

In the Matter of the Application of)

DOCKET NO. 98-2239-01

CONVERGENT COMMUNICATIONS)

SERVICES, INC., for a Certificate to)

Compete as a Telecommunications Corp-)

oration and to Offer Public Telecommunica-)

PROTECTIVE ORDER

tions Services. (To Acquire Certificate)

Issued to its parent Corporation, Conver-)

gent Communications, Inc., in Docket No.)

97-2239-01.))

ISSUED: August 4, 1998

By the Commission:

On July 23, 1998, Convergent Communications Services, Inc. ("Convergent") submitted a Motion and Proposed Protective Order to the Commission in the above-entitled proceeding. Convergent stated in its Motion that the entry of a Protective Order will expedite the production of documents and other information to parties seeking to prepare recommendations 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 the following Protective Order.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, That

1. a. Confidential Information. All documents, data, information, studies, annual reports and other materials furnished or made available pursuant to any Orders of this Commission, interrogatories or requests for information, subpoenas, depositions, or other modes of discovery that are claimed by any party or entity to be of a trade secret, proprietary, privileged 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, proprietary, confidential or privileged commercial and financial information (hereinafter collectively referred to as "Confidential Information"), and the Confidential Information 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 by stamping the same with a designation indicating its trade secret, proprietary, privileged, or confidential nature. 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 purposes of this proceeding. Counsel for a party may authorize access to such confidential information by that party's

experts, as follows:

- (1) Five (5) business days' written notice shall be given to the party which produced the confidential information. The notice shall contain the name, title, job description, description of previous positions and experience, and area of expertise of any person to be given access to such information.
- (2) If it is the good faith position of the party which produced the confidential information that the person so designated should not be given access to that information, the party which produced the information may respond to the notice by written objection.
- (3) If the party which has proposed that access be given to the designated person does not receive a written objection by the party which produced the confidential information within five (5) business days after service of the said written notice, that party shall be authorized to provide access to the information to the designated person.
- (4) If the party which produced the Confidential Information objects to access to that information by the designated person, the party which requested such access and the party which produced the information shall attempt to resolve the objection. If these parties are unable to resolve the objection, either of them may apply to the Commission for a ruling as to the access proposed. In that event, access to the information shall not be given to the designated person, pending resolution of the objection by the Commission.
- (5) The standard to be applied by the Commission in determining a question of an expert's access to Confidential Information shall be whether access by the individual in question would be reasonably likely to jeopardize the confidential nature of the information sought.

c. Nondisclosure Agreement. Prior to giving access to Confidential Information as contemplated in paragraph 1(b) above to any expert, 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. 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." Court reporters shall also sign an Exhibit "A." The Nondisclosure Agreement (Exhibit "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 they have reviewed the same and have consented to be bound by its terms. The Nondisclosure Agreement shall contain the signatory's full name, permanent business address and employer, and the name of the party with whom the signatory is associated. Copies of such agreements shall be delivered to counsel for the providing party and the originals filed with the Commission.

d. Availability of Documentation. As to highly sensitive documents and information, any party shall have the right, at its option, to refuse to provide copies to counsel for other parties or to their experts as defined in paragraph 1(b). Should any party 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.

2. Challenge to Confidentiality.

- a. This Order establishes a procedure for the expeditious handling of information that a party claims is confidential; 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 trade secret, proprietary, confidential or privileged commercial and financial information, the party objecting to the trade secret claim or other confidentiality 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, the Commission will enter an order resolving the issue.
- c. Any party at any time upon ten (10) business 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 other 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. 98-2239-01". 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 a hearing, pursuant to a subsequent Order of the Commission. In the event that 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, the parties, at the request of the providing party and to enable the providing party to seek a stay or other relief, shall not disclose such information or use it in the public record for ten (10) business days.

3. Confidential Information as Evidence.

a. Receipt into Evidence. Provision is hereby made for receipt of evidence in this proceeding under seal. At least ten (10) business days prior to the use of or substantive reference to any Confidential Information as evidence, the party intending to use such 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, proprietary, confidential or privileged 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 these proceedings.

b. Seal. While in the custody of the Commission, these materials shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. 98-2239-01", and due to their trade secret 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 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 Order. 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.

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

5. Use by the Commission.

- a. Use in Decisions and Orders. The Commission will attempt to refer to Confidential Information in only a general or conclusionary 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 conclusionary form, it shall be placed in a separate section of the Report and 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 (Exhibit "A"). 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 (Exhibit "A").
- b. Summary for Record. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Confidential Information for use in the Report and Order or Decision or to be placed on the public record.
- c. Commission personnel. Any Commissioners or members of the Commission staff may have access to any Confidential Information made available pursuant to this Protective Order and shall be bound by the terms of this Order, except for the requirement of signing an Exhibit "A".
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 a 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, nor 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 and in accordance with the purposes and intent of this Order.
8. 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 materials furnished under the terms of this Protective Order in response to interrogatories, requests for information 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 herein to contest any assertion or finding of trade secret, propriety, confidentiality or privilege, and to appeal any such determination of the Commission or such assertion by a party.

9. Scope. The provisions of this Order are specifically intended to apply to Confidential Information supplied by or from any party to this proceeding, and any nonparty that supplies documents pursuant to process issued by this Commission, as well as to any reports or filings required upon a grant of the application in this proceeding, including but not limited to, annual reports submitted to the Commission.

DATED at Salt Lake City, Utah, this 4th day of August, 1998.

/s/ Stephen F. Mecham, Chairman

(SEAL) /s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

EXHIBIT "A"

I have reviewed the Protective Order issued by the Public Service Commission of Utah on the 4th day of August, 1998, in Docket No. 98-2239-01 and agree to be bound by the terms and conditions of such Order.

Signature

Name (Type or Print)

Job Title or Job Description

Employer or Firm

Business Address

Party to the proceeding

Date Signed