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April 4, 2003

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Missouri Public
Service Commission

Dale Roberts
Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

RE: Protective Order Rule

Dear Mr. Roberts:

AT&T offers the following preliminary comments regarding the proposed variations of the protective order that were posted on the Commission WEB page.

As an initial matter, as you may know, AT&T has raised concerns regarding the two-tier protective order that is currently in place in Missouri in several dockets.

Specifically, AT&T addressed the deficiencies of the current protective order in the following pleadings in Case No. TR-2001-65: AT&T's and TCG's Motion Requesting the Adoption of Modified Protective Order, dated May 3, 2002; AT&T's and TCG's Reply to Southwestern Bell's Response in Opposition to AT&T's Motion Requesting the Adoption of a Modified Protective Order, dated May 23, 2002; Motion for Reconsideration, dated

Dale Roberts
Chief Regulatory Law Judge
Missouri Public Service Commission
April 4, 2003
Page 2 of 6

July 18, 2002, AT&T's Initial Post Hearing Brief, dated December 13, 2002; and AT&T's Reply Brief, dated January 17, 2003. The major concern AT&T has with the current two-tier system relates to the restriction on access by in-house experts to information designated as highly confidential. This concern has been exacerbated by the fact that, in AT&T's view, the highly confidential tier of the protective order has been abused by some parties, severely constraining other parties from fully and fairly participating in proceedings because of the restriction on in-house experts review of highly confidential information. Therefore, AT&T opposes the ongoing use of the two-tier protective order.

AT&T believes that the One Tier and the Two-Tier Strict proposals are an improvement over the current procedure. However, AT&T makes suggestions on changes to those two versions.

In both proposals, an attempt is made to define specific subject area documents that constitute confidential and highly confidential information. AT&T believes the better approach is to use a single, more generic definition of confidential, rather than attempting to identify the specific information by subject matter that the Commission believes is confidential or highly confidential. (*See, e.g.,* sample Texas protective order.) This is the approach used in most trade secret statutes and many other protective orders AT&T has encountered. For example, an approach used in some states is to tie the definition to the state trade secret statute. I have attached some examples of protective orders used in other

Dale Roberts
Chief Regulatory Law Judge
Missouri Public Service Commission
April 4, 2003
Page 3 of 6

states that provide alternative language. Missouri has enacted the Missouri Uniform Trade Secrets Act. (See RSMo 2001, Sections 417.450 through 417.467.)

Another option, if the Commission is inclined to retain the current definition, is to add the more generic definition before the current definition and use the current definition as examples of information that may constitute confidential information. This is the approach used in Kansas. (See attached example of Kansas protective order.)

In addition, AT&T acknowledges that there may be some data/information that warrants special protection. AT&T believes that rather than using the Two-Tier Strict approach, another option would be to craft language that, in addition to the one-tier level of protection, would allow a party to move for special protections. For example, the rules in Colorado, provided with this letter, have such a provision. (See Colorado Rule 723-16-3.2.) If language similar to that in the Colorado rule were adopted, the Commission would have the flexibility to determine on a case-by-case basis, whether such special protections were warranted. This would be preferable to the Two-Tier Strict proposal, which determines in advance for every proceeding that certain information deserves special protection and prohibits all in-house employees from gaining access to such information.

Another option would be to specifically identify classes of information that warrant special protection. For example, the Minnesota protective order provides that marketing sensitive information may not be disclosed to any employee of a party with

Dale Roberts
Chief Regulatory Law Judge
Missouri Public Service Commission
April 4, 2003
Page 4 of 6

responsibility for marketing, product development or market entry. (See Section 1(c) of the Minnesota standard protective order.)

The Two-Tier Strict proposal is too broad because it includes in its definition of highly confidential information documents that are normally treated as confidential in other states. In addition, its limitations on access are too broad, restricting in-house experts access to any document defined as highly confidential. A better approach would be to more narrowly target the access limitations to employee subsets that could use the information to the benefit of the corporation. As an example, in the attached Minnesota protective order, the Minnesota Commission identified marketing-sensitive information as warranting special protections in the case, but only precluded access to such information by in-house employees that have marketing, product development and market entry responsibilities. Such a provision would still allow other in-house experts, who are involved in the proceeding, to review the information pursuant to the terms of the protective order.

In addition, in the Two-Tier Strict proposal, trade secrets are inappropriately defined as "proprietary" information. Much of the information defined as highly confidential information in that proposal could meet the definition of trade secret in Missouri law. Further, information such as access line counts or other competitively sensitive information could meet the definition of trade secret and may warrant special

Dale Roberts
Chief Regulatory Law Judge
Missouri Public Service Commission
April 4, 2003
Page 5 of 6

protections, yet under the Two-Tier Strict would appear to fall under the definition of "proprietary" information. This provision should be revised to eliminate the reference to trade secret or, as discussed above, should be consolidated into the more generic, single definition of confidential information.

Next, because of the concerns regarding abuse in claiming documents confidential, AT&T proposes the inclusion of a rule similar to one adopted in Colorado, which provides:

723-16-3.1.1 A claim of confidentiality constitutes a representation to the Commission that the claiming party has a reasonable and good faith belief that the subject document or information is, in fact, confidential under applicable law, including §§ 24-72-201 et. seq., C.R.S. If a claim of confidentiality is made in violation of this Rule 3.1.1, the Commission may impose an appropriate sanction upon the claiming party, including an order to pay to other parties the amount of reasonable expenses incurred because of the claim of confidentiality, including a reasonable attorney's fee.

Of course, the specific language would have to be adapted for use in Missouri. However, AT&T believes the underlying purpose of this section is one that should be adopted in Missouri. It properly places the burden on the designating party to only designate documents as confidential that legitimately fall within the definition of confidential.

Finally, one other area of concern for AT&T with respect to the current proposals is the treatment of voluminous data. It has been AT&T's experience with SWBT recently

Dale Roberts
Chief Regulatory Law Judge
Missouri Public Service Commission
April 4, 2003
Page 6 of 6

that very few documents are produced directly to the requesting party by SWBT. Rather, SWBT claims everything is voluminous and requires counsel to come to St. Louis or Jefferson City to review documents. AT&T believes that the voluminous production rule was intended to be an exception, not a rule. In any event, there needs to be some parameters placed around the operation of this rule in order to disincent this type of production conduct.

AT&T appreciates the opportunity to provide comments on these proposals and hope to work with the Commission to develop a fair and balanced protective order for use in Missouri. If you have any questions regarding AT&T comments, please feel free to call me.

Very truly yours,

A handwritten signature in black ink that reads "Rebecca B. DeCook by DRF". The signature is written in a cursive, flowing style.

Rebecca B. DeCook
Counsel for AT&T

Enclosures

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MAY 02 2003

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
Suite 1700
100 Washington Square
Minneapolis, Minnesota 55401-2138

Missouri Public
Service Commission

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
Suite 350
121 Seventh Place East
St. Paul, Minnesota 55101-2147

Gregory Scott
Edward A. Garvey
Marshall Johnson
LeRoy Koppendrayner
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of an Investigation Regarding
Qwest's Compliance with Section 271 of the
Telecommunications Act of 1996 with Respect
to the Provision of InterLATA Services
Originating in Minnesota

MPUC Docket No. P-421/CI-96-1114
OAH Docket No. 12-2500-14473-2

In the Matter of a Commission Investigation
Into Qwest's Compliance with Sec. 271 (c)(2)
(B) of the Telecommunications Act of 1996;
Checklist Items 3, 7, 8, 9, 10 and 12

MPUC Docket No. P-421/CI-01-1370
OAH Docket No. 12-2500-14485-2

In the Matter of a Commission Investigation
Into Qwest's Compliance with Sec. 271 (c)(2)
(B) of the Telecommunications Act of 1996;
Checklist Items 1, 2, 4, 5, 6, 11, 13 and 14

MPUC Docket No. P-421/CI-01-1371
OAH Docket No. 7-2500-14486-2

In the Matter of a Commission Investigation
Into Qwest's Compliance with Sec. 272
of the Telecommunications Act of 1996's
Separate Affiliate Requirements

MPUC Docket No. P-421/CI-01-1372
OAH Docket No. 7-2500-14487-2

In the Matter of a Commission Investigation
Into Qwest's Compliance with Sec. 271 (d)
(3)(C) of the Telecommunications Act of 1996
That the Requested Authorization is Consistent
with the Public Interest, Convenience and
Necessity

MPUC Docket No. P-421/CI-01-1373
OAH Docket No. 12-2500-14488-2

In the Matter of Qwest's Statement of
Generally Available Terms (SGAT)
Pursuant to Section 252 (f) of the
Telecommunications Act of 1996

MPUC Docket No. P-421/CI-01-1374
OAH Docket No. 12-2500-14489-2

PROTECTIVE AGREEMENT

WHEREAS, the parties to this proceeding may request each other to produce certain valuable confidential, trade secret and business information including third party information, i.e., cost studies, computer models, workpapers, analyses and other documentation ("Confidential Information") upon which any such party will rely to demonstrate the existence of costs and to support rates and charges associated with the provision of the interconnection services and unbundled facilities and wholesale services requested by the competitive entrants.

AND WHEREAS, either (1) no protective order has been issued by the Commission and without such order or its equivalent, the parties are unwilling to produce those responses which in the party's view are legally protected trade secret or otherwise confidential business information, or (2) such protective order as has been issued, does not specifically refer to and protect the vendor proprietary data in a responding party's possession, production of which is desired by the requesting party. The requesting parties desire the production of such information.

