

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Complaint of	)	
BEAVER COUNTY, et al.	)	<u>DOCKET NO. 01-049-75</u>
Complainants,	)	
vs.	)	
QWEST CORPORATION fka U S WEST	)	
COMMUNICATIONS, INC., fka	)	<u>PROTECTIVE ORDER</u>
MOUNTAIN STATES TELEPHONE &	)	
TELEGRAPH SERVICES, INC.	)	
Respondent.	)	

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ISSUED: October 28, 2002

By The Commission:

Qwest Corporation ("Qwest"), on October 23, 2002, submitted a Motion and Proposed Order to the Commission in the above-entitled proceeding seeking a Protective Order. Qwest states in its Motion that the entry of a Protective Order will expedite the production of documents and other information to parties in this matter, and will afford necessary protection to valuable confidential, trade secret, and business information.

The Commission finds that sufficient grounds exist for entry of a Protective Order.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

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 or confidential nature shall be furnished pursuant to the terms of this Order, and shall be treated by all persons accorded access thereto pursuant to this Order as constituting trade secret, confidential commercial or otherwise protected information, (hereinafter referred to as "Confidential Information"), and shall neither be used nor disclosed except for the purpose of this proceeding, and solely in accordance with this Order. All material claimed to be Confidential Information shall be so marked by the party or its affiliates by stamping the same with the designation, "CONFIDENTIAL" or "CONFIDENTIAL -- SUBJECT TO PROTECTIVE ORDER." All copies of documents so marked shall be made on yellow paper. Parties filing electronically shall file both a confidential and non-confidential version clearly marked as such. 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 Order.

(b) Use of Confidential Information and Persons Entitled to Review. All Confidential Information made available pursuant to this Order shall be given solely to counsel for the parties and shall not be used or disclosed except for the purposes of this proceeding; provided, however, that access to any specific Confidential Information may be authorized by counsel, solely for the purpose of this proceeding, to those persons indicated by the parties as being their experts in this matter. Persons designated as experts shall not include persons employed by the parties who could use the information in their normal job functions to the competitive disadvantage of the party providing the Confidential Information. Any member of the Public Service Commission and its staff, under and pursuant to the applicable provisions of Title 54, Utah Code Ann., the Rules of Civil Procedure and the Rules of the Commission, may have access to any Confidential Information made available pursuant to this Order and shall be bound by the terms of this Order, except for the requirement of signing a nondisclosure agreement. Parties shall include the Division of Public Utilities

("Division") and the Committee of Consumer Services ("Committee") if they elect to participate in this proceeding. Employees of the Division and Committee who have signed a nondisclosure agreement shall be entitled to have access to Confidential Information in accordance with the terms of this Order.

(c) Nondisclosure Agreement. Prior to giving access to Confidential Information, as contemplated in paragraph 1(b) above to counsel or any expert designated to testify in this proceeding, counsel for the party seeking review of the Confidential Information shall deliver a copy of this Order to such person, and, prior to disclosure, such person shall agree in writing to comply with and be bound by this Order. 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 Appendix A. The Nondisclosure Agreement (Appendix A) shall require the person to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that 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.

(d) Additional Protective Measures. A provider of Confidential Information may claim that additional protective measures, beyond those required under this Protective Order, are warranted for certain Confidential Information, referred to as Highly Sensitive Confidential Information. In such case, the provider shall identify the Highly Sensitive Confidential Information and shall inform the person to whom it is to be provided of the basis for the claim and the additional protective measures proposed. If the provider and the person to whom the Highly Sensitive Confidential Information is to be provided agree on additional protective measures, the measures shall be filed with the Commission and shall be regarded as an addendum to this Order. If the parties cannot agree on additional protective measures, the provider of the information shall petition the Commission for an order granting additional protective measures which the petitioner believes are warranted for the Highly Sensitive Confidential Information. The petition shall set forth the particular basis for: the claim, the need for the specific, additional protective measures, and the reasonableness of the requested, additional protection. A party who would otherwise receive the Highly Sensitive Confidential Information under the terms of this Order, may respond to the petition and oppose or propose alternative protective measures to those requested by the provider of the Highly Sensitive Confidential Information. Disputes between the parties shall be resolved pursuant to Commission Order pursuant to Paragraph 2 of this Order.

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

(b) In the event that the parties are unable to agree that certain information constitutes Confidential Information or Highly Sensitive Confidential Information referred to in paragraph 1(d) above, or agree on the appropriate treatment of Highly Sensitive Confidential Information, the party objecting to the classification as Confidential Information or the party claiming that information is Highly Sensitive Confidential Information and needs additional protective measures shall forthwith submit the matters to the Commission for its review pursuant to this Order. When the Commission rules on the question of whether any documents, data, information, studies, or other matters submitted to them for review and determination are Confidential Information, are Highly Sensitive Confidential Information, or the appropriate additional protection to be afforded for specific Highly Sensitive Confidential Information, the Commission will enter an order resolving the issue.

