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REDACTED

EX PARTE OR LATE FILED

May 20, 2005

ORIGINAL

EX PARTE

RECEIVED

MAY 20 2005

Federal Communications Commission
Office of Secretary

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW B-204
445 12th Street, S.W.
Washington, DC 20554

Re: *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area – WC Docket No. 04-223*

Dear Ms. Dortch:

On May 18, 2005, Blair Rosenthal, Cronan O'Connell, and Dave Teitzel of Qwest met with Jeremy Miller, Russell Hanser, Ian Dillner and Erin Boone of the Policy Division of the Wireline Competition Bureau. Qwest's June 21, 2004 Petition for Forbearance in the above-captioned proceeding was the topic of the discussion.¹ In the meeting, we updated the staff on the revised line counts for Qwest's residential and business retail access lines as of December 2004 from our counts as of February 2004. Residential retail lines have decreased to 120,485 from 136,572 and business retail line counts have decreased to 80,426 from 81,749.² Qwest then clarified that all Qwest access line information as well as information related to competitors, their facilities and their access line counts filed in this proceeding correspond solely to the twenty-four serving wire centers ("SWCs") in Qwest's serving territory within the Omaha MSA.

¹ See Public Notice, 19 FCC Rcd 11374 (2004), *erratum* to correct the docket number issued July 7, 2004.

² Qwest's April 20, 2005 ex parte cover letter reflected Qwest December 2004 retail line counts of 120,483 for residence and 80,451 for business. The residential line count omitted two retail lines sold through Qwest's interexchange carrier sales channel and should have been 120,485, while the business retail line count included 25 lines sold to consumers and should have been 80,426.

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Ms. Marlene H. Dortch
May 20, 2005

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Also during the meeting, we reviewed key arguments and competitive information supporting why forbearance should be granted in the Omaha, NE MSA. Qwest distributed a presentation and a binder which contained information that Qwest has designated as confidential as well as information for which no claim of confidentiality need be made. In particular, Qwest reviewed key competitive information from the Omaha, NE MSA as follows:

- Maps that outline the SWCs and the counties; the fiber routes of competitors; independent telephone company territories; and an overlay of the current service offerings of Cox within the Omaha Metro area
- Access lines counts for Qwest³ as well as competitors as a whole, solely within the Qwest SWCs within the MSA
- Qwest business line information broken down by SWC
- Total number of CLECs, UNEs, collocation, and interconnection trunks, broken down by SWC, purchased by competitors. Additionally, we reviewed the number of UNE-P lines that have transitioned to the Qwest QPP commercial product as of December 2004. We also stated that from a Qwest regional perspective, 90% of all Qwest UNE-P facilities have transitioned to the QPP commercial product.
- Wireless competitive information for the MSA
- VoIP competitive information for the MSA
- Other relevant competitive market data from outside sources which validate the competitiveness of the Omaha MSA and the coinciding marketshare redistribution between Qwest and its competitors

This **REDACTED** version of the *ex parte* contains those portions of the presentation for which no claim of confidentiality is made, as well as the Confidential portions that have been redacted and labeled "**REDACTED FOR PUBLIC INSPECTION.**" Enclosed with this letter are an original and four copies of the redacted version of the presentation. The FCC staff recipients listed below are being provided only with a copy of this cover letter since copies of the voluminous presentation materials were previously provided to them. The version of the presentation containing confidential portions is being filed today, via hand delivery, under separate cover.

A fifth copy of this letter is being provided, for which acknowledgment is requested. Please date-stamp the copy and return it to the courier. If you have any questions regarding this submission, please contact the undersigned at the contact information reflected in the letterhead. Thank you for your assistance with this matter.

³ Qwest access line counts, as reflected on page 5 of the attached power point presentation, represents voice-grade equivalent ("VGE") line counts and only counts those VGE channels that are active. For example, if a customer has ordered a DS1 circuit, we did not count all 24 circuits in that DS1, we only counted those channels that are active in the DS1.

Ms. Marlene H. Dortch
May 20, 2005

Page 3 of 3

Sincerely,
/s/ Cronan O'Connell

Enclosure

cc:

Jeremy Miller
Russell Hanser
Ian Dillner
Erin Boone



Spirit of Service

**Omaha MSA Forbearance
WC Docket 04-223**

May 18, 2005

REDACTED FOR PUBLIC INSPECTION

Legal Framework for Forbearance in the Omaha MSA

- **Under Section 10(a) of the Communications Act, forbearance is to be granted where:**
 1. Enforcement of a regulation or provision of the Act is not necessary to ensure that the charges, practices, classifications or regulations of a carrier are just and reasonable.
 2. Enforcement of such regulation or provision is not necessary for the protection of consumers; and
 3. Forbearance is consistent with the public interest.

- **In determining whether forbearance serves the public interest, Section 10(b) of the Act requires that the Commission consider whether forbearance will “enhance competition among providers of telecommunications services.” If competition between carriers is promoted, from a consumer viewpoint, then this finding is dispositive.**

Legal Framework for Forbearance in the Omaha MSA (cont'd)

- **In contrast, the Section 251(d)(2) impairment standard is a more empirical standard that considers the ability of a competitor to provide a service in the absence of access to an ILEC's unbundled network elements. While a network element that does not meet the impairment test would clearly qualify for forbearance relief as well, the opposite is not necessarily true.**
- **Consequently, Section 10 considers the broad public interest as outlined above (once Section 251(c) has been "fully implemented"), and forbearance cannot be denied solely because the impairment standard has not been met.**

Legal Framework for Forbearance in the Omaha MSA (cont'd)

- **Qwest's evidence in this docket shows that its service territory in the Omaha MSA is extremely competitive and that Qwest now has less than half of the access line base in that market. Qwest's showing clearly demonstrates the right to forbearance.**
- **Qwest's right to forbearance if its showing is accurate has gone relatively unchallenged.**
- **Cox and other CLECs that compete with Qwest have challenged the accuracy and sufficiency of Qwest's data without providing data of their own, even though such data is presumably in their possession.**
 - Under the standards of evidence, a party's failure to provide evidence that is particularly within their control permits a court –or the Commission– to draw the conclusion that this information would not be favorable to that party's claims. See Mammoth Oil Co. v. United States, 275 U.S. 13, 51-53 (1927).

