pursuant to subsection 3(e)
13 above) will each maintain the Highly Confidential Information and any notes reflecting
14 their contents in a secure location to which only designated counsel and consultants have
15 access. No additional copies will be made, except for use as part of prefiled testimonies
16 or exhibits or during the hearing, and then such copies shall also be subject to the
17 provisions of this Protective Order.

18 (h) Staff of designated outside counsel and staff of designated outside
19 consultants who are authorized to review Highly Confidential Information (including
20 Staff and RUCO pursuant to subsection 3(e) above) may have access to Highly
21 Confidential Information for purposes of processing the case, including but not limited to
22 receiving and organizing discovery, and preparing prefiled testimony, hearing exhibits,
23 and briefs. Outside counsel and consultants are responsible for appropriate supervision of
24 their staff to ensure the protection of all Highly Confidential Information consistent with
25 the terms of this Protective Order.
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1 (i) Any testimony or exhibits prepared that include or reflect Highly
2 Confidential Information must be maintained in the secure location until filed with the
3 Commission or removed to the hearing room for production under seal and under
4 circumstances that will ensure continued protection from disclosure to persons not
5 entitled to review Highly Confidential Information. Counsel will provide prior notice (at
6 least one business day) of any intention to introduce Highly Confidential Information at
7 hearing, or refer to such Highly Confidential Information in cross-examination of a
8 witness. The Administrative Law Judge will determine the process for including such
9 Highly Confidential Information following consultation with the Parties.

10 (j) The designation of any document or information as Highly
11 Confidential Information may be challenged by motion and the classification of the
12 document or information as Highly Confidential Information will be considered in
13 chambers by the Administrative Law Judge. The Party contending that a document or
14 information is Highly Confidential Information bears the burden of proving that such
15 designation is necessary.

16 **4. Staff Eyes Only Confidential Information.**

17 (a) In addition to requests for information and/or documents deemed
18 Confidential Information or Highly Confidential Information, Parties to this proceeding
19 may receive discovery requests that call for the disclosure of even more sensitive
20 confidential documents or information, the disclosure of which imposes a greater risk of
21 competitive harm to the Disclosing Party or third parties than the disclosure of
22 Confidential Information or Highly Confidential Information. This information, which
23 would cause irreparable harm to the Disclosing Party, is contained in the following types
24 of documents:

- 25 : Strategic business plans and analysis
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- New product roll-out timelines
- Market share information

In order to protect such highly sensitive information and documents from disclosure to competitors, a Party may designate the documents and information for review by Staff and RUCO only ("Staff Eyes Only Confidential Information"), and such documents or information will be disclosed only in accordance with the provisions of this Section 4.

(b) A Disclosing Party shall carefully scrutinize responsive documents and information and strictly limit the amount of information designated as Staff Eyes Only Confidential Information to only information that truly might impose a serious business risk if disseminated without the heightened protections provided in this Section 4. The first page and individual pages of a document determined in good faith to include Staff Eyes Only Confidential Information must be marked by a stamp that reads: "STAFF EYES ONLY CONFIDENTIAL INFORMATION-USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NOS. T-01051B-10-0194, ET AL." A Disclosing Party shall list information and documents identified as Staff Eyes Only Confidential Information in a privilege log which shall be provided to the Receiving Party in order that the Receiving Party may evaluate the validity of the Staff Eyes Only designation. A Staff Eyes Only designation may be challenged pursuant to Sections 4(h) and 6 below.

(c) Placing a Staff Eyes Only Confidential Information stamp on the first page of a document indicates only that one or more pages contains Staff Eyes Only Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Staff Eyes Only Confidential Information must be marked separately to indicate where Staff Eyes Only Confidential Information is redacted. The unredacted versions of each page containing Staff Eyes Only Confidential

1 Information must be stamped as set forth in Section 4(b) and submitted on light green
2 paper with references (i.e., highlighting or other markings) to show where Staff Eyes
3 Only Confidential Information is redacted in the original document.

4 (d) Only Staff and RUCO, and their respective employees and
5 outside consultants assigned to this case, may receive, review, or use Staff Eyes Only
6 Confidential Information. Staff and RUCO shall submit the Staff Eyes Only Confidential
7 Information Nondisclosure Agreement in the form attached as Exhibit "C" to this
8 Protective Agreement for each person who will have access to Staff Eyes Only
9 Confidential Information and any external experts or consultants they wish to have review
10 the Staff Eyes Only Confidential Information.

