

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

In the Matter of the Petition of Eschelon)
Telecom of Utah, Inc., for Arbitration with) DOCKET NO. 07-2263-03
Qwest Corporation, Pursuant at 47 U.S.C.)
Section 252 of the Federal) PROTECTIVE ORDER
Telecommunications Act of 1996)
)

ISSUED: August 16, 2007

By the Commission:

On July 27, 2007, Qwest Corporation submitted a Motion for Protective Order in this docket. Qwest Corporation stated that entry of a protective order would expedite the production of documents and other information and would afford necessary protection to trade secret and confidential commercial, financial and competitive information. The Commission finds that sufficient grounds exist for entry of the following Protective Order in this docket.

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 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, financial, competitive 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 - - SUBJECT TO PROTECTIVE ORDER**” or “**CONFIDENTIAL - - SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. 07-2263-03.**” All copies of documents so marked will be made on yellow paper. Parties filing electronic documents should 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 (which may include counsels’ paralegals, administrative assistants and clerical staff to the extent necessary for performance of work on this matter), and shall not be used nor disclosed except for the purpose 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 (including such experts’ administrative assistants and clerical staff, and persons employed by the parties, to the extent necessary for performance of work on 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. The Public Service Commission, the Division of Public Utilities, and the Committee of Consumer Services, and their respective counsel and 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 and Highly Confidential Information (as described in paragraph two below) 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. Further, nothing herein shall prevent disclosure as required by law pursuant to interrogatories, administrative requests for information or documents, subpoena, civil investigative demand or similar process, provided, however, that the party being required to disclose Confidential Information or Highly Confidential Information shall promptly give prior notice by telephone and written notice of such requirement of disclosure by facsimile and overnight mail to the party that provided said Information, addressed to the attorneys of record for such party, so that the party that provided said Information may seek an appropriate protective order. The disclosing party will not oppose action by, and will cooperate with the party that provided the Confidential Information or Highly Confidential Information to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to said Information.

(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 documents and information may claim that additional protective measures, beyond those required under this Protective Order, are warranted for certain confidential material, referred to as highly sensitive documents and information. In such case, the provider shall identify such documents and information and shall inform the requester of such documents and information of their claimed highly sensitive nature as soon as possible. The provider of the requested information shall also petition the Commission for an order granting additional protective measures which the petitioner believes are warranted for the claimed highly sensitive documents and information that is to be produced in response to an information request. The provider 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 documents and information under the terms of this Protective Order, may respond to the petition and oppose or propose alternative protective measures to those requested by the provider of the claimed highly

sensitive documents and information. Disputes between the parties shall be resolved pursuant to Commission Order pursuant to Paragraph 2 of this Protective Order.

2. Highly Confidential Information. Any person, whether a party or non-party, may designate certain competitively sensitive Confidential Information as “Highly Confidential Information” if it determines in good faith that it would be competitively disadvantaged by the disclosure of such information to its competitors. Highly Confidential Information includes, but is not limited to, documents, pleadings, briefs and appropriate portions of deposition transcripts, which contain information regarding the market share of, number of access lines served by, or number of customers receiving a specified type of service from a particular provider or other information that relates to marketing, business planning or business strategies.

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

“HIGHLY CONFIDENTIAL—USE RESTRICTED PER PROTECTIVE ORDER IN
DOCKET NO. 07-2263-03.”

Placing a “Highly Confidential” stamp on the first page of a document indicates only that one or more pages contain Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly

Confidential Information must be marked separately to indicate Highly Confidential Information, even where that information has been redacted. The unredacted versions of each page containing Highly Confidential Information, and provided under seal, should be submitted on paper distinct in color from non-confidential information and “Confidential Information” described in section 1 of this Protective Order.

Parties seeking disclosure of Highly Confidential Information must designate the person(s) to whom they would like the Highly Confidential Information disclosed in advance of disclosure by the providing party. Such designation may occur through the submission of Exhibit “B”. Parties seeking disclosure of Highly Confidential Information shall not designate more than (1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Confidential Information; (2) five in-house experts; and (3) a reasonable number of outside counsel and outside experts to review materials marked as “Highly Confidential.” Disclosure of Highly Confidential Information to Commissioners, Hearing Officers and Staff members shall be limited to persons to whom disclosure is necessary. The Exhibit “B” also shall describe in detail the duties or responsibilities of the person being designated to see Highly Confidential Information and the person’s role in the proceeding. Highly Confidential Information may not be disclosed to persons engaged in strategic or competitive decision making for any party, including the sale or marketing of products or services on behalf of any party.