Erosion of Qwest's Retail Access Line Base in the Omaha MSA ⁽²⁾ 1997 - 2004

| Qwest Retail Lines in Service (1) | Dec. 1997 | Dec. 1998 | Dec. 1999 | Dec. 2000 (3) | Feb. 2004 (3) | Dec. 2004 |
|---|----------------|----------------|----------------|------------------|------------------|----------------|
| Res. | 278,678 | 274,843 | 260,023 | 236,725 | 136,572 | 120,485 |
| Bus. | 125,116 | 124,205 | 118,999 | 113,624 | 81,749 | 80,426 |
| Total | 403,794 | 399,048 | 379,022 | 350,349 | 218,321 | 200,911 |

Source: Qwest Forecast Data Mart ("FDM") retail services tracking system.

(1) Excludes Qwest Official Company Service and Public Coin lines.

(2) Excludes effects of market growth.

(3) Data shown at P. 3 of the Affidavit of David L. Teitzel in this docket.

Wireless Service Competition in the Omaha MSA (cont'd)

- In November 2002, Qwest commissioned wireless substitution research in support of its 2003 petition to deregulate local exchange services in Iowa. Council Bluffs, a community within the Omaha MSA, was one of the specific study areas.**
 - In Council Bluffs, 13% of the residential respondents reported that that they had substituted wireless service for Qwest wireline service.** (source: Qwest Small Business and Residential Customers Survey Results, Iowa, p. 16, November 2002. Study conducted by FrederickPolls).

Trend of "Share" in the Omaha MSA

(Source: TNS Telecoms)

Share of Connections (including landline, wireless and broadband)

| | | <u>4Q2000</u> | <u>4Q2004</u> |
|----------|-------------|---------------|---------------|
| Consumer | Qwest | 47% | 23% |
| Consumer | Other | 53% | 77% |
| | Sample Size | 330 | 677 |

Note: TNS does not produce a business connections share analysis.

Share of Local Access Lines

| | | <u>4Q2000</u> | <u>4Q2004</u> |
|----------|-------------|---------------|---------------|
| Consumer | Qwest | 73% | 49% |
| Consumer | Other | 27% | 51% |
| | Sample Size | 106 | 235 |
| Business | Qwest | 83% | 41% |
| Business | Other | 17% | 59% |
| | Sample Size | 31 | 164 |

Note: TNS did not initiate business line share analyses until 4Q02. Values above for business are from the 4Q02 study.

Trend of “Share” in the Omaha MSA (cont’d)

(Source: TNS Telecoms)

Share of Total Telecom Spending

| | | <u>4Q2000</u> | <u>4Q2004</u> |
|----------|-------------|---------------|---------------|
| Consumer | Qwest | 39% | 20% |
| Consumer | Other | 61% | 80% |
| | Sample Size | 106 | 235 |
| Business | Qwest | 29% | 26% |
| Business | Other | 71% | 74% |
| | Sample Size | 31 | 164 |

Note: TNS did not initiate business telecom spending share analyses until 4Q02.
Values above for business are from the 4Q02 study.

Comparison of Qwest Retail Line Counts to Qwest E911 Records in the Omaha MSA

- **E911 records are an approximation of access lines and will never precisely match actual in-service line counts.**
 - Qwest's retail line counts are updated automatically. E911 records are driven by service orders issued separately to Intrado.
 - Disconnected lines are occasionally not removed immediately from the Intrado database.
 - Qwest does not report "incoming only" line records to Intrado, since these lines can never originate an E911 call.

Comparison of Qwest Retail Line Counts to Qwest E911 Records in the Omaha MSA (cont'd)

Qwest Retail Access Lines vs. E911 Records (April 2004 data)

| | | <u>Residence</u> | <u>Business</u> | <u>Total</u> |
|--------------------------------------|--------------------------|------------------|-----------------|-----------------|
| Iowa portion of Omaha MSA | Qwest retail line totals | <i>REDACTED</i> | <i>REDACTED</i> | <i>REDACTED</i> |
| | Qwest E911 records | <i>REDACTED</i> | <i>REDACTED</i> | <i>REDACTED</i> |
| | Difference | <i>REDACTED</i> | <i>REDACTED</i> | <i>REDACTED</i> |
| Nebraska portion of Omaha MSA | Qwest retail line totals | <i>REDACTED</i> | <i>REDACTED</i> | <i>REDACTED</i> |
| | Qwest E911 records | <i>REDACTED</i> | <i>REDACTED</i> | <i>REDACTED</i> |
| | Difference | <i>REDACTED</i> | <i>REDACTED</i> | <i>REDACTED</i> |

Note Qwest retail line totals include Qwest Official Company Service lines, which are also included in Qwest E911 records.

Omaha MSA Wholesale Services View: Qwest Wire Centers (12/31/04)

- As of 12/31/04, a total of 31 CLECs were purchasing wholesale items from Qwest in the Omaha MSA.

| WIRE CENTER | Active CLECs | UNE Loops | | | Collo | LIS Trunks | UNE-P | | QPP | | Resale | |
|------------------|--------------|-----------|-----|-----|-------|------------|-------|-----|-----|-----|--------|-----|
| | | DS0 | DS1 | DS3 | | | BUS | RES | BUS | RES | BUS | RES |
| BENNINGTON | X | X | X | X | X | X | X | X | X | X | X | X |
| ELKHORN-WATERLOO | X | X | X | X | X | X | X | X | X | X | X | X |
| GRETNA | X | X | X | X | X | X | X | X | X | X | X | X |
| OMAHA 135TH ST | X | X | X | X | X | X | X | X | X | X | X | X |
| OMAHA 156 ST | X | X | X | X | X | X | X | X | X | X | X | X |
| OMAHA 78TH ST | X | X | X | X | X | X | X | X | X | X | X | X |
| OMAHA 84TH ST | X | X | X | X | X | X | X | X | X | X | X | X |
| OMAHA 90TH ST | X | X | X | X | X | X | X | X | X | X | X | X |
| OMAHA BELLEVUE | X | X | X | X | X | X | X | X | X | X | X | X |
| OMAHA DOUGLAS | X | X | X | X | X | X | X | X | X | X | X | X |
| OMAHA FORT ST | X | X | X | X | X | X | X | X | X | X | X | X |
| OMAHA FOWLER ST | X | X | X | X | X | X | X | X | X | X | X | X |
| OMAHA IZARD ST | X | X | X | X | X | X | X | X | X | X | X | X |
| OMAHA O ST | X | X | X | X | X | X | X | X | X | X | X | X |
| SPRINGFIELD | X | X | X | X | X | X | X | X | X | X | X | X |
| VALLEY | X | X | X | X | X | X | X | X | X | X | X | X |

= fewer than 10 units.