11 (e) A Disclosing Party may object in writing to the designation by Staff
12 or RUCO of any outside consultant as a person who may review Staff Eyes Only
13 Confidential Information within five (5) days after receipt of a Staff Eyes Only
14 Confidential Information Nondisclosure Agreement. Any such objection must
15 demonstrate good cause, supported by affidavit, to exclude the challenged outside
16 consultant from the review of the Staff Eyes Only Confidential Information. Written
17 response to any objection must be returned by Staff or RUCO within five (5) days after
18 receipt of the objection. If, after receiving a written response from Staff or RUCO, a
19 Disclosing Party still objects to disclosure of the Staff Eyes Only Confidential
20 Information to the challenged individual, the Administrative Law Judge shall determine
21 whether the Staff Eyes Only Confidential Information must be disclosed to the challenged
22 individual.

23 (f) Staff and RUCO shall each maintain the Staff Eyes Only
24 Confidential Information and any notes reflecting their contents in a secure location to
25 which only designated counsel and consultants have access. Staff of any Staff-retained
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1 outside consultants or RUCO-retained outside consultants who are authorized to review
2 Staff Eyes Only Confidential Information may have access to Staff Eyes Only
3 Confidential Information for purposes of processing this case, including but not limited to
4 receiving and organizing discovery, and preparing prefiled testimony, hearing exhibits,
5 and briefs; provided, however, that Staff-retained outside consultants and RUCO-retained
6 outside consultants are responsible for appropriate supervision of their staffs to ensure the
7 protection of all Staff Eyes Only Confidential Information consistent with the terms of
8 this Protective Order.

9 (g) Any testimony or exhibits prepared that include or reflect Staff Eyes
10 Only Confidential Information must be maintained in a secure location that will ensure
11 continued protection from disclosure to persons not entitled to review Staff Eyes Only
12 Confidential Information. Counsel for Staff and/or counsel for RUCO shall provide prior
13 notice to the Disclosing Party (at least one business day) of any intention to introduce
14 Staff Eyes Only Confidential Information at hearing, or refer to such Staff Eyes Only
15 Confidential Information in cross-examination of a witness. The Administrative Law
16 Judge shall determine the process for including such Staff Eyes Only Confidential
17 Information following consultation with the parties.

18 (h) Except for Staff and RUCO, no Parties shall be entitled to any
19 information or documents identified as Staff Eyes Only Confidential Information;
20 provided, however, that any information or documents identified as Staff Eyes Only
21 Confidential Information may be challenged by motion, and the classification of the
22 information or document as Staff Eyes Only Confidential Information will be considered
23 in chambers by the Administrative Law Judge. The Disclosing Party bears the burden of
24 proving that such designation is necessary.

1 **5. Objections to Admissibility.** The furnishing of any document, data, study
2 or other materials pursuant to this Protective Order shall in no way limit the right of the
3 Disclosing Party to object to its relevance or admissibility in proceedings before the
4 Commission.

5 **5.6. Challenge to Confidentiality.** This Protective Order establishes a
6 procedure for the expeditious handling of information that a Party claims is Confidential
7 Information ~~or~~, Highly Confidential Information or Staff Eyes Only confidential
8 Information. It shall not be construed as an agreement or ruling on the confidentiality of
9 any document. Any Party may challenge the characterization of any information,
10 document, data or study claimed by the Disclosing Party to be confidential in the
11 following manner:

12 **(a)** A Party seeking to challenge the confidentiality of any materials
13 pursuant to this Protective Order shall first contact counsel for the
14 Disclosing Party and attempt to resolve any differences by
15 stipulation;

16 **(b)** In the event that the Parties cannot agree as to the character of the
17 information challenged, any Party challenging the confidentiality
18 shall do so by appropriate pleading. This pleading shall:

19 **(1)** Designate the document, transcript or other material
20 challenged in a manner that will specifically isolate the
21 challenged material from other material claimed as
22 confidential; and

23 **(2)** State with specificity the grounds upon which the documents,
24 transcript or other material are deemed to be non-confidential
25 by the challenging Party.

26 **(c)** A ruling on the confidentiality of the challenged information,
document, data or study shall be made by an Administrative Law
Judge after proceedings in camera, which shall be conducted under
circumstances such that only those persons duly authorized
hereunder to have access to such confidential materials shall be
present. This hearing shall commence no earlier than five (5)

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business days after service on the Disclosing Party of the pleading required by subsection 56(b) above.

