

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. NUSF-26  
Public Service Commission, on )  
its own Motion, seeking to ) PROTECTIVE ORDER  
establish a long-term universal )  
service funding mechanism. ) Entered: November 25, 2003

BY THE COMMISSION:

The Nebraska Public Service Commission (Commission), on its own motion, opened the above captioned docket seeking to establish a long-term universal service funding mechanism. The order initiating this docket was entered on August 21, 2001. Notice of the application was published in The Daily Record, Omaha, Nebraska, on August 24, 2001.

O P I N I O N   A N D   F I N D I N G S

For purposes of conducting the next phase of this proceeding, several telecommunications carriers have submitted or will submit confidential information including but not limited to various exchange maps, in electronic form, to the Commission.<sup>1</sup> We find that an order should be entered to protect all confidential information filed with the Commission. The distribution and use of confidential information shall be subject to the terms of this order and the attached nondisclosure agreements. Parties seeking access to the confidential electronic exchange maps must sign the nondisclosure agreement attached as Exhibit "A" and fully incorporated herein. Parties seeking access to all other confidential information filed in this proceeding must sign Exhibit "B" attached to this Order and fully incorporated herein.

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 as part of testimony or briefs or 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

---

<sup>1</sup> While much of the information contained within the exchange maps is public, some may view that the exchange maps in electronic form (from which the maps could easily be reproduced, manipulated, and/or transmitted) are proprietary and could, if provided to other carriers or potential carriers, provide those carriers or potential carriers with a competitive advantage, and thereby simultaneously place the submitting carrier at a competitive disadvantage.

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 order.

2. Access: No access to the exchange map information shall be authorized under the terms of this order to any person until the person desiring access to the exchange map information signs a nondisclosure agreement in the form that is attached hereto and incorporated herein as "Exhibit A." No access to all other confidential information shall be authorized under the terms of this order to any person until the person desiring access to the information signs a nondisclosure agreement in the form that is attached hereto and incorporated herein as "Exhibit B." The nondisclosure agreements (Exhibit A and B) shall require the person to whom disclosure is to be made to certify in writing that he or she has read this order and agrees to be bound by its terms and conditions. The agreements shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such agreements shall be filed with the Commission.

3. Availability to the Commission and Parties: Confidential information shall be accessible to the Commission, Commission counsel, and Commission staff members and shall not be used or disclosed except for the purpose of conducting, issuing orders in, and otherwise participating in, this proceeding.

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

- (A) Confidential information may not be used for 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.
- (B) Prior to receipt of confidential information, the individual seeking disclosure shall provide to the disclosing party an executed nondisclosure agreement including: his or her name, employer, title, job description and experience and area of expertise.
- (C) If the disclosing party believes in good faith that disclosure should not be made to any person seeking confidential information, the disclosing party may respond to the notice by filing a written objection. If the parties cannot resolve the dispute informally, the matter shall be submitted to the Commission by motion. No confidential information need be disclosed pending resolution by the Commission.

- (D) If any party believes that, due to the highly sensitive nature of any information to be disclosed in this proceeding, the provisions of this protective order do not provide sufficient protection, the disclosing party may apply to the Commission for extraordinary protection.
- (E) While in the custody of the Commission, the original and all copies of material containing information claimed under this 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 APPLICATION NO. NUSF-26."
- (F) Any individual who has primary marketing, pricing, product development, market analysis, market entry, or strategic planning responsibilities for any party to this proceeding shall be entitled to review confidential information subject to signing the nondisclosure agreements and will be strictly limited to use of such information solely in this proceeding, or for preparation of and conduct of any appeals arising directly from this proceeding.

4. Segregation of Files: The materials containing the confidential information and proceedings and orders of the Commission with regard thereto will be sealed and marked as provided in this order of the Commission, segregated in the files of the Commission and withheld from inspection by any person except under the conditions established in 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.

5. Preservation of Confidentiality: No persons who are afforded access to any confidential information by reason of this 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 directly 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 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.

6. Use of Confidential Material: In the event any party intends to use or uses 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 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 APPLICATION NO. NUSF-26." 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 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 and 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 APPLICATION NO. NUSF-26." 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 claimed to be protected has been omitted.

7. Access to Record:

- (A) General: 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 or Exhibit B, where applicable, unless such 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 or the final order of the final order of a court having final jurisdiction.

- (B) Appeal: 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) Continuation of Protection: 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 order after final settlement or conclusion of this matter, including administrative or judicial relief 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 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 APPLICATION NO. NUSF-26." 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 this order.
- (F) If the Commission rules that any document or specific information should be removed from the restrictions imposed by this order, no party shall disclose such document or specific information, or use it in the public record for five 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: Upon request by the disclosing party, 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 order, that person shall promptly notify the effected party's counsel 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 may be liable for damages and penalties as provided by law.

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the terms and conditions of the protective order for Docket No. NUSF-26 be, and hereby are, as set forth herein.

MADE AND ENTERED at Lincoln, Nebraska, this 25th day of November, 2003.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

**EXHIBIT "A"**

IN THE MATTER OF THE  
COMMISSION, ON ITS OWN MOTION,  
SEEKING TO ESTABLISH A LONG  
TERM UNIVERSAL SERVICE FUNDING  
MECHANISM

Application No. NUSF-26

NONDISCLOSURE AGREEMENT

By his/her signature below, \_\_\_\_\_ certifies as follows:

1. In the course of this proceeding, several telecommunications carriers have submitted or will submit to the Commission and/or Commission Staff in electronic form various exchange maps specific to the carrier's operations and exchanges.

2. While much of the information contained within the exchange maps is public, some may view that the exchange maps in electronic form (from which the maps could easily be reproduced, manipulated, and/or transmitted) are proprietary and could, if provided to other carriers or potential carriers, provide those carriers or potential carriers with a competitive advantage, and thereby simultaneously place the submitting carrier at a competitive disadvantage.

3. During the course of this proceeding, I may be provided with access to, or copies of, the aforementioned exchange maps



submitted by other carriers, either in electronic form or produced therefrom. Based on the foregoing, I agree not to disclose or share these maps with any individual who has not signed this Nondisclosure Agreement and submitted a signed copy to the Commission.

4. I further agree not to use or disclose the exchange maps 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. I agree to take all reasonable precautions to keep the maps secure as trade secret, confidential, or proprietary information. I will not copy, microfilm, microfiche or otherwise reproduce the maps without the written consent of the submitting carrier except for my own use, or the use of persons permitted access to the maps and underlying information and who have signed a Nondisclosure Agreement.

5. In the event I intend to use the exchange maps obtained pursuant to the Nondisclosure Agreement 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, discovery responses or other pleadings containing the exchange maps shall be filed under seal with the Commission in sealed envelopes or other appropriate containers, which shall be prominently marked with the legend "CONFIDENTIAL". 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 5(a) above which contain maps 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 5(a) above from which the exchange maps have been omitted.

6. I will return to Commission Staff within 30 days of the conclusion of the proceeding or any appeal taken therefrom all exchange maps received from the Commission and any copies made.

\_\_\_\_\_, 2003

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Representing

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Signature

**"Exhibit B"**

IN THE MATTER OF THE  
COMMISSION, ON ITS OWN MOTION,  
SEEKING TO ESTABLISH A LONG  
TERM UNIVERSAL SERVICE FUNDING  
MECHANISM

Application No. NUSF-26

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 the protective order.

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Representing

\_\_\_\_\_  
Business Address