Therefore, in order to make these materials available for purposes of this proceeding, the parties have entered into the following Protective Agreement regarding the protection of confidential, trade secret and business information:

1. (a) Confidential Information. All documents, data, information, studies and other materials furnished or made available pursuant to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery that are claimed by the parties to be of a trade secret, competitive or business nature shall be furnished pursuant to the terms of this Agreement, and shall be treated by all persons accorded access thereto pursuant to this Agreement as

constituting confidential, competitive, trade secret, and business information, and shall neither be used nor disclosed except for the purpose of such proceedings, and solely in accordance with this Agreement. All material claimed to be Confidential Information shall be so marked by the party or its affiliates by stamping each individual page with the designation, "CONFIDENTIAL -- SUBJECT TO PROTECTIVE AGREEMENT IN ARBITRATION DOCKET." All copies of documents so marked will be made on yellow paper. For purposes hereof, notes made pertaining to or as the result of a review of Confidential Information shall be subject to the terms of this Agreement. Parties serving on disk should serve both a confidential and non-confidential disk clearly marked as such.

(b) Use of Confidential Information and Persons Entitled to Review. All Confidential Information made available pursuant to this Agreement shall be given solely to counsel for the requesting party and shall not be used or disclosed except for purposes of this proceeding; provided, however, that access to any specific Confidential Information may be authorized by said counsel, solely for the purpose of this proceeding, to those persons indicated by counsel as being the party's experts or witnesses in this matter.

(c) Special limitation on use for Marketing Sensitive Information. The disclosing party may designate the Confidential Information as "Marketing Sensitive" information if it determines in good faith that the information made available would disclose product development, marketing plan or customer information. Such Confidential Information will not be made available to any employee of a party with responsibility for marketing, product development or market entry.

(d) Identification of persons receiving access to Confidential Information. Counsel for each party receiving such information as described in paragraphs

(b) and (c) above will provide written notice to the disclosing party listing the names and firm or company affiliation of all experts to whom such information will be disclosed. In addition, if such experts are employees of the party or an affiliate, a general description of such employee's job responsibilities will be part of the notification required in this paragraph. Such notice will be made in sufficient time prior to receipt of information to provide reasonable opportunity for objection by the disclosing party.

(e) Special Limitation on Use for Vendor Proprietary Information. If information [containing Confidential Information] as claimed by a third party vendor to be confidential ("Vendor Proprietary Information") is to be provided by a responding party, each party receiving such information will provide written notice to the involved vendor indicating the information to be received and listing the names and firm or company affiliation of all attorneys and experts to whom such information will be disclosed. Such notice will be made in sufficient time prior to receipt of information to provide reasonable opportunity for intervention or objection by vendor(s). This notice is in addition to any notice that U S WEST may be obligated to make to vendors as a result of its contractual agreements with them. Similar notification and opportunity to object will be made in the event that additional attorneys or experts are to be given access by any party to vendor proprietary information during the course of any such proceeding. No expert gaining access to Vendor Proprietary Information may be an officer, director, employee, or major shareholder (holding 5% or more of total issued stock) of any corporation, partnership or other business entity which is a competitor or customer of a vendor whose proprietary information is made available hereunder. Any dispute concerning this restriction which cannot be resolved by the parties, may be brought before the arbitrator for resolution.

(f) Nondisclosure Agreement. Prior to giving access to Confidential Information as contemplated in paragraph (b) above to any expert, whether or not such expert is a person designated to testify in any such proceeding, counsel for the party seeking review of the Confidential Information shall deliver a copy of this Agreement to such person, and prior to disclosure such person shall agree in writing to comply with and be bound by this Agreement. In connection therewith, Confidential Information shall not be disclosed to any person who has not signed a Nondisclosure Agreement in the form which is attached hereto and incorporated herein as Exhibit "A." The Exhibit "A" Nondisclosure Agreement (Exhibit "A") shall require the person to whom disclosure is to be made to read a copy of this Protective Agreement and to certify in writing that he or she has reviewed the same and has consented to be bound by its terms. The agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the providing party prior to the expert gaining access to the Confidential Information.

(g) Availability of Documentation. As to highly sensitive documents and information, the parties shall have the right, at their option, to refuse to provide copies to counsel for the other party or to its experts as defined in paragraph 1(b). Should the parties refuse to provide copies, such documents shall be made available for inspection and review by counsel or experts at a place and time mutually agreed upon by the parties. Where copies are not provided, the counsel or expert reviewing the Confidential Information may make limited notes regarding the Confidential Information for reference purposes only. Such notes shall not constitute a verbatim or substantive transcript of the Confidential Information. For purposes hereof, notes made pertaining to or as the result of

a review of Confidential Information shall be considered Confidential Information and subject to the terms of this Agreement.

2. (a) Challenge to Confidentiality. This Agreement establishes a procedure for the expeditious handling of Confidential Information; it shall not be construed as an agreement or ruling on the confidentiality of any such document.

(b) In the event that the parties hereto are unable to agree that certain documents, data, information, studies or other matters constitute Confidential Information or Marketing Sensitive information or highly sensitive documents and information referred to in paragraph 1(b), (c) or (g) above, the party objecting to the classification as Confidential Information or Marketing Sensitive information or highly sensitive documents and information shall forthwith submit the said matters to an arbitrator for review pursuant to this Agreement.

(c) Any party at any time upon ten (10) days prior notice may seek by appropriate pleading to have documents that have been designated as Confidential Information removed from the protective requirements of this Agreement. If the confidential or proprietary nature of this information is challenged, resolution of the issue shall be made by an arbitrator after proceedings *in camera* which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential matter shall be present. The record of such *in camera* hearings shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE AGREEMENT IN ARBITRATION DOCKET."

3. (a) Receipt into Evidence. Provision is hereby made for receipt of evidence in this proceeding under seal. At least ten (10) days prior to the use of or substantive reference to any Confidential Information as evidence, the party intending to use such Confidential Information shall make that intention known to the providing party. The requesting party and the providing party shall make

a good faith effort to reach an agreement so the information can be used in a manner which will not reveal its trade secret, confidential or proprietary nature. If such efforts fail, the providing party shall separately identify, within five (5) business days, which portions, if any, of the documents to be offered or referenced on the record containing Confidential Information shall be placed in the sealed record. Only one (1) copy of documents designated by the providing party to be placed in the sealed record shall be made and only for that purpose. Otherwise, parties shall make only general references to Confidential Information in this proceeding.

(b) In Camera Hearing. Any Confidential Information which 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 Confidential Information under this Agreement. Similarly, cross examination on or making substantive reference to Confidential Information as well as that portion of the record containing references thereto, shall be marked and treated as provided herein.

(c) Return. Unless otherwise ordered, Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Agreement, and shall be returned to counsel for the providing party within 30 days after final settlement or conclusion of the applicable matter including administrative or judicial review thereof.

4. Use in Pleadings. Where reference to Confidential Information in the sealed record is required in pleadings, cross-examinations, briefs, argument or motions, it shall be by citation of title or exhibit number or by some other nonconfidential description. Any further use of or substantive references to Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the

arbitrator under seal. This sealed section shall be served only on counsel of record (one copy each), who have signed a Nondisclosure Agreement. All the protections afforded in this Agreement apply to materials prepared and distributed under this paragraph.

5. Preservation of Confidentiality. All persons who may be entitled to receive, or who are afforded access to any Confidential Information by reason of this Agreement shall neither use nor disclose the Confidential Information for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of these proceedings, and then solely as contemplated herein, and shall take reasonable precautions to keep the Confidential Information secure and in accordance with the purposes and intent of this Agreement.

6. Reservation of Rights. The parties hereto affected by the terms of this Protective Agreement further retain the right to question, challenge, and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this Protective Agreement in response to interrogatories, requests for information or documents or cross-examination on the grounds of relevancy or materiality.

This Agreement shall in no way constitute any waiver of the rights of any party herein to contest any assertion or finding of trade secret, confidentiality or privilege.

DATED this 6th day of December in the year 2001.

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MAY 02 2003

THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Missouri Public
Service Commission

RULES RELATING TO THE CLAIM OF CONFIDENTIALITY
OF INFORMATION SUBMITTED TO
THE COLORADO PUBLIC UTILITIES COMMISSION

4 CODE OF COLORADO REGULATIONS (CCR) 723-16

BASIS, PURPOSE, AND STATUTORY AUTHORITY.

These rules are issued under the authority of §§ 40-2-108, 40-3-102, and 40-15-107, C.R.S. They establish procedures consistent with the mandate of § 24-72-201, C.R.S., that all public records shall be open for inspection by any person at reasonable times, subject to restrictions specifically provided by law. The rules establish the procedures to be used by: (1) a party, in a formal docket, filing information with the Commission that the party claims is confidential and therefore should not be subject to public inspection; (2) a person, outside of an open formal Commission docket, filing information with the Commission that the person claims is confidential and therefore should not be subject to public inspection; and (3) the Director, in responding to requests to inspect information under Colorado's Public Records Law, §§ 24-72-201 et seq., C.R.S.

TABLE OF CONTENTS

BASIS, PURPOSE, AND STATUTORY AUTHORITY.

RULE (4 CCR) 723-16-1. APPLICABILITY.

RULE (4 CCR) 723-16-2. DEFINITIONS.

RULE (4 CCR) 723-16-3. PROCEDURES RELATING TO INFORMATION PRODUCED IN A FORMAL COMMISSION DOCKET.

RULE (4 CCR) 723-16-4. PROCEDURES RELATING TO CONFIDENTIAL INFORMATION SUBMITTED TO THE COMMISSION OUTSIDE OF A FORMAL DOCKET.

RULE (4 CCR) 723-16-5. INFORMATION PRESUMED TO BE SUBJECT TO PUBLIC INSPECTION.