Omaha MSA Wholesale Services View: Qwest Wire Centers (12/31/04)

| WIRE CENTER | Active CLECs | UNE Loops | | | Collo | LIS Trunks | UNE-P | | QPP | | Resale | |
|-------------------------|--------------|-----------|-----|-----|-------|------------|-------|-----|-----|-----|--------|-----|
| | | DS0 | DS1 | DS3 | | | BUS | RES | BUS | RES | BUS | RES |
| COUNCIL BLUFFS DOWNTOWN | X | X | X | X | X | X | X | X | X | X | X | X |
| COUNCIL BLUFFS MANAWA | X | X | X | X | X | X | X | X | X | X | X | X |
| CRESCENT | X | X | X | X | X | X | X | X | X | X | X | X |
| GLENWOOD-MINEOLA | X | X | X | X | X | X | X | X | X | X | X | X |
| MALVERN | X | X | X | X | X | X | X | X | X | X | X | X |
| MISSOURI VALLEY | X | X | X | X | X | X | X | X | X | X | X | X |
| NEOLA | X | X | X | X | X | X | X | X | X | X | X | X |
| UNDERWOOD | X | X | X | X | X | X | X | X | X | X | X | X |

= fewer than 10 units
* = 3 or fewer CLECs

Evidence Collected by State PUCs of the Magnitude of CLEC Competitive Presence in the Omaha MSA

- In Iowa, the Iowa Utilities Board (“IUB”) conducted a survey of CLEC lines in service in Iowa in conjunction with Docket No. INU-04-1, a docket initiated by the IUB to determine whether local exchange service in certain Iowa communities is subject to effective competition.
 - CLECs responses were collected 4th Qtr. 2003 (and updated 3rd Qtr. 2004) and are highly confidential. Qwest does not have access to the responses.
 - The IUB concluded, based on CLEC responses, that CLECs have “acquired a market share greater than 50% for both business and residential customers” in Council Bluffs. (IUB Final Decision and Order, 12/22/2004, p. 4).
- In Nebraska, the Nebraska Public Service Commission (“NPSC”) issues an annual report to the Legislature regarding telecommunications competition, and in so doing, obtains highly confidential in-service quantities from CLECs serving the state. Qwest does not have access to the highly confidential CLEC access line reports collected by the Commission in the preparation of its report.

Note: Qwest is precluded from obtaining this highly confidential data, and the FCC may wish to work directly with the IUB and NPSC to obtain the required information.

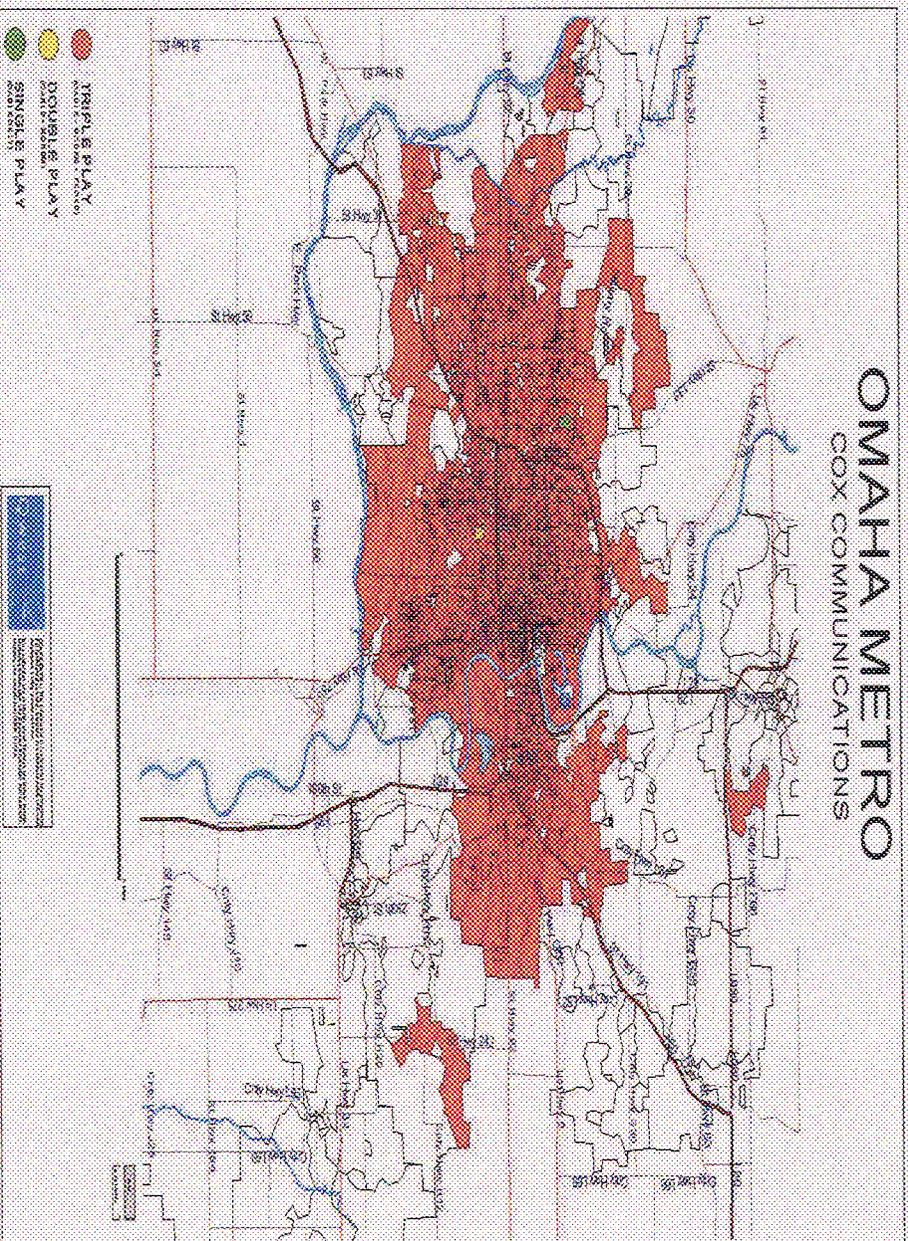
Maps Relevant to Qwest's Forbearance Petition in the Omaha MSA

- At Staff's request, colored maps showing the boundaries of the 24 Qwest wire centers in the Omaha MSA are provided as well as an overlay showing the physical boundaries of the Omaha MSA.**
 - Note: Qwest's petition relates only to Qwest's service territory within the Omaha MSA.