(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, or which were accepted into the sealed record in accordance with this Order, removed from the protective requirements of this Order, or from the sealed record and placed in the public record. If the confidential, or proprietary nature of this information is challenged, resolution of the issue shall be made by the Commission 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 ORDER IN DOCKET NO. 01-049-75." It shall be transcribed only upon agreement by the parties or Order of the Commission, 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, unless and until released from the restrictions of this Order, either through agreement of the parties, or after

notice to the parties and hearing, pursuant to an Order of the Commission. In the event the Commission should rule in response to such a pleading that any information should be removed from the protective requirements of this Order, or from the protection of the sealed record, such Order of the Commission shall not be effective for a period of ten (10) days after entry of the Order.

3. (a) Receipt into Evidence. Provision is hereby made for receipt of Confidential Information into evidence in this proceeding under seal. Parties shall make a good faith effort to use any Confidential Information as evidence in this proceeding in a manner that will not require *in camera* proceedings. In addition, at least ten (10) days prior to the use of or substantive reference to any Highly Sensitive Confidential Information as evidence, the party intending to use such Highly Sensitive 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 Highly Sensitive Confidential 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 Highly Sensitive Confidential Information shall be placed in the sealed record. Only one (1) copy of any Confidential Information 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 these proceedings.

(b) Seal. While in the custody of the Commission, these materials shall be marked "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER IN CASE NO. 01-049-75," and due to their nature they shall not be considered as records in the possession of or retained by the Commission within the meaning of the open meetings or public records statutes.

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

(d) Appeal. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction on appeal in accordance with applicable rules and regulations, but under seal as designated herein for the information and use of the court.

(e) 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 Order, and shall be returned to counsel for the providing party within 30 days after final settlement or conclusion of this matter including administrative or judicial review. Counsel who are provided access to Confidential Information pursuant to the terms of this Order may retain their notes, work papers or other documents which would be considered the attorneys' work product created with respect to their use and access to Confidential Information in this docket. An expert witness, accorded access to Confidential Information pursuant to this Order, shall provide to counsel for the party on whose behalf the expert was retained or employed, the expert's notes, work papers or other documents pertaining or relating to any Confidential Information. Counsel shall retain these experts' documents with counsel's documents. In order to facilitate their ongoing regulatory responsibility, this paragraph shall not apply to the Commission, the Division or the Committee which may retain Confidential Information obtained under this Order subject to the other terms of this Order. Not less than 15 days after providing notice to the providing party, the Division may release or disclose Confidential Information obtained in this docket to other parties in subsequent Commission dockets or proceedings, pursuant to the terms of applicable protective orders issued in such other subsequent Commission dockets or proceedings. If the providing objects to release or disclosure of Confidential Information by the Division, the Division may not release or disclose the Confidential Information until the objection has been resolved by the Commission.

4. Use in Pleadings. Where reference to Confidential Information in the sealed record is required in pleadings, cross-examinations, briefs, arguments, 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 Commission 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 Order apply to materials prepared and distributed under this paragraph.

5. Use in Decisions and Orders. The Commission will attempt to refer to Confidential Information in only a general or conclusory form and will avoid reproduction in any decision of Confidential Information to the greatest possible extent. If it is necessary for a determination in this proceeding to discuss Confidential Information other than in a general or conclusory form, it shall be placed in a separate section of the Order, or Decision, under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed a Nondisclosure Agreement. Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed a Nondisclosure Agreement.

6. Segregation of Files. Those parts of any writing, depositions reduced to writing, written examination, interrogatories and answers thereto, or other written references to Confidential Information in the course of discovery, if filed with the Commission, will be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Order, unless such Confidential Information is released from the restrictions of this Order, either through agreement of the parties, or after notice to the parties and hearing, pursuant to the Order of the Commission and/or final order of a court having jurisdiction.

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

8. Reservation of Rights. The parties affected by the terms of this 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 this Order in response to interrogatories, requests for information, other modes of discovery, or cross-examination on the grounds of relevancy or materiality. This Order shall in no way constitute any waiver of the rights of any party to contest any assertion by a party, or finding by the Commission that any information is a trade secret, confidential, or privileged, and to appeal any assertion or finding.

9. The provisions of this Order are specifically intended to apply to data, or information supplied by or from any party to this proceeding, and any nonparty that supplies documents pursuant to process issued by the Commission.

DATED at Salt Lake City, Utah, this 28<sup>th</sup> day of October, 2002.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

G#31314

**APPENDIX A TO PROTECTIVE ORDER  
IN DOCKET NO. 01-049-75**

I have reviewed the Protective Order entered by the Public Service Commission of Utah in Docket No. 01-049-75 with respect to the review and use of confidential information and agree to comply with the terms and conditions of the Protective Order.

Signature: \_\_\_\_\_

Name (type or print): \_\_\_\_\_

Employer or Business Name: \_\_\_\_\_

Business Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Residence Address if  
no Business Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Party Represented: \_\_\_\_\_

Date Signed: \_\_\_\_\_