RULE (4 CCR) 723-16-6. PROCEDURES CONCERNING REQUESTS FOR PUBLIC INSPECTION OF INFORMATION CLAIMED TO BE CONFIDENTIAL.

RULE (4 CCR) 723-16-7. CRITERIA FOR DETERMINING WHETHER INSPECTION SHOULD BE GRANTED FOR INFORMATION CLAIMED TO BE CONFIDENTIAL.

RULE (4 CCR) 723-16-1. APPLICABILITY.

These rules apply to all persons filing information with or seeking information from the Commission. They also apply to the Commission, Director or a presiding officer to the extent they govern the Commission's responses to claims of confidentiality in a formal docket, requests to restrict public inspection of information outside of a formal docket, or for information under the Public Records Law.

RULE (4 CCR) 723-16-2. DEFINITIONS.

Terms defined in §§ 24-72-201 et seq., C.R.S., the Colorado Public Records Law, and Title 40, C.R.S., the Public Utilities Law, shall have the same meaning when used in these rules. In addition, the following terms mean:

723-16-2.1 Filing Under Seal. The process of filing information with the Commission in a sealed, specially marked envelope to indicate that the filing party claims that the information is confidential.

723-16-2.2 Presiding Officer. The Chair of the Commission, an Administrative Law Judge, or an individual selected by the Commission to preside in a formal Commission docket.

RULE (4 CCR) 723-16-3. PROCEDURES RELATING TO INFORMATION PRODUCED IN A FORMAL COMMISSION DOCKET.

723-16-3.1 Confidential Information. All documents, data, information, studies, computer programs, and other matters filed with the Commission in any form in a proceeding, or produced in response to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery, and all notes taken or copies made thereof, that are claimed to be a trade secret or confidential in nature (herein referred to as "confidential information") shall be furnished under the terms of this Rule 3. All persons accorded access to such confidential information, shall treat such information as constituting trade secret or confidential information and shall neither use nor disclose such information except for the purpose of the proceeding in which such information is obtained and in accordance with this Rule 3.

723-16-3.1.1 A claim of confidentiality constitutes a representation to the Commission that the claiming party has a reasonable and good faith belief that the subject document or information is, in fact, confidential under applicable law, including §§ 24-72-201 et. seq., C.R.S. If a claim of confidentiality is made in violation of this Rule 3.1.1, the Commission may impose an appropriate sanction upon the claiming party, including an order to pay to other parties the amount of reasonable expenses incurred because of the claim of confidentiality, including a reasonable attorney's fee.

723-16-3.1.2 The Commission's acceptance of information pursuant to a claim of confidentiality shall not be construed to be an agreement or ruling by the Commission that the subject information is, in fact, confidential.

723-16-3.2 To the extent there may be information which a party believes requires extraordinary protection beyond that provided for in these rules the party shall submit a motion seeking such extraordinary protection. The motion shall state the grounds for seeking the relief, the specific relief requested, and advise all other parties of the request and the subject matter of the material at issue.

723-16-3.3 Challenge to Confidentiality. This Rule 3 establishes a procedure for the expeditious handling of information that a party claims is confidential. Compliance with this rule shall not be construed as an agreement or ruling regarding the confidentiality of any document.

723-16-3.3.1 A party seeking to challenge a claim of confidentiality shall first contact counsel for the providing party and attempt to resolve any differences by stipulation.

723-16-3.3.2 In the event the parties cannot agree as to the character of the information challenged, any party challenging a claim of confidentiality shall do so by advising all parties and the Commission, in writing, that it deems material non-confidential. This notice shall designate the material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential.

723-16-3.3.3 The party claiming confidentiality shall, within ten days of the notice referenced in Rule 3.3.2, file an appropriate pleading stating grounds upon which the challenged data is deemed to be confidential. The challenging party shall have ten days to respond to the pleading. In the event the claiming party fails to file an appropriate pleading within ten days, the Commission may enter an order that the challenged material may be used in the public record.

723-16-3.3.4 When the Commission receives a pleading asserting confidentiality by the claiming party regarding any items claimed as proprietary the Commission will enter an order resolving the issue.

723-16-3.3.5 In the event the Commission rules in response to a pleading that any information is not confidential and should be removed from the protective requirements of this rule or from the protection of the sealed record, the parties, to enable the claiming party to seek a stay or other relief, shall not disclose the information or use it in the public record for five business days.

723-16-3.3.6 In the event the Commission rules that information previously

filed in a proceeding is not confidential, the filing party may, by motion submitted within five days of the ruling regarding confidentiality, request that it be permitted to remove the subject information from the record. Pending the ruling on the motion, all persons accorded access to such information shall continue to treat the information as confidential pursuant to this Rule 3.

723-16-3.3.7 In the absence of new information or a change in circumstances, as determined by the Director of the Commission in responding to a request for Commission records under §§ 24-72-201 et seq., C.R.S., a Commission ruling regarding confidentiality of specific material shall be a ruling on the confidentiality of such material for purposes of a request under §§ 24-72-201 et seq.

723-16-3.4 Procedure for Filing "Confidential" Information "Under Seal".

723-16-3.4.1 A party submitting information claimed to be confidential to the Commission shall file, as part of the public record (i.e. not under seal), the required number of copies of its testimony and/or exhibits, according to the Commission's Rules of Practice and Procedure, 4 CCR 723-1, without including the information claimed to be confidential. The first page of each of these copies shall be stamped: "NOTICE of CONFIDENTIALITY: A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL." A cover page on each copy shall include a list of the documents filed under seal and indicate the nature of the documents, so that if the documents are separated from the envelope it will still be clear that they are claimed to be confidential. Otherwise, parties shall make only general references to information claimed to be confidential in their testimony and exhibits.

723-16-3.4.2 In addition to the copies available for public inspection, the filing party shall file under seal an original and four copies of the information claimed to be confidential. All pages and copies of the information claimed to be confidential shall be clearly marked as "confidential" and shall be filed on microfilmable paper, pastel or white, not on dark colored paper such as goldenrod.

723-16-3.4.3 The five copies filed under seal shall be submitted in separate sealed envelopes numbered serially. The following information shall be written on the outside of each sealed envelope:

- (1) the caption "CONFIDENTIAL--SUBMITTED IN DOCKET NO. _____."
- (2) the name of the filing party;
- (3) date of filing;
- (4) description of the information (e.g. testimony or exhibits of _____ (name of witness));

(5) the filing party's statement as to whether it prefers to retrieve the information following conclusion of Commission proceedings and any related court actions, or whether the Commission should destroy the information by shredding; and

(6) if the party chooses to retrieve the information, in accordance with the statement contained in Rule 3.4.3(5), the name and phone number of the person who will retrieve such information.

723-16-3.5 Segregation of Files. Confidential information, if filed with the Commission, will be sealed by the Director of the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Rule 3. This treatment shall prevail unless the confidential information is released from the restrictions of this rule either through agreement of the parties and publication by the filing party, or, after opportunity for comment, pursuant to order of the Commission or final order of a court having jurisdiction.

723-16-3.6 Delivery of Documentation. Where feasible, confidential information will be marked as such and delivered to counsel for the parties. Where the material is too voluminous to copy and deliver to counsel, the confidential information shall be made available for inspection and review by counsel and experts, as provided for in Rule 3.8, at a place and time mutually agreed on by the parties, or at the premises of the providing party, or as directed by the Commission. During the inspection, the parties may take notes on the material or request and receive copies of the documents. All notes taken and copies received of such documents shall be treated as constituting trade secret or confidential information in accordance with this Rule 3.

723-16-3.7 Use of Confidential Information and Persons Entitled to Review. All confidential information made available by a party shall be given solely to the Commission, its staff, and counsel for the parties, and, shall not be used or disclosed for purposes of business or competition, or for any other purpose other than for purposes of the proceeding in which the information is produced. With the exception of Staff, any disclosure of such information to a party's experts or advisors must be authorized by that party's counsel, and must be permitted solely for the purpose of the proceeding in which the information is produced. No expert or advisor may be an officer, director, or employee concerned with marketing or strategic planning of competitive products and services of the party or of any subsidiary or affiliate of the party. Information claimed to be confidential shall not be disclosed to individual members of a trade association to the extent these individuals are concerned with marketing or strategic planning of products or services competitive to the party producing such information. Any member of the Staff of the Commission may have access to any confidential information made available under the terms of this rule. Neither is Staff limited to using confidential information only in the specific proceeding in which it was obtained. However, except

as provided in this Rule 3 or other Commission rule or order, members of Staff shall be subject to all other requirements of this rule. Upon motion approved by the Commission, the Colorado Office of Consumer Counsel may be permitted to use information subject to this Rule 3 in a proceeding or for a purpose unrelated to the specific proceeding in which the information was obtained.

723-16-3.8 Nondisclosure Agreement. No access to information under seal shall be allowed until the person seeking such access signs a nondisclosure agreement in the form that is attached and incorporated as Attachment 1. The Nondisclosure Agreement shall require the persons to whom disclosure is to be made to certify in writing that they have read this Rule 3 and agree to be bound by the terms of the Rule. The agreement shall contain the signatory's full name, business address, and employer, the name of the party with whom the signatory is associated, and, with the exception of Staff, the signature of that party's counsel. The agreement shall be delivered to counsel for the filing party and to the Commission at or before the time of review of the documents. All persons, including Staff, who are afforded access to any information under seal shall take all reasonable precautions to keep the confidential information secure in accordance with the purposes and intent of this Rule 3

723-16-3.9 Use in Pleading. Where reference to information subject to this Rule 3 is made in pleadings, briefs, arguments, or motions, it shall be by citation of title or exhibit number, or by some other description that will not disclose the information. Any further use of or substantive references to such information shall be placed in a separate section of the pleading or brief and submitted to the Commission under seal.