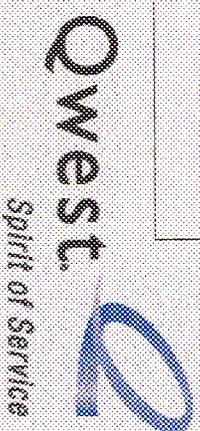
- At Staff's request, maps illustrating the fiber routes of various competitive providers in the Omaha MSA are provided.**
 - Note: These maps are based upon data provided by GeoTel and Power Engineering, the sources relied upon by Qwest for fiber route data utilized in the Triennial Review proceedings.

- An updated map showing the "triple play" service area of Cox Communications in the Omaha MSA is provided.**
 - Note: This map is based upon data obtained from Cox's website by Qwest Market Intelligence.

Map of Cox Service Area Within the Omaha Metro MSA



Note: based upon service availability data obtained from Cox website.



**QWEST SWITCHED BUSINESS LINES BY TYPE:
OMAHA MSA
(12/31/04)**

| <u>Service Type</u> | <u>In-Service Quantity</u> |
|---------------------|----------------------------|
| Basic Business | <i>REDACTED</i> |
| Centrex | <i>REDACTED</i> |
| ISDN BRI | <i>REDACTED</i> |
| ISDN PRI | <i>REDACTED</i> |
| Analog PBX | <i>REDACTED</i> |
| Digital PBX | <i>REDACTED</i> |
| <u>Other</u> | <i>REDACTED</i> |
| Total | <i>REDACTED</i> |

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VoIP as a Competitive Factor in the Omaha MSA

- **Broadband connectivity is a VoIP prerequisite.**
 - **Availability of Broadband in the Omaha MSA:**
 - Cox passes approximately 300,000 homes. The Cox network is 100% broadband cable modem ready.
 - Approximately 70%, or 153,000, of Qwest retail lines in the Omaha MSA are DSL-capable.
 - Excluding other available options, it is clear that the majority of the Omaha MSA market has access to broadband internet connectivity.

VoIP as a Competitive Factor in the Omaha MSA (cont'd)

- **Estimated size of existing broadband subscriber base in the Omaha MSA:**
 - **Cox reports a 24.6% broadband cable modem penetration rate of homes passed: equates to 85,963 cable modem subscribers in the Omaha MSA. (source: Cox 2004 10K).**
 - *****CONFIDENTIAL***: Qwest DSL subscribers in the Omaha MSA as of 12/04: xxxx***END CONFIDENTIAL*****
 - **Well over 86,000 Omaha MSA customers currently have the option of subscribing to VoIP service.**

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VoIP as a Competitive Factor in the Omaha MSA (cont'd)

- Current VoIP providers in the Omaha MSA: AT&T, FiveStar, Vonage, Packet8, VoicePulse, BroadVoice, Zipglobal (Teitzel affidavit at p. 26). The range of VoIP providers is regularly expanding.
 - Vonage adding more than 15K subscribers/week, and now has over 650,000 subscribers nationally. (source: CNN Money, 5/9/05)
 - Vonage reports subscribers are now using their service over satellite broadband connections. (source: Brooke Schulz, Vonage Senior Vice President, comments in Arizona Docket T-000001-04-0749, Feb. 4, 2005).
 - Cox has announced “detailed plans to convert Cox’s local telephone service from traditional circuit switching to VoIP, beginning immediately.” (source: Telephony On Line, March 7, 2005).
 - VoIP services revenues nationally are expected to double from 2005 to 2006 and increase by a factor of 7 by 2009. (source: Infonetics Research, April 29, 2005).

Wireless Service Competition in the Omaha MSA

- **At least six major wireless carriers are now serving the Omaha MSA.** (source: Teitzel affidavit, p. 23).
- Wireless subscribers in the Omaha MSA: Alltel, Cingular, Cricket, Nextel, Sprint, U.S. Cellular and Verizon as of 12/04 (source: Telephia Market Metrics, 12/04):

| | |
|-------|-----------------|
| Total | <i>REDACTED</i> |
|-------|-----------------|

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Wireless Service Competition in the Omaha MSA (cont'd)

- **FCC has estimated that 5%-6% of wireless subscribers have “cut the cord.”** (source: Annual CMRS Competition Report, FCC 04-216).
 - On an approximate wireless subscriber base in the Omaha MSA of 450,000, 6% equates to 27,000 subscribers.
 - Note: the FCC’s estimate excludes customers that have shifted substantial usage from wireline to wireless or that have never initiated wireline service in their residences.
 - On disconnects, Qwest asks customers to report the reason for the disconnect. While customers often decline to provide such a reason, Qwest has identified access line disconnects that have been attributed to wireless substitution. For example, in the 24 Omaha MSA wire centers, * **REDACTED** * residential access lines were identified as being disconnected in favor of wireless service between May 2004 and March 2005. (source: Qwest Disconnect Reason Report).
 - Cricket, one of the wireless providers in the Omaha MSA, reports that “52% of its customers have cut the cord.” (source: Cricket press release, 3/14/05).

Wireless Service Competition in the Omaha MSA (cont'd)

- In November 2002, Qwest commissioned wireless substitution research in support of its 2003 petition to deregulate local exchange services in Iowa. Council Bluffs, a community within the Omaha MSA, was one of the specific study areas.**
 - In Council Bluffs, 13% of the residential respondents reported that that they had substituted wireless service for Qwest wireline service.** (source: Qwest Small Business and Residential Customers Survey Results, Iowa, p. 16, November 2002. Study conducted by FrederickPolls).

