

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

COX NEBRASKA TELECOM, L.L.C. and)	Docket No. FC-1296
ILLUMINET,)	
)	
Complainants,)	
)	
vs.)	
)	
QWEST CORPORATION,)	
)	
Respondent,)	
)	
And)	
)	
ALLTEL NEBRASKA, INC., and)	Docket No. FC-1297
ALLTEL COMMUNICATIONS OF)	
NEBRASKA, INC.,)	
)	
Complainants,)	
)	
Vs.)	
)	
QWEST CORPORATION,)	
)	
Respondent.)	Entered: July 23, 2002

PROTECTIVE ORDER

This Matter came before the Nebraska Public Service Commission (Commission) upon Cox Nebraska Telecom, L.L.C., ALLTEL Nebraska, Inc, ALLTEL Communications Of Nebraska, Inc., Illuminet, Inc. (Illuminet) (collectively the "Complainants" or individually a "Complainant"), Motion for Protective Order in this application and proposed form of Protective Order. The Commission having considered the Motion, the responses of the parties, and being otherwise fully advised, finds that the Motion should be granted and the Protective Order entered. The following Protective Order is hereby entered with respect to all confidential information (as defined herein) filed by any of the parties in this proceeding or produced in discovery during this proceeding:

1. Confidential Information. All documents and information (including confidential information in computer storage media or devices of every type or description) filed with the Commission or furnished to other parties pursuant to any requests for information, subpoenas, or other modes of discovery (formal or informal), and including depositions, that are claimed to be of a trade secret, proprietary, or confidential nature (hereinafter referred to as "confidential information") shall be so marked by the party so claiming, by stamping the same with a designation indicating its trade secret, proprietary or confidential nature. Access to and review of

confidential information shall be strictly controlled by the terms of this Protective Order.

2. Nondisclosure Agreement. No access to confidential information shall be authorized under the terms of this Protective Order to any person until the person desiring access to such information signs a Nondisclosure Agreement in the form that is attached hereto and incorporated herein as "Exhibit A." The Nondisclosure Agreement (Exhibit A) shall require the person to whom disclosure is to be made to certify in writing that he or she has read this Protective Order and agrees to be bound by its terms and conditions. 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. The original signed agreement shall be returned to Chris Post, legal counsel for the Nebraska Public Service Commission, with a copy served upon the opposing party.

3. Availability to the Commission and Parties. Confidential material shall be accessible to the Commission and Commission Counsel and shall not be used or disclosed except for the purpose of conducting, issuing orders in and otherwise participating in this proceeding. Copies of confidential information shall also be made available to Commission Staff members who have signed this Protective Order.

Confidential information shall be disclosed to a party's counsel, witnesses or expert only as follows:

- (a) Except as provided for in paragraph 3(e), below, confidential information may not be disclosed to any individual 1) who has primary job responsibilities for marketing, market analysis, or market entry for any party to this proceeding or who will have those responsibilities in the foreseeable future. Any such witness or expert may be an employee of a party provided that such employee's duties are not primarily related to marketing, market analysis, or market entry for the party.
- (b) Prior to receipt of confidential information, the individual seeking disclosure shall provide to the disclosing party notice of his or her desire to receive confidential information, together with 1) his or her name, employer, title, job description and experience and area of expertise, 2) except as provided for in paragraph 3(e), below, a statement that he or she does not have primary responsibility for marketing, market analysis, or market entry for any party to the proceeding nor does he or she anticipate having those responsibilities in the foreseeable future; and 3) an executed Non-Disclosure Agreement.
- (c) While in the custody of the Commission, the original and all copies of material containing information claimed under this Protective Order to be confidential shall be kept in a

sealed envelope or box, which envelope or box is marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. FC-1296 AND DOCKET NO. FC-1297."

- (d) Vendor specific proprietary information filed with the Commission will be provided under this Protective Agreement only upon the vendor's approval and to individuals who are authorized to receive vendor specific information and who are (1) not responsible for marketing or pricing of telecommunication services; (2) not responsible for product procurement as to any switch products or services for any competitor; and (3) not an expert advisor, outside consultant, independent consultant, representative or witness who is a major shareholder (holding five percent (5%) or more of issued stock), principal or consultant of a direct competitor of Qwest Corporation's switch vendors. All terms of this Protective Agreement apply to the provision of vendor specific information.
- (e) Notwithstanding the requirements of Sections 3(a), 3(b)(2) and 3(d), the parties agree that Complainants may receive confidential information from another party provided that such information shall be used by Complainants only with respect to the presentation of the issues raised in this proceeding regarding the development and implementation of intrastate tariffed Common Channel Signaling System No. 7 message signaling services provided by QWEST CORPORATION.

4. Segregation of Files. The materials containing the confidential information and any proceedings and orders of the Commission with regard thereto will be sealed and marked as provided in this Protective Order by the Commission, segregated in the files of the Commission and withheld from inspection by any person except under the conditions established in this Protective Order unless such confidential information is released from the restrictions of this Protective Order either through agreement of the parties or, after notice to the parties and hearing, pursuant to the Protective Order of the Commission and/or final order of a court having jurisdiction.

5. Preservation of Confidentiality. No persons who are afforded access to any confidential information by reason of this Protective Order shall use or disclose the confidential information for purposes of business or competition, or any other purpose other than the purpose of preparation of and conduct of this proceeding, or for preparation of and conduct of any appeals arising from this proceeding. Persons afforded access to confidential information shall use such information solely as contemplated herein, and shall take all reasonable precautions to keep the confidential information secure as trade secret, confidential, or proprietary information and in accordance with the purposes and intent of this Protective Order. No person may copy, microfilm, microfiche or otherwise reproduce the information without the written consent of the party claiming protection except for his or her own use, or the use of persons

permitted access to the confidential information and who have signed a Nondisclosure Agreement.