723-16-3.10 Appeal. Sealed portions of a record in any proceeding may be forwarded under seal to any court of competent jurisdiction on appeal in accordance with applicable rules and regulations.

723-16-3.11 Retention of Documents. At the conclusion of the proceedings, all documents and information subject to this Rule 3, except the original and copies required by Staff to carry out its regulatory responsibilities, shall be retrieved by the party or person producing them. If the producing party does not retrieve the documents from the Commission within seven days of notification by the Commission, the documents will be shredded or destroyed. The original shall be maintained by the Commission as part of its archival files. Staff shall take all reasonable precautions to maintain the confidentiality of information subject to this Rule 3. Upon motion approved by the Commission, the Colorado Office of Consumer Counsel may be permitted to retain information subject to this Rule 3 for a specified time following conclusion of the proceeding in which such information was obtained. All other parties shall, within seven days of the conclusion of the proceeding in which documents and information subject to this Rule 3 were produced, return such documents and information to the party producing them.

723-16-3.11.1 In the event Staff intends to use confidential information in a subsequent proceeding, it shall notify, in writing, the party who produced such information of such intended use. This notification shall be made at least ten days prior to submission of the subject information in the subsequent proceeding. Staff's use of confidential information in a subsequent proceeding shall be in accordance with the provisions of this Rule 3.

723-16-3.12 Reservation of Rights. Parties retain the right to question, challenge, and object to the admissibility of any and all data, information, studies, and other matters furnished under the terms of this Rule 3 on the grounds of relevancy or materiality.

723-16-3.13 Non-Waiver. Acceptance of information claimed to be confidential by any party shall in no way constitute a waiver of the rights of that party to contest any assertion or finding of trade secret, confidentiality, or privilege, to make a request under the Public Records Law, or to appeal any determination of the Commission.

723-16-3.14 Remedies. Any person or party to the proceeding retains all remedies existing at civil or criminal law for breach of this Rule 3, and compliance with these rules shall not be construed to be a waiver of those rights.

RULE (4 CCR) 723-16-4. PROCEDURES RELATING TO CONFIDENTIAL INFORMATION SUBMITTED TO THE COMMISSION OUTSIDE OF A FORMAL DOCKET.

723-16-4.1 Procedures For Filing, Under Seal, Confidential Information Outside Of A Formal Docket. A person filing with the Commission, outside of a formal docket, documents or information claimed to be confidential, including information submitted in electronic form, shall utilize the following procedure:

723-16-4.1.1 Non-confidential portions. Non-confidential portions of a document may not be filed under seal. If a document contains both confidential and non-confidential information, the filing person shall specifically identify those portions of the subject document which are not confidential and shall submit to the Commission the required number of the document or report without including the information claimed to be confidential. The cover page of all copies of the material shall be stamped with the following: "NOTICE OF CONFIDENTIALITY. A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL" and shall include a list of the documents filed under seal. This list shall indicate the nature of the documents so that if the documents are separated from the envelope it will still be clear that they are claimed to be confidential. The non-confidential information will be available to the public immediately. The confidential information shall be filed under seal in accordance with the procedures set forth below. The Commission's acceptance of this information under seal shall not be construed to be an agreement by or ruling of the Commission that the subject information is, in fact,

confidential.

723-16-4.1.2 Information Claimed To Be Confidential. The filing party shall file, under seal, the required number of copies of the subject confidential information in accordance with the rules of the Commission, if applicable. All pages and copies of the information claimed to be confidential shall be clearly marked as "confidential" and shall be filed on microfilmable paper, pastel or white, not on dark colored paper such as goldenrod. Each of the copies shall be submitted in a separate, sealed envelope numbered serially. The following information shall be written on the outside of each sealed envelope:

- (1) the caption "CONFIDENTIAL--INFORMATION FILED UNDER SEAL."
- (2) the name of the filing party;
- (3) date of filing;
- (4) description of the information;
- (5) the filing party's statement as to whether it prefers to retrieve the information when the information is no longer needed by the Commission, or whether the Commission should destroy the information; and
- (6) if the party chooses to retrieve the information, in accordance with the statement contained in Rule 4.1.2(5), the name and phone number of the person who will retrieve such information.

723-16-4.3 Retrieval of Information Under Seal. Upon notification from the Commission that the confidential information is no longer needed, the filing person shall make arrangements to retrieve the information. If the information is not retrieved by the filing party within seven (7) business days after notification, the Commission will dispose of the information. The Commission may retain the original of a filed document where necessary or required by law.

723-16-4.4 The Director of the Colorado Office of Consumer Counsel ("OCC") may submit a written request for access to Commission records claimed to be confidential by the person providing the information. In such instances, the Director of the Commission shall forthwith notify the person who provided the subject information of the OCC's request. The person who provided the subject information may, within five business days of the Director's notification, submit a written objection to disclosure of the information to the OCC. The Director shall disclose the requested information to the OCC if he determines that the request is reasonably related to the OCC's statutory purpose as set forth in §§ 40-6.5-101 *et seq.* However, if the person who provided the subject information notifies the Director, in writing submitted within the five-day period referenced in this rule, that judicial action will be commenced to prevent disclosure

to the OCC, the Director shall refrain from disclosing the information to the OCC for an additional five business days to allow the person objecting to disclosure to commence judicial action to prevent such disclosure.

723-16-4.4.1 In the event the Director denies an OCC request for access to Commission records, the OCC may file a petition for access to such records with the Commission. Such petition shall be served upon the person who provided the subject information to the Commission.

723-16-4.4.2 Disclosure of information claimed to be confidential to the OCC shall be conditioned upon its compliance with the provisions of these rules, including the requirement in Rule 3.8 that it take all reasonable precautions to keep the confidential information secure.. Employees and representatives of the OCC shall sign a nondisclosure agreement in substantially the same form as Attachment 1 to these rules, and shall deliver such agreement to the Director of the Commission and the provider of the information claimed to be confidential, prior to review of the records claimed to be confidential. Employees and representatives of the OCC shall not disclose information obtained under this rule absent a ruling by the Director, the Commission or a court of appropriate jurisdiction authorizing such disclosure.

723-16-4.4.3 The OCC shall not utilize the procedure specified in this Rule 4.4 as a substitute for discovery in formal dockets before the Commission.

723-16-4.4.4 This Rule 4.4 shall not authorize the OCC to obtain access to Commission Staff workpapers or workproduct.

723-16-4.4.5 All information obtained under this rule shall be returned to the Commission within sixty days after the OCC was provided access to such information. However, the OCC may, upon written request approved by the Director or the Commission, retain the subject information for an additional specified period of time. The OCC shall serve a copy of the written request upon the person who provided the subject information to the Commission, and that person may submit an objection to the OCC's request.

723-16-4.4.6 The OCC's request for access to Commission records shall be considered in as expeditious a manner as possible given other duties of the Director and the Commission. The time periods set forth in §§ 24-72-201 et seq. shall not apply to requests under this Rule 4.4.

RULE (4 CCR) 723-16-5. INFORMATION PRESUMED TO BE SUBJECT TO PUBLIC INSPECTION.

723-16-5.1 Information Presumed To Be Public. Pursuant to § 24-72-201, C.R.S., information filed with the Commission is public record and presumed to be open for inspection by any person at any reasonable time,

subject to restrictions specifically provided by law. In particular, the following documents shall be presumed to be available for public inspection:

723-16-5.1.1 Annual reports required under Rule 25 of the Commission's Rules of Practice and Procedure, 4 CCR 723.

723-16-5.1.2 Rates, terms and conditions for regulated services.

723-16-5.1.3 Tariffs and price lists.

723-16-5.1.4 Advice letters but not necessarily information filed in support of advice letters such as supporting information required by the Rules Regulating Costing and Pricing (4 CCR 723-30).

723-16-5.1.5 Aggregate data regarding informal consumer complaint information.

723-16-5.1.6 All compliance filings that the Commission has ordered to be filed as public record.

723-16-5.1.7 Insurance filings of transportation carriers.

723-16-5.1.8 Unless otherwise specified by the Commission, performance reports required pursuant to either Commission rule or order to demonstrate compliance or lack of compliance with Commission rules or orders, including but not limited to, the Rules Regulating Telecommunications Service Providers and Telephone Utilities (4 CCR 723-2), Electric Utilities (4 CCR 723-3), Gas Utilities (4 CCR 723-4), and Rules Prescribing the Provision of Emergency 911 Services (4 CCR 723-29). Individual customer names, addresses and telephone numbers shall be presumed to be confidential.

723-16-5.1.9 To the extent ordered to be filed as public documents by the Commission, service quality performance reports required by the Commission from utilities regulated under an alternative form of regulation or performance based regulation, with the exception of individual customer names, addresses, and telephone numbers.

723-16-5.1.10 Safety inspection reports or information filed with the Commission or compiled by Commission staff pursuant to Commission order or rule, including but not limited to Rules Relating to Gas Pipeline Safety (4 CCR 723-11) and Safety Rules and Regulations for Common Carriers (4 CCR 723-15).

723-16-5.1.11 Any documents or information that have been previously made public.

723-16-5.2 Rebutting Presumption of Public Inspection of Information. A

person claiming that any portion of one of the documents listed in Rule 5.1 is confidential, shall file the information claimed to be confidential in accordance with the procedures set forth in Rules 3 or 4. In addition, a person claiming that any portion of one of the above listed documents is confidential shall file a written justification for such a claim at the time of filing of the document.

RULE (4 CCR) 723-16-6. PROCEDURES CONCERNING REQUESTS FOR PUBLIC INSPECTION OF INFORMATION CLAIMED TO BE CONFIDENTIAL.