Conclusions

- **Qwest's evidence satisfies all statutory criteria for forbearance.**
- **Qwest has lost in excess of 50% of its retail access line base in the Omaha MSA, and competitive losses are continuing in that market.**
- **Qwest has demonstrated a willingness to provide wholesale services to CLECs in instances when unbundled elements are no longer required.**
 - **Qwest Platform Plus ("QPP")**
 - **DSL**
- **Wireless and VoIP competition is contributing to Qwest's customer base erosion in the Omaha MSA and this effect clearly will continue to expand.**

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Qwest  SM

Spirit of Service

**Omaha MSA Forbearance
WC Docket 04-223**

May 18, 2005

**QWEST OMAHA FORBEARANCE PETITION
WC DOCKET 04-223**

Responses to FCC inquiries

TAB 1

- Request:** Provide a colored/legible version of the MSA map included in the Teitzel affidavit that includes a breakout of counties and wire centers served by Qwest.
- Response:** See "Map 1" which identifies Qwest wire center boundaries by name and identifies Independent Local Exchange Carriers' serving territories. "Map 1 Overlay" identifies the MSA boundary and counties within the MSA.
- Source:** Boundaries of counties within the Omaha MSA were obtained from the U.S. Census Bureau. Mapping of Qwest wire center boundaries consists of Distribution Area (DA) boundary information from Qwest's Network organization mapped via GIS mapping software. Independent service areas were manually mapped from Independent service territory information obtained from the Iowa Utilities Board (IUB).

**QWEST OMAHA FORBEARANCE PETITION
WC DOCKET 04-223**

Responses to FCC inquiries

TAB 2

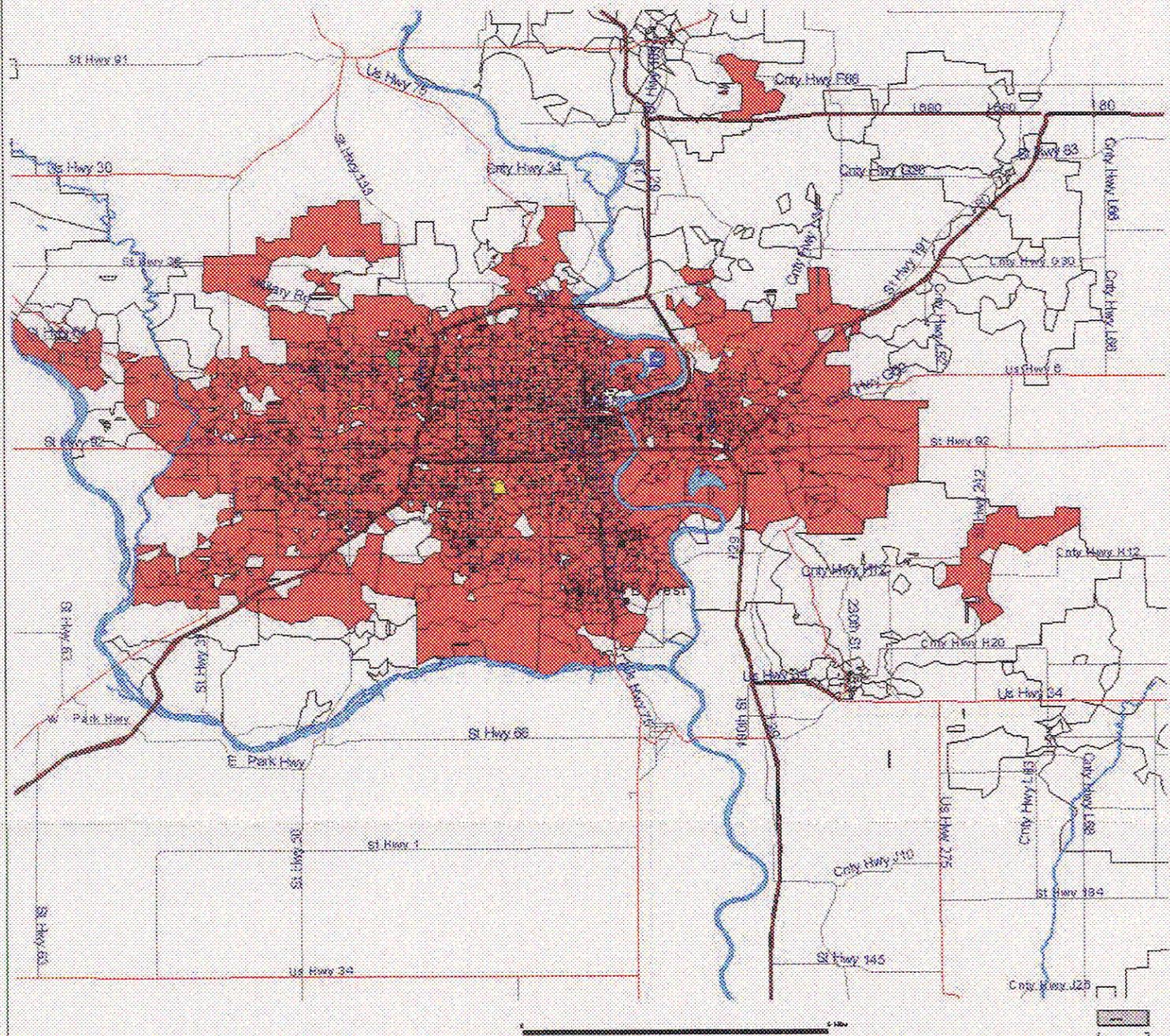
Request: If possible, provide a map of the cable footprint in the Omaha MSA.

Response: The data requested is proprietary to Cox and is not available to Qwest. As an alternative Qwest provides the attached map which was created by querying the Cox public website for service availability in the Omaha MSA and noting whether Cable only ("single play"), Cable + Cable Modem ("double play"), or "Cable + Cable Modem + Telephone ("triple play") is currently available. See "Map 2".

