JOHN W. SUTHERS
Attorney General

CYNTHIA H. COFFMAN
Chief Deputy Attorney General

DANIEL D. DOMENICO
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street - 7th Floor
Denver, Colorado 80203
Phone (303) 866-4500

September 12, 2008

BY ELECTRONIC FILING

Tim Stelzig, Esq.
Denise Coca, Esq.
Assistant Chief, Competition Policy Division
Federal Communications Commission
Wireline Competition Bureau; 5-C261
445 12th Street, SW
Washington, DC 20554

RE: *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, FCC 08-174.

Dear Mr. Stelzig and Ms. Coca:

Enclosed are originals of First Protective Order and Second Protective Order, signed by Commissioners James Tarpey and Matt Baker, and myself. Thank you for your assistance in this matter.

Sincerely,

FOR THE ATTORNEY GENERAL

Mariya Barmak

MARIYA Y. BARMAK
Assistant Attorney General
Public Officials/PUC Unit
State Services Section
303-866-5486
303-866-5671 (FAX)
Email: mariya.barmak@state.co.us

Enclosures

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petitions of Qwest Corporation for Forbearance	)	WC Docket No. 07-97
Pursuant to 47 U.S.C. § 160(c) in the Denver,	)	
Minneapolis-St. Paul, Phoenix, and Seattle	)	
Metropolitan Statistical Areas	)	

FIRST PROTECTIVE ORDER

Adopted: May 31, 2007 **Released: June 1, 2007**

By the Chief, Wireline Competition Bureau:

1. Documents submitted to the Commission in the course of forbearance proceedings may represent or contain confidential or proprietary information. This *First Protective Order* is intended to facilitate and expedite the review of confidential information submitted by parties to this proceeding, including privileged and confidential information, such as trade secrets or financial information. To ensure that documents and materials in the above-referenced proceeding considered by Submitting Parties to be confidential and proprietary are afforded protection, the Wireline Competition Bureau hereby enters this *First Protective Order*.[1]

2. Non-Disclosure. Except with the prior written consent of the person originally designating a document to be stamped as a confidential document, or as hereinafter provided under this order, no stamped confidential document may be disclosed to any person. A "stamped confidential document" means any document which bears the legend (or which otherwise has had the legend recorded upon it in a way that brings it to the attention of a reasonable examiner) "CONFIDENTIAL – SUBJECT TO FIRST PROTECTIVE ORDER IN WC DOCKET NO. 07-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION" to signify that it contains information believed to be subject to protection under the Commission's rules. For purposes of this order, the term "document" means all written, recorded, or graphic material, whether produced or created by a party or another person, whether produced pursuant to the Commission's rules, pursuant to subpoena, by agreement, or otherwise. Documents that quote, summarize, or contain materials entitled to protection may be accorded status as a stamped confidential document, but, to the extent feasible, shall be prepared in such a manner that the confidential information is bound separately from that not entitled to protection.

3. Permissible Disclosure. Notwithstanding paragraph 2, stamped confidential documents may be disclosed subject to the provisions of subparagraphs (a) and (b), to the following persons if disclosure is reasonably necessary for such persons to render professional services in this proceeding: counsel of record for parties that may file in this proceeding, including in-house counsel who are actively engaged in the conduct of this proceeding; partners, associates, secretaries, paralegal assistants, and employees of such counsel; outside consultants or experts retained to render professional services in this proceeding, provided

[1] We also adopt today a *Second Protective Order* to govern the submission and disclosure of highly confidential information in this proceeding. *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, Second Protective Order, DA 07-2293 (WCB, rel. June 1, 2007) (*Second Protective Order*).

that they are under the supervision of the counsel of record; and in-house economists and regulatory analysts, provided that they are under the supervision of the counsel of record. Such documents may also be disclosed to relevant employees of regulatory agencies, Commission employees involved in this proceeding, and to any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

(a) Notwithstanding any other provision of this order, before any disclosure shall occur, any individual (other than a Commission employee) to whom confidential information is disclosed must certify in writing that he/she has read and understands this *First Protective Order*, agrees to abide by its terms, and understands that unauthorized disclosures of the stamped confidential documents are prohibited. A copy of each such certification shall be provided to the party that designated the information confidential. (*See* Attachment A for a model certification.)