723-16-6.1 When any person makes a request to inspect Commission records which another person has claimed are confidential, the Director of the Commission shall determine whether the records are subject to public inspection pursuant to the provisions of §§ 24-72-201, et seq., C.R.S. ("Public Records Law "). The Director shall utilize procedures as are consistent with the provisions of the Public Records Law. In any event, the Director shall give timely notice of the request for inspection of public records to the person who submitted the documents or information subject to the request and who claims that the records are confidential. The Director shall also provide the person who submitted the information to the Commission an opportunity to submit oral or written comments regarding the public records request.

723-16-6.2 Upon making a determination as to whether the requested records are subject to public inspection, the Director shall forthwith notify the person objecting to disclosure and the person requesting public inspection of Commission records of that decision.

723-16-6.3 If the Director determines that the Commission's records are subject to public inspection, the Director, upon written request from the person objecting to such public disclosure, shall refrain from disclosure of the records for five (5) business days to allow the person objecting to such disclosure to commence judicial action to prevent public inspection of the subject records.

RULE (4 CCR) 723-16-7. CRITERIA FOR DETERMINING WHETHER INSPECTION SHOULD BE GRANTED FOR INFORMATION CLAIMED TO BE CONFIDENTIAL.

The Director's determination as to what level of public inspection should be permitted for specific public records submitted to the Commission shall be made on a case-by-case basis and shall be based on the Public Records Law, 24-72-201 et seq., C.R.S., and all other applicable law.

4 CCR 723-16 - ATTACHMENT 1

**NONDISCLOSURE AGREEMENT
RELATING TO CONFIDENTIAL DOCKETED INFORMATION**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. _____

[DOCKET CAPTION]

NONDISCLOSURE AGREEMENT

I hereby state that I have read the protective provisions relating to confidential information contained in Rules 4 CCR 723-____ through ____ and agree to be bound by the terms of those protective provisions with respect to all evidence and information produced or arising in the course of this Docket No. _____.

NAME

Title

Employer or Firm

Business Address

Party in Case

Date

Signature

Signature of Counsel

FILED

MAY 02 2003

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Missouri Public
Service Commission
May 11, 19 11:51:31
Kansas Corporation Commission
/S/ Jeffery S. Wagoner

Before Commissioners: John Wine, Chair
Cynthia L. Claus
Brian J. Moline

In the Matter of a General Investigation into) Docket No. 02-GIMT-678-GIT
Winback/Retention Promotions and Practices.)

ORDER 6: PROTECTIVE ORDER

The above matter comes before the State Corporation Commission of the State of Kansas (Commission). Being fully advised of all matters of record, the Commission finds:

1. K.S.A. 66-1220a and K.A.R. 82-1-221a set forth requirements for the designation and treatment of information designated as confidential in Commission proceedings. The Commission finds that it is appropriate to issue this Protective Order to establish further procedures relating to confidential data and information.

2. K.S.A. 66-1220a limits disclosure of trade secrets or confidential commercial information of regulated entities. Under K.S.A. 66-1220a(a)(4), the Commission is to consider alternatives to disclosure that will serve the public interest and protect the regulated entity. This Protective Order provides an interim procedure under K.S.A. 66-1220a(a)(4) to facilitate the prompt and orderly conduct of this case. This Protective Order will govern the treatment and handling of confidential information until further order of the Commission.

3. A party may designate as confidential any information that it believes, in good faith, to be a trade secret or other confidential commercial information. The party designating the information as confidential must provide a written statement of the specific grounds for the designation at the time the designation is made. K.A.R. 82-1-221a(a)(5). The party claiming confidentiality has the burden of proving the confidential status of the information. Designating

information as confidential does not establish that the information will not be subject to disclosure after review by the Commission. See K.S.A. 66-1220a.

4. This Protective Order applies to all parties in this proceeding, unless specifically stated otherwise. The provisions of the Protective Order apply to Staff and to experts or consultants used by Staff, except that Staff and its experts or consultants are not required to sign Nondisclosure Certificates or view voluminous materials on site, as discussed in Paragraph 6, and are not required to return or destroy confidential information upon request at the conclusion of a proceeding, as referenced in Paragraph 12.

5. The following definitions shall apply:

INFORMATION: Information refers to all documents, data, including electronic data, studies, and other materials furnished pursuant to requests for information or other modes of discovery, or any other documents or information which are otherwise a part of the Commission record.

CONFIDENTIAL INFORMATION: Confidential information refers to information which, if disclosed, would likely result in harm to a party's economic or competitive interest or which would result in harm to the public interest generally and which is not otherwise available from public sources. Confidential information may include but is not limited to: (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration; (6) contract negotiations; and (7) information concerning trade secrets, as well as private technical, financial and business information.

6. A party designating information as confidential shall make the confidential information available to parties seeking access or discovery under the restrictions in this Protective Order if such disclosure is not otherwise privileged or objectionable on other evidentiary grounds. Disclosure of confidential information shall be made to attorneys of record and to authorized representatives, including outside experts, who are consulting with parties or intend to file testimony in this proceeding. Attorneys or authorized representatives seeking

access to confidential information shall first read this Protective Order and sign a Nondisclosure Certificate as provided in Appendix A. In cases in which a utility's rates are being reviewed, attorneys and representatives of the utility whose rates are being reviewed are not required to sign Nondisclosure Certificates in order to receive copies of documents containing the utility's own confidential information. The Nondisclosure Certificate shall contain the signatory's name, permanent address, title or position, date signed, and an affirmation that the signer is acting on behalf of a party to this proceeding. The Nondisclosure Certificate shall be filed in the docket. The party claiming confidentiality shall provide legible copies of the confidential information to requesting parties by serving one copy upon counsel for the requesting party. The requesting party may copy the confidential information and make it available to its authorized representatives who have signed Nondisclosure Certificates. If a response to a discovery request requires the duplication of voluminous material or the material is not easily copied because of its binding or size, the furnishing party may require that the voluminous material be reviewed on its own premises. If duplication of voluminous material can be accomplished without undue burden on the party disclosing the information, the voluminous material may be copied at the expense of the requesting party. Voluminous material shall include documents or materials comprised of two-hundred pages or more.

7. A party may designate prefiled testimony and exhibits as confidential pursuant to this Protective Order. The specific grounds for the confidential designation shall be stated in writing at the time the designation is made or the testimony filed. Any party obtaining confidential information may use or refer to such information in prefiled or oral testimony provided that the confidentiality is maintained, unless otherwise ordered by the Commission.

8. If information to be disclosed in response to a data request contains confidential information designated by another party in this docket, the furnishing party shall maintain the

confidential status by marking the information as confidential and only providing responses to parties which have signed Nondisclosure Certificates. If information that a party intends to use in this proceeding or that would be disclosed in response to a data request contains confidential information obtained from a source outside of this proceeding, the party intending to use or provide the confidential information must notify the original source which claimed confidential status to allow that entity to decide whether to claim confidentiality in this proceeding.

9. When pleadings, prefiled testimony or exhibits include confidential information, parties are to follow these procedures:

- a. File seven copies of the complete document, including all confidential information. The cover is to clearly state "CONFIDENTIAL VERSION." Confidential pages shall be stamped "CONFIDENTIAL" and the specific confidential information shall be identified by being underlined.
- b. File one copy with the confidential portions redacted, for use as a public document. The cover is to clearly state "PUBLIC VERSION."
- c. File one copy of the pages which contain confidential information in a separate envelope marked "CONFIDENTIAL." This filing will be maintained in the docket room file under seal. If there are multiple pages with confidential information and it is impracticable to separate the pages with the confidential information, the party may file instead one copy of the entire document which is stamped "CONFIDENTIAL."

10. Confidential testimony may be offered or subject to cross-examination at hearings. Parties have the right to object to the admissibility of confidential information on standard evidentiary grounds such as relevance. Confidential information that is received into evidence will be kept under seal. Confidential information shall be discussed only after the

hearing is closed to all persons except the Commission, its Staff, hearing examiners, court reporters, attorneys of record and individuals to whom the designated information is available under the terms of this Protective Order. Parties shall make every effort at hearings to ask and answer questions in such a way as to preserve the confidentiality of the information without the need to close the hearing. The transcript of live testimony or oral argument disclosing confidential information shall be kept under seal and copies provided only to persons entitled to access to confidential information. Neither the parties nor their attorneys shall disclose or provide copies of the contents of such transcripts to anyone other than those who may have access to the designated information under the terms of this Protective Order.

11. If a party disagrees with a claim that information is confidential or should not be disclosed, the parties shall first attempt to resolve the dispute on an informal basis. If the parties cannot resolve the dispute informally, the party contesting the confidential treatment may file a motion with the Commission. Commission Staff should also be prepared to challenge a confidential designation when Staff believes that information does not meet the definition of confidential information. When a dispute concerning confidentiality is brought before the Commission, the Commission will review the matter to determine 1) if the party claiming confidentiality has met its burden of establishing that the confidential designation is proper, and 2) whether disclosure is warranted under K.S.A. 66-1220a. The contested information shall not be disclosed pending the Commission's ruling.

12. All persons who are afforded access to confidential information under the terms of this Protective Order shall neither use nor disclose such information for purposes of business or competition or any other purpose other than the purpose of preparation for and litigation of this proceeding. During the course of this proceeding, parties shall keep confidential information secure in accordance with the purposes and intent of this Order. At the conclusion of this

proceeding, including judicial review, a party which claimed that information was confidential may require that other persons in possession of its confidential information return or destroy all such confidential information and all notes, tapes, documents, and any other medium containing, summarizing, or otherwise embodying such confidential information. If the party claiming confidentiality requests destruction, the person destroying the information shall certify its destruction. Counsel shall be entitled to retain memoranda or pleadings including or embodying confidential information to the extent reasonably necessary to preserve a file on this proceeding.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) This Protective Order shall govern the treatment and handling of confidential information in this docket.