(d) The record of said in camera hearing shall be marked "CONFIDENTIAL, HIGHLY CONFIDENTIAL, OR STAFF EYES ONLY (as the case may be) — SUBJECT TO PROTECTIVE ORDER IN DOCKET NOS. T-01051B-10-0194, ET. AL." Court reporter notes of such hearing shall be transcribed only upon agreement by the Parties or Order of the Administrative Law Judge and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Protective 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 Protective 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 Disclosing Party to do so. The provisions of this subsection are intended to enable the Disclosing Party to seek a stay or other relief from an order removing the restriction of this Protective Order from materials claimed by the Disclosing Party to be confidential.

6.7. (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-~~or, Highly Confidential Information or Staff Eyes Only~~ Confidential Information, the Parties intending to use such ~~Information~~information shall make that intention known to the Disclosing Party.
- (2) The Requesting Party and the Disclosing Party shall make a good-faith effort to reach an agreement so that the Confidential Information-~~or, Highly Confidential Information or Staff Eyes Only~~ Confidential Information can be used in a manner which will not reveal its confidential or proprietary nature.
- (3) If such efforts fail, the Disclosing Party shall separately identify which portions, if any, of the documents to be offered or referenced shall be placed in a sealed record.

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- (4) Only one (1) copy of the document designated by the Disclosing Party to be placed in sealed record shall be made.
- (5) The copy of the documents to be placed in the sealed record shall be tendered by counsel for the Disclosing Party to the Commission, and maintained in accordance with the terms of this Protective Order.

(b) **Seal.** While in the custody of the Commission, materials containing: (1) Confidential Information shall be marked "CONFIDENTIAL — SUBJECT TO PROTECTIVE ORDER IN DOCKET NOS. T-01051B-10-0194, ET. AL;" and (2) Highly Confidential Information shall be marked "HIGHLY CONFIDENTIAL — USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NOS. T-01051B-10-0194, ET. AL;" and (3) Staff Eyes Only Confidential Information shall be marked "STAFF EYES ONLY CONFIDENTIAL INFORMATION — USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NOS. T-01051B-10-0194, ET. AL." and shall not be examined by any person except under the conditions set forth in this Protective Order.

(c) **In Camera Hearing.** Any Confidential Information ~~or~~, Highly Confidential Information or Staff Eyes Only 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 Protective Order. Similarly, any cross-examination on or substantive reference to Confidential Information ~~or~~, Highly Confidential Information or Staff Eyes Only Confidential Information (or that portion of the record containing Confidential Information ~~or~~, Highly Confidential Information, Staff Eyes Only Confidential Information, or references thereto) shall be received in an in camera hearing, and shall be marked and treated as provided herein.

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(d) **Access to Record.** Access to sealed testimony, records and information shall be limited to the Administrative Law Judge, Commissioners, and their respective staffs, and persons who are entitled to review Confidential Information ~~or~~ Highly Confidential Information, or Staff Eyes Only Confidential Information pursuant to subsections 1(c) ~~and~~ 3(d) and 4(d) above and have signed Exhibit "A," ~~or~~ "B" or "C" forms, unless such information is released from the restrictions of this Protective Order either through agreement of the Parties or after notice to the Parties and hearing, pursuant to the ruling of an Administrative Law Judge, the order of the Commission 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 but under seal as designated herein for the information and use of the court or the Federal Communications Commission. If a portion of the record is forwarded to a court, the Disclosing Party shall be notified which portion of the sealed record has been designated by the appealing Party as necessary to the record on appeal.

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

1 In the event that the Commission becomes legally compelled (by deposition,
2 interrogatory, request for documents, subpoena, civil investigative demand, or similar
3 process) to disclose any of the Confidential Information, Highly Confidential Information
4 or Staff Eyes Only Confidential Information, the Commission shall provide Disclosing
5 Party with prompt written notice of such requirement so that Disclosing Party may seek
6 an appropriate remedy and/or waive compliance.

7 (g) **Return.** Unless otherwise ordered, Confidential Information ~~and,~~
8 Highly Confidential Information and Staff Eyes Only Confidential Information, including
9 transcripts of any depositions to which a claim of confidentiality is made, shall remain
10 under seal, shall continue to be subject to the protective requirements of this Protective
11 Order, and shall, at the Disclosing Party's discretion, be returned to counsel for the
12 Disclosing Party, or destroyed by the Receiving Party, within thirty (30) days after final
13 settlement or conclusion of these proceedings. If the Disclosing Party elects to have
14 Confidential Information ~~or,~~ Highly Confidential Information or Staff Eyes Only
15 Confidential Information destroyed rather than returned, counsel for the Receiving Party
16 shall verify in writing that the material has in fact been destroyed.