(b) Before disclosing a stamped confidential document to any person who is described in paragraph 3 (other than an attorney) and who is employed by a competitor or potential competitor of the party that so designated the document, the party seeking such disclosure shall give at least five days' advance notice in writing to the counsel who designated such information as confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. Such notice shall also be filed in the Commission's Electronic Comment Filing System (ECFS) for this docket. No such disclosure shall be made within the five-day period. If, within the five-day period, a motion is filed objecting to the proposed disclosure, disclosure is not permissible until the Commission has denied such motion and disclosure is permitted under 47 C.F.R. § 0.459. Any such motion shall be hand-served on the party seeking such disclosure.

4. Access to Confidential Information. Any party producing confidential information pursuant to this order shall designate a Washington, D.C., location and such other locations as may be convenient at which all parties shall be permitted access to and review of requested confidential information pursuant to the other terms of this order, or pursuant to alternative arrangements agreed upon by the parties. Any such access or review may be limited to regular business hours after reasonable notice by the requesting party.

5. Confidential Information Filed in the Record. Stamped confidential documents and other confidential information may be offered in the record of this proceeding, provided that such confidential information is furnished under seal. The party submitting confidential documents shall ensure that each page bears the legend "CONFIDENTIAL - SUBJECT TO FIRST PROTECTIVE ORDER IN WC DOCKET NO. 07-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION."

6. Commission Treatment of Confidential Information. If confidential documents are submitted to the Commission in accordance with paragraph 5, the materials shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents. The Commission may, *sua sponte* or by petition, determine that all or part of the information claimed by the producing party to be confidential is not entitled to such treatment. *See generally* 47 C.F.R. § 0.459.

7. Use. Persons obtaining access to stamped confidential documents under this order shall use the information only in the conduct of this proceeding and any judicial proceeding arising therefrom, and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings. Persons obtaining access to confidential information under the terms of this order may disclose, describe, or discuss the confidential information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed from which all confidential information is redacted. Persons filing pleadings

under seal based on confidential information provided by others shall serve such pleadings by hand or overnight delivery on the party originally requesting confidential treatment of the underlying information.

8. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of stamped confidential documents which a party has obtained under terms of this order, such party shall promptly notify the party and any other person who designated the document as confidential of the pendency of such subpoena or order.

9. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients regarding the forbearance proceeding in which a confidential document is submitted and, in the course thereof, relying generally on examination of stamped confidential documents submitted in that proceeding; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraph 3 above.

10. Prohibited Copying. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited." Application for relief from this restriction against copying may be made to the Commission, with notice to counsel so designating the document.

11. Non-Termination. The provisions of this order shall not terminate at the conclusion of this proceeding.

12. Modification Permitted. Nothing in this order shall prevent any party or other person from seeking modification of this order.

13. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of stamped confidential documents. Parties shall not duplicate any stamped confidential document except working copies and for purposes of filing at the Commission under seal.

14. Return of Confidential Documents. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), parties that have received stamped confidential documents shall either return all copies of such documents in their possession to the party that submitted the documents, or destroy all such confidential documents.

15. Penalties. In addition to any other penalties or remedies authorized under the Communications Act, the Commission's rules, the common law or other source of law, any failure to abide by the terms of this order may result in dismissal of a party's pleadings, or censure, suspension, or disbarment of the attorneys involved, *see* 47 C.F.R. § 1.24, or possible referral to the relevant local bar.

16. Accordingly, IT IS ORDERED that pursuant to sections 4(i), 4(j), and 10 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, and pursuant to authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291,[2] the First Protective Order IS ADOPTED, effective upon its release.

FEDERAL COMMUNICATIONS COMMISSION

Marcus Maher
Associate Chief, Wireline Competition Bureau

[2] *See* 47 U.S.C. § 155(c).

ATTACHMENT A

WC DOCKET NO. 07-97

I have received a copy of the *First Protective Order* in WC Docket No. 07-97. I have read the order and agree to comply with and be bound by the terms and conditions of the *First Protective Order*. The signatory understands, in particular, that unauthorized disclosure, or the use of the information for competitive commercial or business purposes, will constitute a violation of the *First Protective Order*.