(B) A party may file a petition for reconsideration of this Order within 15 days of the date of this Order. If service is by mail, 3 additional days may be added to the 15-day time limit to petition for reconsideration.

(C) The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

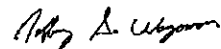
BY THE COMMISSION IT IS SO ORDERED.

Wine, Chr.; Claus; Comm.; Moline, Comm.

Dated: NOV 19 2002

ORDER MAILED

NOV 20 2002

 Executive
Director

Jeffrey S. Wagaman
Executive Director

STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

NONDISCLOSURE CERTIFICATE

I, _____, have been presented with a copy of the Protective Order issued in Docket No. 02-GIMT-678-GIT.

I have requested review of confidential information produced in Docket No. 02-GIMT-678-GIT on behalf of _____.

I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

Dated this ____ day of _____, 200__.

Signature and Title _____

Employer _____

Party _____

Address _____

Telephone _____

FILED

MAY 02 2003

P.U.C. DOCKET NO. 22417
SOAH DOCKET NO. 473-00-1087

Missouri Public
Service Commission

COMPLAINT OF AT&T	§	
COMMUNICATIONS OF TEXAS,	§	PUBLIC UTILITY COMMISSION
L.P., REGARDING TARIFF	§	
CONTROL NUMBER 22403 PRICING	§	OF
FLEXIBILITY - LONG DISTANCE	§	
MESSAGE	§	OF TEXAS
TELECOMMUNICATIONS SERVICE	§	
CUSTOMER SPECIFIC PRICING	§	

ORDER NO. _____

PROTECTIVE ORDER

This Protective Order shall control the production of information and documents in this proceeding until such time as this Protective Order is modified by subsequent order of the Administrative Law Judge (ALJ), the Commission, or a court of competent jurisdiction. In each of the above-styled proceedings, it is anticipated that the complainant or the responding Incumbent Local Exchange Carrier (ILEC) may designate certain documents and information to be confidential and exempt from public disclosure under the Open Records Act, TEX GOV'T CODE ANN §§ 552.002-552.353 (Vernon Supp. 1999). Therefore, a Protective Order, covering such documents and information should be entered to facilitate timely submission of information in these petitions and in any discovery conducted in these proceedings. This Protective Order shall control all discovery to date, and shall control the on-going production of information and documents in this proceeding until such time as this Protective Order is modified by subsequent order of the ALJ, the Commission, or court of competent jurisdiction.

Definition

1. The term "party" as used in this Protective Order means either the complainant or the (ILEC) involved in a proceeding before the State Office of Administrative Hearings in connection with a complaint filed with the Public Utility Commission of Texas ("the Commission" or "PUC") concerning telephone utility informational notices and/or underlying tariffs ("Proceeding").

2. The term "Confidential Information" refers to portions of petition and all documents, data, information, studies, cost study information and other materials furnished pursuant to requests for information or other modes of discovery, including but not limited to depositions, that are claimed to be trade secrets, confidential business information and information subject to an evidentiary privilege or exempt from public disclosure under the Open Records Act. "Confidential Information" shall not include information contained in the public files of any federal or state agency that is subject to disclosure under the Open Records Act or a similar statute, nor shall it include information that, at the time it is provided through discovery in these proceedings or prior thereto, is or was public knowledge, inadvertent disclosure, or which becomes public knowledge other than through disclosure in violation of this Order. "Confidential Information" shall not include information found by the ALJ, the Commission or a court of competent jurisdiction not to merit the protection afforded Confidential Information under the terms of this Order.

Confidential Information

(a) General. In the discovery or other proceeding or filings to be conducted in connection with the complaint proceeding, a party may designate certain material produced by such party as "Confidential Information." Copies of the material shall be delivered to the Filing Clerk of the Commission and to the ALJ in a sealed document that is clearly marked on the outside, in letters at least 1" tall, as containing "Confidential Information." Each page of the material submitted under seal shall be consecutively numbered and the envelope shall clearly specify the number of pages contained therein. The party designating the material as Confidential Information shall clearly identify each portion of the material alleged to be Confidential Information, and provide a written explanation of the claimed exemption. Such explanation may be accompanied by affidavits providing appropriate factual support for any claimed exemption. The claim of exemption shall also indicate:

- (1) any and all exemptions to the Open Records Act claimed to be applicable to the alleged Confidential Information;
- (2) the reasons supporting the party's claim that the information is exempt from public disclosure under the Open Records Act and subject to treatment as Confidential Information;

- (3) that counsel for the party has reviewed the information sufficiently to state in good faith that the information merits the confidential designation and is exempt from public disclosure under the Open Records Act. Each party will have an additional level of review to insure that the information determined to be confidential is reasonably classified as confidential. There is a rebuttable presumption that all information is non-confidential and the burden of establishing confidentiality will be on the party proposing confidential treatment; and
- (4) in the event that any party questions whether an item has been incorrectly classified as confidential, then the party shall bring the matter to the producing party's attention prior to taking any action at SOAH, the Commission or elsewhere.
- (5) In the alternative, parties may designate certain material as confidential without filing an affidavit or other written support, with the understanding that should another party question the appropriateness of the confidential designation, the designating party will comply with the requirements set forth in subparts (a) (1), (2), (3) and (4) above within five business days.

(b) Exemption from Disclosure. Material received by SOAH or the Commission in accordance with this procedure shall be treated as exempt from public disclosure until and unless such Confidential Information is determined to be public information as the result of an Open Records Decision by the Attorney General, or pursuant to an order of the ALJ or Commission, entered after notice to the parties and hearing, or pursuant to an order of a court having jurisdiction.

(c) Material Provided to Parties. Material claimed to be Confidential Information must be provided to the other parties to the proceeding provided they agree in writing to treat the material as Confidential Information. One copy of the material shall be provided to each party. The receiving party shall be entitled to make copies of the Confidential Information, provided that no more than one copy of the Confidential Information shall be made for each individual authorized to review the information and the receiving party and such individuals shall keep the Confidential Information properly secured during all times when the documents are not being reviewed by a person authorized to do so. FAXes shall be permitted and any FAXed documents shall be treated as copies of the original material; provided that it shall be the responsibility of the party transmitting documents by

FAX to insure that the documents are only received by individuals authorized to receive the applicable information.

(d) Review by Parties. Each receiving party may designate specific individuals associated with the party who will be allowed access to the Confidential Information. The individuals who may have access to the Confidential Information shall be limited to the receiving party's counsel of record, regulatory personnel acting at the direction of counsel, and outside consultants employed by the receiving party who are under the direction of either counsel or said regulatory personnel. These individuals may use the Confidential Information only for the purpose of presenting or responding to matters raised in the proceeding during the course of that proceeding and shall not disclose the Confidential Information to any person who is not authorized under this section to view this information.

Prior to giving access to Confidential Information as contemplated above to any party authorized to be given access pursuant to this Order, counsel for the party seeking review of the Confidential Information shall deliver a copy of this Order to such persons, and prior to disclosure, such persons shall affirmatively state that the individual has personally reviewed the Order, and will observe the limitations upon the use and disclosure of Confidential Information, in the form of Exhibit A, attached hereto. By signing such statements, a party may not be deemed to have acquiesced in the designation of the material as Confidential Information or to have waived any rights to contest such designation or to seek further disclosure of the Confidential Information. Said counsel shall, at the time of the review of such Confidential Information, or as soon thereafter as practicable, deliver to counsel for the party that produced the Confidential Information a copy of Exhibit A as executed, which shall show each signatory's full name, permanent address and employer, and the party with whom the signatory is associated.

Counsel of record for the persons authorized hereunder who requested the copies shall sign a statement in the form of Exhibit B, attached hereto, verifying that the sealed envelope clearly marked as containing Confidential Information has been received and designating the name and address of the individual into whose custody the copies shall be delivered. Access to said copies shall be limited to those persons specified in this Order. Additionally, for every copy of the Confidential Information that

is made, counsel for the party seeking review of the Confidential Information shall deliver an Exhibit C, attached hereto, identifying what Confidential Information has been copied and delivered to each person who is authorized to review said Confidential Information. To the extent possible and practical, Exhibits B and C shall be supplemented, and it shall not be required that a separate Exhibit B be signed for each separate set of Confidential Information that is received nor shall a separate Exhibit C be required for each copy. It is the intent of the parties to streamline the record-keeping process, so long as a complete record is maintained for purposes of review.

Open Records Act Requests

If SOAH or the Commission receives an Open Records Act request for disclosure of information claimed to be Confidential Information (or any notes reflecting such information) produced pursuant to this Order, then SOAH or the Commission shall, as promptly as is reasonably feasible (preferably no later than two (2) business days following receipt of that request), notify the party making the claim of confidentiality (responding party) that a request for disclosure has been made pursuant to the Open Records Act. The Commission or SOAH shall timely request an Attorney General's opinion as to whether the information falls within any of the exemptions identified in the Public Information Act. Specifically, pursuant to §§ 552.301-552.308 of the Open Records Act, responding party shall request that the applicable agency (the Commission or SOAH, in this case) decline to release the requested information, in order to request an Attorney General opinion. As provided for in §§ 552.304 and 552.305(b), the responding party may submit in writing to the Attorney General that party's reason for withholding the information. The recipient of the request for disclosure (the Commission, in this case) may contest the responding party's claim of exemption pursuant to Open Records Act § 552.305(c) in a separate communication to the Attorney General. If an Attorney General opinion is issued regarding the claim of confidentiality, SOAH or the Commission shall, as promptly as is reasonably feasible (preferably within two (2) business days following the issuance of the opinion), provide a copy of that opinion to the responding party. If an Attorney General opinion recommends disclosure of Confidential Information, either in whole or in part, then SOAH or the Commission shall not release such information publicly for ten calendar days, in order to allow the responding party time to pursue any legal remedies that it may have.