Source: Cox Website

OMAHA METRO

COX COMMUNICATIONS



- **TRIPLE PLAY**
(CABLE + PHONE + INTERNET)
- **DOUBLE PLAY**
(CABLE + INTERNET)
- **SINGLE PLAY**
(CABLE ONLY)



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**QWEST OMAHA FORBEARANCE PETITION
WC DOCKET 04-223**

Responses to FCC inquiries

TAB 3

Request: If possible, provide maps showing the “footprint” of other facilities-based providers in the Omaha MSA.

Response: ***Note: the information provided is Confidential.***
See “Map 3A, 3B, 3C, 3D, 3E” which provide information on the availability of fiber facilities used by facilities-based carriers competing with Qwest in the Omaha MSA.

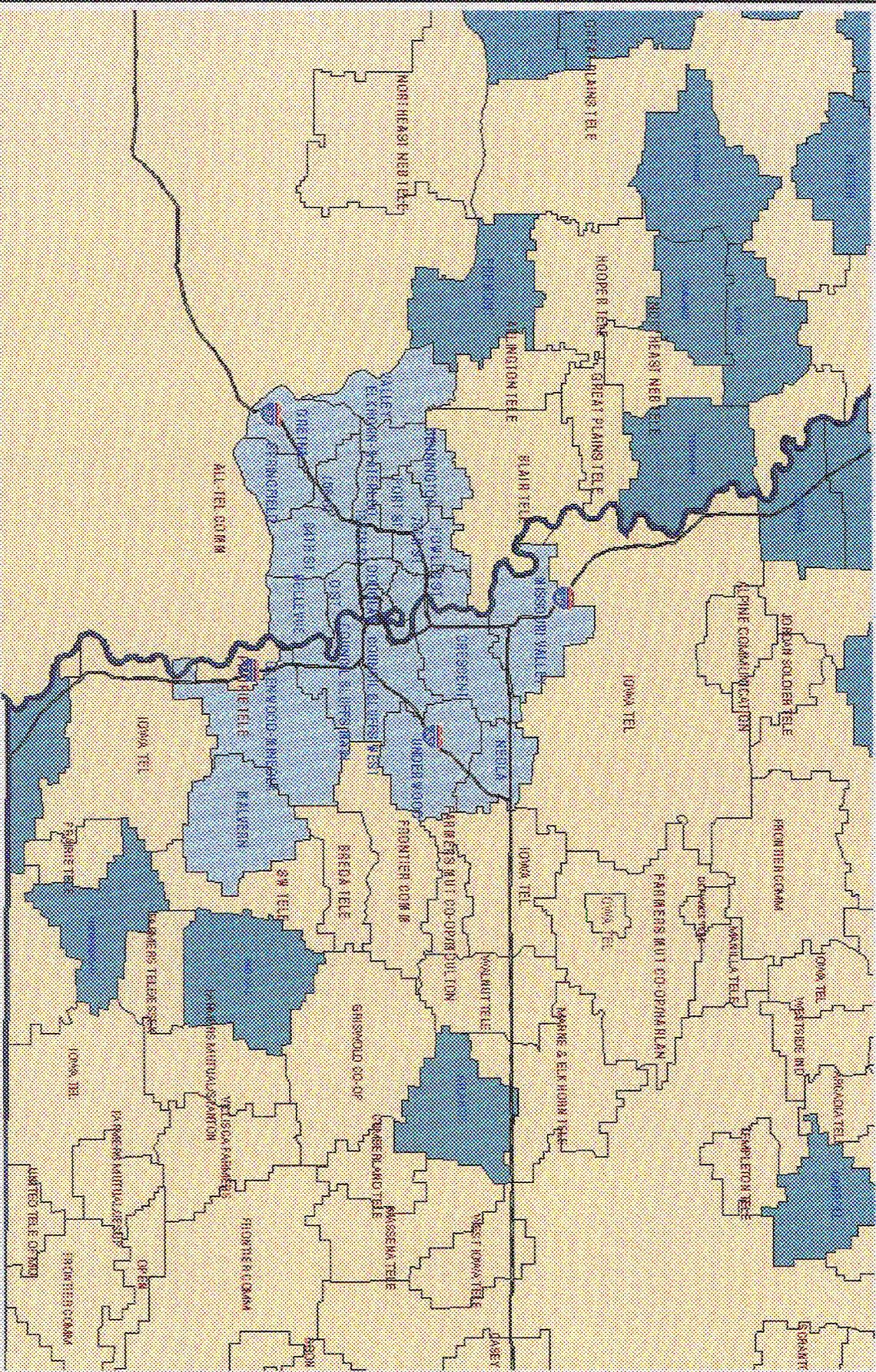
Source: GeoTel and Power Engineering

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Omaha MSA MAP 3D



REDACTED - FOR PUBLIC INSPECTION



**QWEST OMAHA FORBEARANCE PETITION
WC DOCKET 04-223**

Responses to FCC inquiries

TAB 4

Request: Provide information regarding the presence of Independent Telephone Companies in the MSA.

Response: Please see "Map 1" and "Map 1 Overlay" which identifies the ILECs operating in the MSA.

Source: Boundaries of counties within the Omaha MSA were obtained from the U.S. Census Bureau. Mapping of Qwest wire center boundaries consists of Distribution Area (DA) boundary information from Qwest's Network organization mapped via GIS mapping software. Independent service areas were manually mapped from Independent service territory information obtained from the Iowa Utilities Board (IUB).

**QWEST OMAHA FORBEARANCE PETITION
WC DOCKET 04-223**

Responses to FCC inquiries

TAB 5

Request: Confirm whether the access line counts cited in Qwest's Petition include all lines in the MSA or only the access lines for the wire centers in which Qwest operates.

Response: The line counts in Qwest's Petition reflect only access lines (and E911 records) for both the residence and business markets in the wire centers in Qwest's serving territory in the MSA.

Source: Dave Teitzel
Staff Director, Qwest Public Policy

**QWEST OMAHA FORBEARANCE PETITION
WC DOCKET 04-223**

Responses to FCC inquiries

TAB 6

Request: Do the CLECs in Nebraska and Iowa file access line counts with the state PUCs today? If so, provide this data on the record.

Response: The Iowa Utilities Board (IUB) obtained CLEC-specific data regarding the Council Bluffs area during the Iowa Deregulation proceeding (Docket INU-04-1). This information would be useful to demonstrate what the CLECs self-report as in-service quantities in Council Bluffs. The FCC may wish to pursue this data directly with the IUB, as the terms of the protective order preclude Qwest's ability to use that data in this proceeding. The terms of the protective order in that proceeding are attached.

