

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

In the Matter of NorthPoint)	
Communications, Inc. Application for)	<u>DOCKET NO. 99-2288-01</u>
a Certificate of Convenience and Necessity)	
to Provide Local Exchange)	
Telecommunications Services Within the)	<u>PROTECTIVE ORDER</u>
State of Utah.)	

ISSUED: August 23, 1999

By the Commission:

NorthPoint Communications, Inc. ("NorthPoint"), on the 2nd day of August, 1999 submitted a Motion and Proposed Order to the Commission in the above-entitled proceeding seeking a Protective Order. NorthPoint states in its Motion that the entry of a Protective Order will expedite the production of documents and other information to parties seeking to prepare for the hearing of 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, information and other material produced pursuant to any data requests or other modes of discovery that are claimed by the party producing such material to be confidential in nature shall be produced pursuant to the terms of this Order, and shall be treated by all persons accorded access thereto pursuant to this Order as constituting confidential commercial 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 a designation indicating its proprietary 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 (which shall include the Division of Public Utilities), and shall not be used or disclosed except for purposes of this proceeding; provided, however, that said counsel may authorize the party's designated expert witnesses in this matter to obtain access to any specific Confidential Information for the purpose of this proceeding. The Public Service Commission and its staff may have access to any Confidential Information made available pursuant to this Order, and such persons shall be bound by the terms of this Order.
- (c) Nondisclosure Agreement. Prior to giving access to Confidential Information as contemplated in paragraph (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 by signing a copy of Exhibit A hereto. Confidential Information shall not be disclosed to any person who has not signed a copy of Exhibit "A." Each person to whom disclosure is to be made shall certify by signing Exhibit A that he or she has reviewed the Protective Order 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.

(d) 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 other parties or to their 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.

2. (a) Challenge to Confidentiality. 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 material constitutes Confidential Information, the party objecting to the claim of confidentiality shall forthwith submit the material to the Commission for its review pursuant to this Order. The Commission will rule on the question of whether such material submitted is Confidential Information and 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 material that has been designated as Confidential Information or that was 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 such material 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. 99-2288-01." It shall be transcribed only by agreement of the parties or on Order of the Commission and, in that event, it 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 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. (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 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 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 these proceedings.

(b) Seal. While in the custody of the Commission, these materials shall be marked "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN CASE NO. 99-2288-01," and due to their proprietary nature, they shall not be considered 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. In order to facilitate their ongoing regulatory responsibility, this paragraph shall not apply to the Commission, the Division of Public Utilities, or the Committee of Consumer Services, which may retain confidential information obtained under this Order subject to the terms of this Order. Any state regulatory agency that intends to use any of the retained Confidential Information in any subsequent case shall notify the providing party in advance of such use.

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 Exhibit "A." All the protections afforded in this Order apply to materials prepared and distributed under this paragraph.

5. (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 this Order or Decision under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed 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 Exhibit "A."

(b) Summary for Record. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Confidential Information referred to in the Decision or Order to be placed on the public record.

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, segregation 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 purpose of preparing for and conducting this proceeding, and then solely in accordance with the purposes and intent of this Order, and shall take reasonable precautions to keep the Confidential Information secure.

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 matters 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, confidentiality or privilege, and to appeal any such determination of the Commission or such assertion by a party.

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 this Commission.

DATED at Salt Lake City, Utah, this 23rd day of August, 1999.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

EXHIBIT "A"

I have reviewed the foregoing Protective Order issued by the Public Service Commission on August 23, 1999, in Docket No 99-2288-01, with respect to the review and use of Confidential Information as defined therein, and agree to be bound by the terms and conditions of such Order.

Signature

Name (type or print)

Residence Address

Employer or Firm

Business Address

Party

Date