Storage at the Commission

Confidential Information, including that portion of testimony containing references thereto, if filed with the Commission or at SOAH, shall clearly be labeled as Confidential and filed under seal, and shall be segregated in the files of the Commission and at SOAH, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, as a result of an Open Records Decision by the Attorney General, or, after notice to the parties and hearing, pursuant to the order of the ALJ, the Commission, or a court having jurisdiction.

Good Faith Use of Material

To the extent that such efforts will not damage a party's presentation of its position in these proceedings, each party shall use its best efforts to phrase deposition and other discovery questions, prefiled testimony, questions asked on live examination of a witness, briefs, other pleadings and oral argument in a way which will eliminate or minimize the need for documents in the record to be under seal. Any party intending to refer to Confidential Information during a hearing in this proceeding shall, as soon as possible, provide advance notice of this to the parties and the ALJ, identifying with particularity the Confidential Information in question. The party requesting the confidential information has the burden of demonstrating that the need to do so. The party asserting confidentiality bears the burden of proving that the alleged Confidential material should be admitted under seal.

If it becomes necessary, or at the request of a party, the ALJ may order additional guidelines addressing the procedures and standards for admissibility of alleged Confidential materials.

All persons who may be entitled to receive, or who are afforded access to, any Confidential Information by reason of this Protective Order shall neither use nor disclose the Confidential Information for any purpose other than preparation for and conduct of the proceeding in which the information was furnished before this Commission, SOAH or any resulting proceedings before any judicial tribunal. All such persons shall use their best efforts to keep the Confidential Information secure in accordance with the purposes and intent of this Protective Order. To this end, persons having

custody of any Confidential Information shall keep the documents properly secured during all times when the documents are not being reviewed by a person authorized to do so.

Upon the completion of SOAH or Commission proceedings to review the complaint and any appeals thereof, Confidential Information received by the parties shall be returned to the producing party or destroyed, at the option of the producing party, absent a contrary order of SOAH or the Commission or agreement of the parties. Any notes or work product prepared by the receiving party which were derived in whole or in part from the Confidential Information shall be destroyed at that time. Material filed with SOAH or the Commission will remain under seal at the Commission and will continue to be treated as Confidential Information under this subchapter. The Commission or SOAH may destroy Confidential Information in accordance with its records retention standards.

Other Rights Preserved

This Protective Order shall in no way constitute any waiver of the rights of any party to contest any assertion of confidentiality or to appeal any finding that specific information is Confidential Information or should be subject to the protective requirement of this Order. The designation of any information as Confidential Information may be challenged before the ALJ, the Commission, or a court having jurisdiction, for a determination, after review, as to whether said material should be so classified. Nothing in this Protective Order shall be deemed to prevent the ALJ or the Commission from raising on its own motion the correctness of designating information as Confidential Information. Nothing in this Protective Order, or any order of the Commission adopting this Protective Order, shall be construed as an order by the ALJ or the Commission that the materials exchanged under this Protective Order are in fact entitled to confidential treatment. Nothing in this Protective Order shall be construed as requiring any party to produce any information that would otherwise be exempt from discovery as a matter of law (e.g., attorney-client privilege or attorney work-product materials), nor as altering the procedures set forth in 16 Tex. Admin. Code for asserting any objections to discovery based on a claim of privilege or exemption.

The parties affected by the terms of this Protective Order further retain the right to question, challenge and object to the admissibility of any and all data, information, studies and other matters

furnished under the terms of the Protective Order in response to requests for information or other modes of discovery, and the right to cross-examine or any applicable grounds.

This Protective Order may be superseded by an order of the ALJ, the Commission, or a court of competent jurisdiction after due notice and an opportunity for comment by affected parties. Titles or subtitles in this Order are informational only and are not intended to affect the textual provisions.

SIGNED AT AUSTIN, TEXAS the ____ day of _____ 2000.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

MARC H. BURNS
ADMINISTRATIVE LAW JUDGE

**EXHIBIT A
PROTECTIVE ORDER**

I agree to comply with and be bound by the terms and conditions of this Protective Order.

SIGNATURE: _____
NAME PRINTED: _____
TITLE: _____
ADDRESS: _____

REPRESENTING: _____
EMPLOYER: _____
DATE: _____

EXHIBIT B

PROTECTIVE ORDER

The copies listed on "Attachment A" have been provided to the designated representative indicated below, pursuant to the terms of the Protective Order applicable to the Proceeding.

These copies will remain in the custody of:

Name Printed

STATEMENT OF RECEIPT

I, _____, as (COUNSEL OF RECORD) or (DESIGNATED REPRESENTATIVE) (CIRCLE ONE) have received the sealed envelope marked "Confidential Information." These copies are to remain in the possession of:

Name: _____

Title: _____

Address: _____

Signed on this ____ day _____, 2000.

Name (Printed): _____

EXHIBIT C

PROTECTIVE ORDER

Copies of the following documents have been provided to Counsel of Record, pursuant to the terms of the Protective Order applicable to the this Proceeding.

EXHIBIT D

PROTECTIVE ORDER

The documents listed below have been copied pursuant to the terms of the Protective Order applicable to this Proceeding.

These copies will remain in the custody of:

Name: _____

Title: _____

Address: _____

Signed on this _____ day of _____, 2000.

Name (Printed): _____

FILED

MAY 02 2003

AZ2578

Missouri Public
Service Commission

BEFORE THE ARIZONA CORPORATION COMMISSION

18/02
2 WILLIAM A. MUNDELL
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 MARC SPITZER
COMMISSIONER
5

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

DOCKET NO. RT-00000F-02-0271

PROTECTIVE ORDER

8 **BY THE COMMISSION:**

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

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

17 Accordingly, in order to facilitate the disclosure of documents and information during the
18 course of this proceeding and to protect trade secret and other confidential information not in the
19 public domain, the Commission now issues this Protective Order to govern these proceedings.

20 1. (a) Confidential Information. All agreements, documents, data information,
21 studies and other materials furnished pursuant to the Commission's request for agreements, or
22 pursuant to any requests for information, subpoenas or other modes of discovery (formal or
23 informal), and including depositions, and other requests for information, that are claimed to be of a
24 trade secret, proprietary or confidential nature (herein referred to as "Confidential Information"),
25 shall be so marked by the providing party by stamping the same with a "Confidential" designation.
26 In addition, all notes or other materials that refer to, derive from, or otherwise contain parts of the
27 Confidential Information will be marked by the receiving party as Confidential Information. Access
28 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.

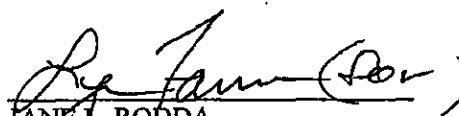
26 9. Summary of Record. If deemed necessary by the Hearing Officer, the providing party
27 shall prepare a written summary of the Confidential Information referred to in the Order to be placed
28

on the public record.

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

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

DATED this 8th day of May, 2002.


JANE L. RODDA
ADMINISTRATIVE LAW JUDGE

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

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Denver, Colorado 80202

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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

FILED

MAY 02 2003

Missouri Public
Service Commission

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the Review of)	DOCKET NO. UT-023003
Unbundled Loop and Switching Rates and)	
Review of the Deaveraged Zone Rate)	FIRST SUPPLEMENTAL
Structure)	ORDER
)	
)	PROTECTIVE ORDER
.....)	

1 The Commission finds that a protective order to govern disclosure of proprietary and confidential information is necessary in this proceeding. The Commission provided the parties an opportunity to comment on the need for a protective order, considered their comments, and finds as follows:

- a. It is likely that proprietary and confidential information will be required to resolve the issues in this proceeding;
- b. Absent a protective order, a significant risk exists that confidential information might become available to persons who have no legitimate need for such information and that injury to the information provider could result.

2 Accordingly, the Commission enters the following protective order pursuant to RCW 34.05.446 to govern the discovery and use of proprietary and confidential documents in this proceeding:

ORDER

A. General Provisions

3 **Confidential Information.** All access, review, use, and disclosure of any material designated by a party to this proceeding as confidential (referred to in this Order as "Confidential Information") is governed by this Order and by WAC 480-09-015. The Commission expects Confidential Information to include only numbers, customer names, and planning details. The Commission requires the parties to delete such information from the primary exhibits and provide these "confidential deletions" under separate cover in the manner described below. The Commission may reject a filing or any other submission that fails to segregate Confidential Information, or categorizes clearly public information as confidential.

4 Parties must scrutinize potentially confidential material, and limit the amount they designate "Confidential Information" to only information that truly might compromise their ability to compete fairly or that otherwise might impose a business risk if disseminated without the protections provided in this Order. The first page and individual pages of a document determined in good faith to include Confidential Information must be marked by a stamp that reads: "Confidential Per Protective Order in WUTC Docket No. UT-023003." Placing a Confidential Information stamp on the first page of an exhibit indicates only that one or more pages contains Confidential Information and will not serve to protect the entire contents of the multipage document. Each page that contains Confidential Information must be marked separately to indicate where confidential information is redacted. Confidential Information shall be provided on colored paper with references to where each number, customer name, or planning detail is redacted in the original document.

5 **Confidential and Redacted Versions.** Because the parties and the Commission are manipulating data and handling a number of open cases, and because confidentiality is more significant than it has been in the past, we must require **complete confidential and redacted versions of testimony, exhibits, and briefs.**

6 This extends to electronic versions, as well, and requires that **all diskettes** and **all electronic mail** specify whether the file is confidential, redacted, or public.