Similarly, the Nebraska Public Service Commission (PSC) regularly collects confidential competitive facts from CLECs and uses them in aggregate form to create their annual report on telecommunications in the state. Neither Qwest nor any other party is permitted to review the confidential data collected by the Commission for its report (a copy of the 2004 report is enclosed).

Source: IUB CLEC Survey (associated with Docket INU-04-01), Nebraska PSC Annual Report (both documents provided)

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE:

DEREGULATION OF LOCAL EXCHANGE
SERVICES IN COMPETITIVE MARKETS

DOCKET NO. INU-04-1

PROTECTIVE ORDER AND ORDER DENYING MOTION

(Issued July 12, 2004)

On May 7, 2004, the Utilities Board (Board) initiated this notice and comment proceeding to consider whether local exchange service to business and residential customers in certain Iowa communities is subject to effective competition and should be deregulated pursuant to Iowa Code § 476.1D (2003) and 199 IAC 5.3(1). As a part of that order, the Board directed certain local exchange service providers to file updated responses to the Board's 2003 survey of local exchange service providers in Iowa. Those responses include information that many companies consider to be trade secrets or otherwise entitled to confidential treatment, so many of the responses were filed with a request for confidential treatment pursuant to 199 IAC 1.9. The Board granted many of those requests by order issued June 23, 2004, and more requests are pending before the Board at this time.

On June 28, 2004, the Iowa Association of Municipal Utilities (IAMU) filed a request for release of all filings that were granted confidentiality in the June 23, 2004, order. In its motion, IAMU does not indicate whether it has attempted to obtain the information directly from the carriers that filed it with the Board, but the Board

understands that IAMU has been engaged in direct discussions with at least some of those carriers. It appears the IAMU motion will be rendered moot by this order and it will therefore be denied, without prejudice to re-filing if necessary.

Historically, when participants in a Board proceeding seek and receive confidential treatment for certain information from the Board (pursuant to 199 IAC 1.9), they have then entered into mutual confidentiality agreements that allow them to share the same information among themselves. In this matter, however, it appears this process may not be as effective as it usually is. The number of participants and the applicable time frames make the process of negotiating individual confidentiality agreements unwieldy. Therefore, the Board is taking the unusual step of entering this protective order.

This order reflects the Board's understanding of the requirements of typical confidentiality agreements entered into by parties to Board proceedings. However, if the requirements and restrictions on use that are set forth below are somehow inappropriate for use in this matter, the Board will entertain motions to modify this protective order.

Pursuant to this order, the participants to this proceeding shall have access to information that is filed with the Board as confidential under the conditions specified in Attachment A to this order. Those conditions may be briefly described as follows:

1. The information is to be used solely for purposes of this proceeding or any subsequent, directly-related proceedings;
2. Only the attorneys for the participant and expert witnesses (who are not otherwise involved in advising the party on business development,

pricing, marketing, product development, or related matters) (and their associates as necessary) in this proceeding will have such access;

3. The information shall not be shared with persons responsible for the participant's marketing, pricing, and product or service development;

4. All persons proposed to have access to the confidential information for purposes of the proceeding must be identified by the participant and execute a document acknowledging this protective order and agreeing to be bound by the order;

5. In the event that the participant makes a subsequent filing, or intends to provide testimony at hearing, utilizing the confidential information, it shall make every effort to protect the confidential information; and

6. Any participant desiring to opt out of the Board's protective order and relinquish its access to the confidential information must do so in writing and shall then not have access to any such confidential information unless and until the participant opting out negotiates a separate confidentiality agreement with the other participant or otherwise seeks access in accordance with the Board's rules.

Thus, if a participant desires access to the confidential material filed with the Board, but does not wish to negotiate a separate confidentiality agreement with the participant that originally submitted the confidential material (the producing participant), then the participant seeking access shall submit a data request to the producing participant requesting the information. The data request should be accompanied by a written statement acknowledging this protective order and identifying each person who will be reviewing or have access to the information, by name and job title or other job description.

The Board emphasizes that it will not provide access to the confidential material through its Records Center, as the Board has no process in place for verifying participant status or otherwise applying the requirements of this order on a

day-to-day basis. The participants are to obtain the information from the producing participant.

IT IS THEREFORE ORDERED:

1. The Board hereby enters this protective order as described in Attachment A, which is incorporated herein by this reference.
2. Within 14 days of the date of this order, any participant may file a motion to modify the terms of this protective order, specifically stating the proposed modification and the reasons in support of the proposal.
3. The "Request for Release of Information Pursuant To 1.9(8)(b)(3) And Motion To Suspend Procedural Schedule" filed on June 28, 2004, by the Iowa Association of Municipal Utilities is denied, without prejudice, as moot.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 12th day of July, 2004.

ATTACHMENT A

PROTECTIVE ORDER

1. On May 7, 2004, the Iowa Utilities Board (Board) initiated this proceeding to consider whether certain local exchange services are subject to effective competition and should be deregulated pursuant to Iowa Code § 476.1D and 199 IAC chapter 5. Some of the participants to this proceeding seek documents in this proceeding from one or more of the other participants that contain proprietary or confidential information and, therefore, should be made available only pursuant to a protective agreement. Consequently, the Board is entering this protective order to ensure that the documents considered by the producing participant to be confidential and proprietary are afforded protection but are also available to other participants on reasonable terms. This protective order does not constitute a resolution of the merits concerning whether any confidential information would be released publicly by the Board upon a proper request.

2. *Non-Disclosure of Stamped Confidential Documents.* Except with the prior written consent of the producing participant, or as hereinafter provided under this order or any subsequent Board order, neither a Stamped Confidential Document nor the contents thereof may be disclosed by a receiving participant to any person. A "Stamped Confidential Document" shall mean any document that has been submitted to the Board pursuant to a request for confidential treatment and bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL" to signify that it contains information that the producing participant believes should be subject to protection. For purposes of this order, the term "document" means all written, recorded, electronically stored, or graphic material, whether produced or created by any participant or another person.