17 **7.8. Use in Pleadings.** Where references to Confidential Information ~~or,~~ Highly
18 Confidential Information or Staff Eyes Only Confidential Information in the sealed record
19 or with the Disclosing Party is required in pleadings, briefs, arguments or motions (except
20 as provided in Section 56), it shall be by citation of title or exhibit number or some other
21 description that will not disclose the substantive Confidential Information ~~or,~~ Highly
22 Confidential Information or Staff Eyes Only Confidential Information contained therein.
23 Any use of or substantive references to Confidential Information ~~or,~~ Highly Confidential
24 Information or Staff Eyes Only Confidential Information shall be placed in a separate
25 section of the pleading or brief and submitted to the Administrative Law Judge or the
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1 Commission under seal. This sealed section shall be served only on counsel of record and
2 Parties of record who have signed, as applicable, the attached “Exhibit A – Confidential
3 Information Nondisclosure Agreement,” ~~or~~ “Exhibit B – Highly Confidential Information
4 Nondisclosure Agreement” or “Exhibit C – Staff Eyes Only Confidential Information
5 Nondisclosure Agreement.” All of the restrictions afforded by this Protective Order
6 apply to materials prepared and distributed under this Section.

7 **8.9. Summary of Record.** If deemed necessary by the Commission, the
8 Disclosing Party shall prepare a written summary of the Confidential Information ~~or~~,
9 Highly Confidential Information or Staff Eyes Only Confidential Information referred to
10 in the Protective Order to be placed on the public record.

11 **9.10. Breach of Agreement.** A Disclosing Party, in any legal action or
12 complaint that it files in any court alleging breach of this Protective Order shall, at the
13 written request of the Commission, name the Arizona Corporation Commission as a
14 Defendant therein.

15 **10.11. Non-Termination.** The provisions of this Protective Order shall not
16 terminate at the conclusion of this proceeding.

17 **11.12. Effective Date.** The effective date of this Protective Order shall be
18 ~~June~~August __, 2010.

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EXHIBIT A

CONFIDENTIAL INFORMATION NONDISCLOSURE AGREEMENT

I have read the foregoing Protective Order dated ~~June~~August __, 2010, in Docket Nos. T-01051B-10-0194, T-02811B-10-0194, T-04190A-10-0194, T-20443A-10-0194, T-03555A-10-0194 and T-03902A-10-0194 and agree to be bound by the terms and conditions of the Protective Order.

Name

Employer

Job title and Job Description

Business Address

Party

Signature

Date

Role in Proceeding

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EXHIBIT B

HIGHLY CONFIDENTIAL INFORMATION NONDISCLOSURE AGREEMENT
Docket Nos. T-01051B-10-0194, T-02811B-10-0194, T-04190A-10-0194, T-20443A-10-0194, T-03555A-10-0194 and T-03902A-10-0194.

I, _____, as

- Staff/RUCO Attorney
- Staff/RUCO Expert/Analyst
- Staff/RUCO Outside Expert/Consultant
- Intervenor Outside Counsel
- Intervenor Outside Expert/Consultant

in this proceeding for _____ (a Party to this proceeding) hereby declare under penalty of perjury under the laws of the State of Arizona that the following are true and correct:

a. I am not now involved in, and will not for a period of two years involve myself in, competitive decision making with respect to which the documents or information protected by this Non Disclosure Agreement may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with the company or business organization from whom they seek disclosure of Highly Confidential Information with respect to the pricing, marketing, and sales of telecommunications services ~~in the State of Arizona~~; and

b. I have read and understand, and agree to be bound by, the terms of the Protective Order dated ~~June~~ August ____, 2010, in this proceeding, including Section 3 of the Protective Order.

Signature

Date

City/State where this Agreement was signed

Employer

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Position and Responsibilities

Permanent Address

The following portion is to be completed by the Disclosing Party and filed with the Commission within ten (10) days of receipt. Failure to do so will constitute a waiver and the above-named person will be deemed a person having access to Highly Confidential Information under the terms and conditions of the Protective Order.

_____ No objection.

_____ Objection. _____ (Disclosing Party) objects to the above-named person having access to Highly Confidential Information. The Disclosing Party shall file a motion with the Commission, supported by affidavit, setting forth the basis for objection and asking exclusion of the person from access to Highly Confidential Information.

Signature

Date