Any party providing either Confidential Information or Highly Confidential Information may object to the designation of any individual as a person who may review

Confidential Information and/or Highly Confidential Information. Such objection shall be made in writing to counsel submitting the challenged individual's Exhibit "A" or "B" within three (3) business days after receiving the challenged individual's signed Exhibit "A" or "B". Any such objection must demonstrate good cause to exclude the challenged individual from the review of Confidential Information and/or Highly Confidential Information. Written response to any objection shall be made within three (3) business days after receipt of an objection. If, after receiving a written response to a party's objection, the objecting party still objects to the disclosure of either Confidential Information or Highly Confidential Information to the challenged individual, the Commission shall determine whether the Confidential Information or Highly Confidential Information must be disclosed to the challenged individual.

Copies of Highly Confidential Information may be provided to the in-house attorneys, outside counsel and outside experts who have signed Exhibit "B". The in-house experts who have signed Exhibit "B" may inspect, review and make notes from the in-house attorney's copies of Highly Confidential Information.

Persons authorized to review the Highly Confidential Information will maintain the documents and any notes reflecting their contents in a secure location to which only designated counsel and experts have access. No additional copies will be made, except for use during hearings and then such disclosure and copies shall be subject to the provisions of Section 6. Any testimony or exhibits prepared that reflect Highly Confidential Information must be maintained in the secure location until removed to the hearing room for production under seal

and under circumstances that will ensure continued protection from disclosure to persons not entitled to review Highly Confidential Information.

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

3. (A) Challenge to Confidentiality or Proposed Additional Protective Measures.

This Order establishes a procedure for the expeditious handling of Confidential or Highly Confidential Information; it shall not be construed as an agreement, or ruling on the confidentiality of any 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, Highly Confidential Information or information referred to in paragraph 1(d) above, or are unable to agree on the appropriate treatment of highly sensitive documents and information, the party objecting to the classification as Confidential Information or Highly Confidential Information or the party claiming highly sensitive documents and information and the need for additional protective measures, shall forthwith submit the said 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, Highly Confidential Information, or highly sensitive documents and information, or the appropriate additional protection to be afforded for specific highly sensitive documents and 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 Highly 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 CASE NO. 07-2263-03." 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.

4. (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 or Highly Confidential Information as evidence, the party intending to use said 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 that 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 or Highly 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 and Highly 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. 07-2263-03," and Highly Confidential Information shall be marked "HIGHLY CONFIDENTIAL--USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. 07-2263-03" 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 or Highly 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 or Highly 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 and Highly Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall be returned to counsel for the providing party within 30 days after final settlement, or conclusion of this matter including administrative, or judicial review thereof. Alternatively, a party receiving Confidential Information or Highly Confidential Information pursuant to the terms of this Order may certify, within 30 days after final settlement, or conclusions of this matter including administrative or judicial review thereof, that said Information has been destroyed. Counsel who are provided access to Confidential Information or Highly 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 said Information in this docket. An expert witness, accorded access to Confidential Information or Highly 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 said 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 and

Highly Confidential Information obtained under this Order subject to the other terms of this Order. The Division may release or disclose said 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. The providing party shall be notified in advance by any state regulatory agency which intends to use, release or disclose any of the retained Confidential Information or Highly Confidential Information in any subsequent case.

5. Use in Pleadings. Where reference to Confidential Information or Highly 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 said 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.

6. (A) Use in Decisions and Orders. The Commission will attempt to refer to Confidential Information and Highly Confidential Information in only a general, or conclusory form and will avoid reproduction in any decision of said Information to the greatest possible extent. If it is necessary for a determination in this proceeding to discuss Confidential Information or Highly 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.

7. 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 and Highly 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 said 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.

8. Preservation of Confidentiality. All persons who may be entitled to receive, or who are afforded access to any Confidential Information or Highly Confidential Information by reason of this Order shall neither use, nor disclose said 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 said Information secure in accordance with the purposes and intent of this Order.

9. Reservation of Rights. The parties hereto 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 this Protective 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.

10. 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 non-party that supplies documents pursuant to process issued by this Commission

DATED at Salt Lake City, Utah, this 16th day of August, 2007.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#54361

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APPENDIX A TO PROTECTIVE ORDER

IN DOCKET NO. 07-2263-03

I have reviewed the Protective Order entered by the Public Service Commission of Utah in Docket No. 07-2263-03 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 Firm

Business Address

Party Represented

Date Signed

APPENDIX B

HIGHLY CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated August 16, 2007, in Docket No. 07-2263-03 and agree to be bound by the terms and conditions of this Order.

Name (Type or Print)

Employer or Firm

Job Title and Job Description

Business Address

Party Represented

Signature

Date Signed