3. *Permissible Disclosure.* Subject to the requirements of paragraph 5, Stamped Confidential Documents may be reviewed by counsel for a receiving participant who are actively engaged in the conduct of this proceeding, provided that those counsel seeking access are not involved in competitive decision-making; i.e., counsel's activities, association, and relationship with a client that are not such as to involve counsel's advice and participation in any or all of the client's business decisions made in light of similar or corresponding information about a competitor. Subject to the requirements of paragraph 5 and subject to the obligation to secure the confidentiality of Stamped Confidential Documents in accordance with the terms of this Agreement, such counsel may disclose Stamped Confidential Documents to: (i) the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in this proceeding; (ii) the receiving participant's staff members involved in this proceeding; (iii) any outside consultant or expert retained for the purpose of assisting counsel in

these proceedings and who undertakes not to become involved during the pendency of this proceeding and two years thereafter, either in the analysis underlying business decisions or the making of business decisions of any competitor, or any customer (other than a customer who purchases tariffed products only) of, or person who has a non-disclosure agreement with the producing participant; (iv) employees of such counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving data or designing programs for handling data connected with this proceeding; and (v) employees of third-participant contractors performing one or more of these functions. The producing participant shall have the right, at its option, to impose reasonable restrictions on the review and disclosure of Stamped Confidential Documents containing highly sensitive information and designated as "Highly Sensitive." Any participant may seek relief from the Board from any restrictions imposed by another participant on information claimed to be highly sensitive.

4. *Access to Confidential Documents.* Counsel described in paragraph 3 shall have the obligation to ensure that access to Stamped Confidential Documents is strictly limited as prescribed in this order. Such counsel shall further have the obligation to ensure (i) that Stamped Confidential Documents are used only as provided in this order; and (ii) that Stamped Confidential Documents are not duplicated except as necessary for use in these proceedings.

5. *Procedures for Obtaining Access to Confidential Documents.* In all cases where access to Stamped Confidential Documents is permitted pursuant to paragraph 3, and before reviewing or having access to any Stamped Confidential Documents, each person, other than counsel, seeking such access shall execute the Acknowledgment of Confidentiality in the form attached hereto as Exhibit A, which the receiving counsel will retain on file, prior to such person's reviewing or having access to any such Stamped Confidential Documents.

6. *Use of Confidential Information.* Counsel described in paragraph 3 may, in any documents that they file in this proceeding, refer to information found in Stamped Confidential Documents or derived therefrom (hereinafter, "Confidential Information"), but only if they comply with the following procedure:

a. Any portion of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings.

b. The portions of pleadings containing or disclosing Confidential Information must be covered by a separate letter to the Executive Secretary of the Board referencing this order.

c. Each page of any participant's filing that contains or discloses Confidential Information subject to this order must be clearly marked "Confidential."

d. The confidential portion(s) of the pleading shall be served upon the Secretary of the Board and the participants to this agreement. Such confidential portions shall be served under seal and shall not be placed in the Board's public files. A participant filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Board's public files.

e. The producing participant shall have at least 14 days after the filing of sealed Confidential Information to seek confidential treatment pursuant to the Board's rules.

f. The receiving participant shall exercise good faith to advise the producing participant of the anticipated filing of sealed Confidential Information as soon as possible prior to the filing.

7. *No Waiver of Confidentiality.* Disclosure of Stamped Confidential Documents or Confidential Information as provided herein by any person shall not be deemed a waiver by the producing participant of any privilege or entitlement to confidential treatment of such documents or information. Reviewing participants, by viewing Stamped Confidential Documents or Confidential Information: (a) agree not to assert any such waiver; (b) agree not to use information derived from any Stamped Confidential Documents or Confidential Information or to seek disclosure in other proceedings; and (c) agree that accidental disclosure of Stamped Confidential Documents or Confidential Information by the receiving participant shall not be deemed a waiver of any privilege or entitlement as long as the receiving participant takes prompt remedial action.

8. *Subpoena by Courts or Other Agencies.* If a court law enforcement authority, or another administrative agency subpoenas or orders production of Stamped Confidential Documents or Confidential Information that any participant has obtained under terms of this order, that participant shall promptly notify the producing participant of the pendency of such subpoena or order. Consistent with the independent authority of any court or administrative agency, such notification must be accomplished such that the producing participant has full opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document or Confidential Information.

9. *Client Consultation.* Nothing in this order shall prevent or otherwise restrict any participant's counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Confidential Documents; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not disclose Stamped Confidential Documents or Confidential Information.

10. *Violations of Agreement.* Persons obtaining access to Stamped Confidential Documents or Confidential Information under this Agreement shall use the information solely for the preparation and conduct of this proceeding and any subsequent judicial or administrative proceeding arising directly from this proceeding and, except as provided herein, shall not use such information for any other purpose, including business, governmental, commercial, or other administrative, regulatory, or judicial proceedings. Should any person that has obtained access to Stamped Confidential Documents or Confidential Information under this order violate any of its terms, the participant shall immediately convey that fact to the producing participant. Further, should such violation consist of improper disclosure of a Stamped Confidential Document or Confidential Information, the violating participant shall take all necessary steps to remedy the improper disclosure. The Board has full authority to fashion appropriate sanctions for violations of this order.

11. *Prohibited Copying.* If, in the judgment of the producing participant, a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited," and no copies of such document, in any form, shall be made. Application for relief from this restriction against copying may be made to the Board, with notice to counsel for the producing participant.

12. *Termination of Proceeding.* The provisions of this order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding (which includes any administrative or judicial review), Stamped Confidential Documents and all copies of same shall be destroyed. No material whatsoever derived from Stamped Confidential Documents may be retained by any person having access thereto, except counsel to a receiving participant (as described in paragraph 3) may retain, under the continuing strictures of this order, two copies of pleadings containing Confidential Information prepared on behalf of that receiving participant.

EXHIBIT A

ACKNOWLEDGEMENT OF PROTECTIVE ORDER

Iowa Utilities Board Docket No. INU-04-1

I have been presented with a copy of the Protective Order issued by the Iowa Utilities Board in Docket No. INU-04-1. I have read the Protective Order and agree to be bound by each and every term of the Agreement.

Dated _____, 2004.

[Signature of person requesting review of
Stamped Confidential Information]

[Full Name]

[Company and Position]

[Permanent Address]