1. If a witness has a confidential portion of her testimony, the sponsoring party must provide a complete redacted version of the testimony and a complete confidential version, with confidential pages on color paper.
2. It also means that you must submit (at least) two diskettes and E-mails – one with the electronic version of the confidential text and one with the electronic version of the redacted text.
 - a. You **MUST** identify the confidential diskettes with prominent red markings and the word "confidential" in addition to the contents and the docket number. The others must be prominently labeled "redacted" or "public".
 - b. You **MUST** identify each confidential digital file with a C in the file name and **MUST** have the legend "CONFIDENTIAL PER PROTECTIVE ORDER IN WUTC DOCKET NO. UT-023003" prominently displayed on the first page (i.e., the page that appears on the computer screen when the file is opened).

7 **Purpose of Access and Use; Confidentiality.** No Confidential Information distributed or obtained pursuant to this protective order may be requested, reviewed,

used or disclosed by any party or counsel having access pursuant to this order, except for purposes of this proceeding. Persons having access to the Confidential Information pursuant to this order must request, review, use, or disclose Confidential Information only by or to persons authorized under this Order, and only in accordance with the terms specified in this Order.

Disclosure of Confidential Information

- 8 **Persons Permitted Access.** No Confidential Information will be made available to anyone other than Commissioners, Commission Staff, the presiding officer(s), and counsel for the parties for this proceeding, including counsel for Commission Staff, and attorneys' administrative staff such as paralegals. However, access to any Confidential Information may be authorized by counsel, solely for the purposes of this proceeding, to those persons designated by the parties as their experts in this matter. Except for the Washington Utilities and Transportation Commission Staff, no such expert may be an officer, director, direct employee, major shareholder, or principal of any party or any competitor of any party (unless this restriction is waived by the party asserting confidentiality). Any dispute concerning persons entitled to access Confidential Information must be brought before the presiding officer for resolution.
- 9 **Nondisclosure Agreement.** Before being allowed access to any Confidential Information designated for this docket, each counsel or expert must agree to comply with and be bound by this Order on the form of Exhibit A (counsel and administrative staff) or B (expert) attached to this Order. Counsel for the party seeking access to the Confidential Information must deliver to counsel for the party producing Confidential Information a copy of each signed agreement, which must show each signatory's full name, permanent address, the party with whom the signatory is associated and, in the case of experts, the employer (including the expert's position and responsibilities). The party seeking access must also send a copy of the agreement to the Commission and, in the case of experts, the party providing Confidential Information shall complete its portion and file it with the Commission or waive objection as described in Exhibit B.
- 10 **Access to Confidential Information.** Copies of documents designated confidential under this Order will be provided in the same manner as copies of documents not designated confidential, pursuant to WAC 480-09-480. Requests for special provisions for inspection, dissemination or use of confidential documents must be submitted to the presiding officer if not agreed by the parties. The parties must not distribute copies of Confidential Information to, and they must not discuss the contents of confidential documents with, any person not bound by this Order. Persons to whom copies of documents are provided pursuant to this Order warrant by signing the confidentiality agreement that they will exercise all reasonable diligence to maintain the documents consistent with the claim of confidentiality.

Use of Confidential Information in This Proceeding

- Reference to Confidential Information.** If reference is to be made to any Confidential Information by counsel or persons afforded access to this information during any part of this proceeding including, but not limited to, motions, briefs, arguments, direct testimony, cross-examination, rebuttal and proposed offers of proof, any public reference (i.e., any reference that will not be placed in a sealed portion of the record) shall be either solely by title or by exhibit reference. Any other written reference shall be segregated and marked "Confidential Information," and access to it shall be given solely to persons who are authorized access to the information under this Order. References to the Confidential Information must be withheld from inspection by any person not bound by the terms of this Order.
- In oral testimony, cross-examination or argument, public references to Confidential Information must be on such prior notice as is feasible to the affected party and the presiding officer. Unless alternative arrangements exist to protect the Confidential Information as provided below, there must be minimum sufficient notice to permit the presiding officer an opportunity to clear the hearing room of persons not bound by this Order or take such other action as is appropriate in the circumstances.
- Protected Use by Agreement.** Any party who intends to use any Confidential Information in the course of this proceeding, including but not limited to testimony to be filed by the party, exhibits, direct and cross-examination of witnesses, rebuttal testimony, or a proffer of evidence, shall give reasonable notice of such intent to all parties and to the presiding officer, and attempt in good faith to reach an agreement to use the Confidential Information in a manner which will protect its trade secret, proprietary, or other confidential nature. The parties shall consider such methods as use of clearly edited versions of confidential documents, characterizations of data rather than disclosure of substantive data, and aggregations of data. The goal is to protect each party's rights with respect to Confidential Information while allowing all parties the latitude to present the evidence necessary to their respective cases.
- If the parties cannot reach agreement about the use of Confidential Information, they must notify the presiding officer, who will determine the arrangements to protect the Confidential Information to ensure that all parties are afforded their full due process rights, including the right to cross-examine witnesses.
- Right to Challenge Admissibility.** Nothing in this Order may be construed to restrict any party's right to challenge the admissibility or use of any Confidential Information on any ground other than confidentiality, including but not limited to competence, relevance, or privilege.

- 16 **Right to Challenge Confidentiality.** Any party may challenge another party's assertion of confidentiality with respect to any information asserted to be entitled to protection under this Order. The Presiding officer will conduct an *in camera* hearing to determine the confidentiality of information. The burden of proof to show that such information is properly classified as confidential is on the party asserting confidentiality. Pending determination, the assertedly Confidential Information shall be treated in all respects as protected under the terms of this Order. If the presiding officer determines the challenged information is not entitled to protection under this Order, the information continues to be protected under this Order for ten days thereafter to enable the producing party to seek Commission or judicial review of the determination, including a stay of the decision's effect pending further review.
- 17 **Admission Of Confidential Information Under Seal.** The portions of the record of this proceeding containing Confidential Information will be sealed for all purposes, including administrative and judicial review, unless such Confidential Information is released from the restrictions of this Order, either through the agreement of the parties or pursuant to a lawful order of the Commission or of a court having jurisdiction to do so.
- 18 **Return of Confidential Information.** At the conclusion of this proceeding every person who possesses any Confidential Information (including personal notes that make substantive reference to Confidential Information), must return all Confidential Information to the party that produced it, or must certify in writing that all copies and substantive references to Confidential Information in notes have been destroyed, within thirty days following the conclusion of this proceeding, including any administrative or judicial review. These provisions apply to all copies of exhibits which contain Confidential Information and for that reason were admitted under seal. The only exceptions are that exhibits may be preserved by counsel as counsel records, and a complete record, including Confidential Information, will be preserved by the Secretary of the Commission as part of the Agency's official records.
- 19 **Freedom of Information Laws.** Until the Commission or any court having jurisdiction finds that any particular Confidential Information is not of a trade secret, proprietary, or confidential nature, any federal agency that has access to and/or receives copies of the Confidential Information must treat the Confidential Information as within the exemption from disclosure provided in the Freedom of Information Act at 5 U.S.C. § 552 (b)(4); and any Washington state agency that has access to and/or receives copies of the Confidential Information must treat the Confidential Information as being within the exemption from disclosure provided in RCW 42.17.310(1)(h) and (q).
- 20 **Notice of Compelled Production In Other Jurisdictions.** If a signatory to this protective order is compelled to produce confidential documents in any regulatory or judicial proceeding by the body conducting the proceeding, the signatory must

provide notice to the party that provided the confidential information. Such confidential information must not be produced for at least five days following notice, to permit the party that provided such information an opportunity to defend the confidential nature of the material before the regulatory or judicial body that would compel production. Disclosure after that date, in compliance with an order compelling production, is not a violation of this Order.

- 21 **Modification.** The Commission may modify this Order on motion of a party or on its own motion upon reasonable prior notice to the parties and an opportunity for hearing.
- 22 **Violation of this Order.** Violation of this Order by any party to this proceeding or by any other person bound by this Order by unauthorized use or unauthorized divulgence of Confidential Information may subject such party or person to liability for damages and shall subject such party to penalties as generally provided by law.

DATED at Olympia, Washington, and effective this 22nd day of March, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

EXHIBIT A (ATTORNEY AGREEMENT)

AGREEMENT CONCERNING CONFIDENTIAL INFORMATION
IN DOCKET NO. UT-023003
BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, _____, as attorney
in this proceeding for _____
(party to this proceeding) agree to comply with and be bound by the Protective Order
entered by the Washington Utilities and Transportation Commission in Docket No.
UT-023003, and acknowledge that I have reviewed the Protective Order and fully
understand its terms and conditions.

Signature

Date

Address

EXHIBIT B (EXPERT AGREEMENT)

AGREEMENT CONCERNING CONFIDENTIAL INFORMATION
IN DOCKET NO. UT-023003
BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, _____, as expert
witness in this proceeding for _____ (a party to
this proceeding) hereby agree to comply with and be bound by the Protective Order
entered by the Washington Utilities and Transportation Commission in Docket No.
UT-023003 and acknowledge that I have reviewed the Protective Order and fully
understand its terms and conditions.

Signature_____
Date_____
Employer_____
Address_____
Position and Responsibilities

* * *

The following portion is to be completed by the responding party and filed with the
Commission within 10 days of receipt; failure to do so will constitute a waiver and
the above-named person will be deemed an expert having access to Confidential
Information under the terms and conditions of the protective order.

_____ No objection.

_____ Objection. The responding party objects to the above-named expert
having access to Confidential Information. The objecting party shall file a motion
setting forth the basis for objection and asking exclusion of the expert from access to
Confidential Information.

Signature_____
Date