6. Use of Confidential Material. In the event any party intends to use or uses confidential information obtained pursuant to the Nondisclosure Agreement under this Protective Order in testimony, exhibits, discovery or discovery responses, cross-examination, briefs or any other pleading or document to be filed in this proceeding, the following shall apply:

- (a) Testimony, briefs or other pleadings containing the confidential information claimed to be confidential shall be filed under seal with the Commission by the party preparing and using the same in sealed envelopes or other appropriate containers, which shall be prominently marked with the legend "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. FC-1296 AND DOCKET NO. FC-1297". A copy thereof shall be served on the parties who have signed Nondisclosure Agreements. The complete document containing the protected material shall not be filed in the public record.
- (b) The pages of the documents referred to in Paragraph 6(a) above which contain information claimed to be confidential shall be clearly marked.
- (c) Any party who has not executed a Nondisclosure Agreement shall receive a copy of the documents referred to in Paragraph 6(a) above from which information claimed to be protected has been omitted.
- (d) Testimony, exhibits, discovery responses containing the information claimed to be confidential shall be filed under seal with the Commission by the party preparing and using the same in sealed envelopes or other appropriate containers, which shall be prominently marked with the legend "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. FC-1296 AND DOCKET NO. FC-1297". A copy thereof shall be served on the parties who have signed Nondisclosure Agreements. The complete document containing the protected material shall not be filed in the public record. Any party who has not executed a Nondisclosure Agreement shall receive a copy from which information has been omitted.
- (e) In the course of this proceeding, any hearings during which documents or information claimed to be confidential obtained pursuant to the terms of this Protective Order are likely to be disclosed shall be conducted in camera, attended only by persons authorized to have access to such information under this Protective Order, provided that there has been no prior Commission determination that the documents or information in question are not confidential.

The transcript of such in camera proceedings shall be kept under seal.

7. Access to Record.

- (a) Access to sealed testimony, records and information shall be limited to the Commission and persons who have signed the Nondisclosure Agreement set forth in Exhibit A, unless such information is released from the restrictions of this Protective Order either through agreement of the parties or after notice to the parties and hearing, pursuant to the order of the Commission or the final order of a court having final jurisdiction.
- (b) Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal, but under seal as designated herein for the information and use of the court. If a portion of the record is forwarded to a court under seal for the purposes of an appeal, the providing party shall be notified which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal.
- (c) Unless otherwise ordered, confidential information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal and shall continue to be subject to the protective requirements of this Protective Order after final settlement or conclusion of this matter, including administrative or judicial review thereof.

8. Challenge to Confidentiality. This Protective 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 document. In the event that any party challenges a claim for protection under this Protective Order, the party objecting to the removal of the confidential designation bears the burden of demonstrating the harm that would result from public disclosure of the material for which protection is sought. Any party may challenge the characterization of any document or specific information claimed by the providing party to be confidential in the following manner:

- (a) A party challenging the confidentiality of any materials pursuant to this Protective Order shall first contact counsel for the providing party and attempt to resolve any differences informally;
- (b) If the parties cannot resolve the disagreement informally, the party challenging the claim for protection shall do so by filing a motion with the Commission, which identifies

with specificity the material challenged and requests a ruling whether a document or information is confidential.

- (c) Within three business days of service of a motion for determination of confidentiality, the party claiming confidentiality shall deliver under seal all of the relevant documents and information to the Commission for an in camera inspection by the Commission or its designated hearing officer.
- (d) A ruling on the confidentiality of the challenged document or specific information shall be made by the Commission after an in camera hearing which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential materials shall be present. Such hearing shall be held as expeditiously as is practicable following delivery of the relevant documents and information to the Commission.
- (e) The record of said in camera hearing shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. FC-1296 AND DOCKET NO. FC-1297". Court reporter notes of such hearing shall be separately bound, segregated, sealed, and withheld from inspection by any person who has not executed a Nondisclosure Agreement in accordance with Paragraph 3 of this Protective Order.
- (f) If the Commission rules that any document or specific information should be removed from the restrictions imposed by this Protective Order, no party shall disclose such document or specific information, 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 subparagraph are entered to enable the party claiming protection to seek a stay or other relief from the Commission's order denying that party such protection.

9. Return of Documents. All Confidential Information provided pursuant to this Protective Order shall be returned to the disclosing party within 30 days of the conclusion of the proceeding or any appeal taken therefrom.

10. Responses to Subpoena or Order. If any person receiving Confidential Information receives a subpoena or order for production of Confidential Information produced under the terms of this Protective Order, that person shall notify the counsel of record for each party in this proceeding within 24 hours after receiving the subpoena or order and before the documents are produced, identifying the date and location of the ordered or requested production.

11. Damages. Any Person who violates this Protective Order by reason of unauthorized use, or disclosure, or failure to keep the information confidential shall be liable for damages and penalties as provided by law.

DATED this ____ day of July, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

Chair

ATTEST:

Executive Director

COMMISSIONER'S CONCURRING:

EXHIBIT A
BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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NONDISCLOSURE AGREEMENT

I hereby certify that I am familiar with the terms and conditions of the Protective Order entered by the Commission in the above-captioned docket and agree to be bound by the terms and conditions thereof. I further certify that I am eligible to receive confidential information under the terms of Paragraph 3 of the Protective Order.

_____, 2002

Name (print or type)

Title

Representing

Business Address

Signature