SIGNATURE: James K. Tarpey

NAME PRINTED: JAMES K. TARPEY

TITLE: COMMISSIONER

ADDRESS: 1560 BROADWAY, Ste 250
DENVER, CO 80202

REPRESENTING: Colorado Public Utilities Commission

EMPLOYER: Colorado Public Utilities Commission
State of Colorado

DATE: 9/5/2008

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas	)	WC Docket No. 07-97

FIRST PROTECTIVE ORDER

Adopted: May 31, 2007 **Released: June 1, 2007**

By the Chief, Wireline Competition Bureau:

1. Documents submitted to the Commission in the course of forbearance proceedings may represent or contain confidential or proprietary information. This *First Protective Order* is intended to facilitate and expedite the review of confidential information submitted by parties to this proceeding, including privileged and confidential information, such as trade secrets or financial information. To ensure that documents and materials in the above-referenced proceeding considered by Submitting Parties to be confidential and proprietary are afforded protection, the Wireline Competition Bureau hereby enters this *First Protective Order.*[1]

2. Non-Disclosure. Except with the prior written consent of the person originally designating a document to be stamped as a confidential document, or as hereinafter provided under this order, no stamped confidential document may be disclosed to any person. A "stamped confidential document" means any document which bears the legend (or which otherwise has had the legend recorded upon it in a way that brings it to the attention of a reasonable examiner) "CONFIDENTIAL – SUBJECT TO FIRST PROTECTIVE ORDER IN WC DOCKET NO. 07-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION" to signify that it contains information believed to be subject to protection under the Commission's rules. For purposes of this order, the term "document" means all written, recorded, or graphic material, whether produced or created by a party or another person, whether produced pursuant to the Commission's rules, pursuant to subpoena, by agreement, or otherwise. Documents that quote, summarize, or contain materials entitled to protection may be accorded status as a stamped confidential document, but, to the extent feasible, shall be prepared in such a manner that the confidential information is bound separately from that not entitled to protection.

3. Permissible Disclosure. Notwithstanding paragraph 2, stamped confidential documents may be disclosed subject to the provisions of subparagraphs (a) and (b), to the following persons if disclosure is reasonably necessary for such persons to render professional services in this proceeding: counsel of record for parties that may file in this proceeding, including in-house counsel who are actively engaged in the conduct of this proceeding; partners, associates, secretaries, paralegal assistants, and employees of such counsel; outside consultants or experts retained to render professional services in this proceeding, provided

[1] We also adopt today a *Second Protective Order* to govern the submission and disclosure of highly confidential information in this proceeding. *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, Second Protective Order, DA 07-2293 (WCB, rel. June 1, 2007) (*Second Protective Order*).

that they are under the supervision of the counsel of record; and in-house economists and regulatory analysts, provided that they are under the supervision of the counsel of record. Such documents may also be disclosed to relevant employees of regulatory agencies, Commission employees involved in this proceeding, and to any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

(a) Notwithstanding any other provision of this order, before any disclosure shall occur, any individual (other than a Commission employee) to whom confidential information is disclosed must certify in writing that he/she has read and understands this *First Protective Order*, agrees to abide by its terms, and understands that unauthorized disclosures of the stamped confidential documents are prohibited. A copy of each such certification shall be provided to the party that designated the information confidential. (*See* Attachment A for a model certification.)

(b) Before disclosing a stamped confidential document to any person who is described in paragraph 3 (other than an attorney) and who is employed by a competitor or potential competitor of the party that so designated the document, the party seeking such disclosure shall give at least five days' advance notice in writing to the counsel who designated such information as confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. Such notice shall also be filed in the Commission's Electronic Comment Filing System (ECFS) for this docket. No such disclosure shall be made within the five-day period. If, within the five-day period, a motion is filed objecting to the proposed disclosure, disclosure is not permissible until the Commission has denied such motion and disclosure is permitted under 47 C.F.R. § 0.459. Any such motion shall be hand-served on the party seeking such disclosure.

4. Access to Confidential Information. Any party producing confidential information pursuant to this order shall designate a Washington, D.C., location and such other locations as may be convenient at which all parties shall be permitted access to and review of requested confidential information pursuant to the other terms of this order, or pursuant to alternative arrangements agreed upon by the parties. Any such access or review may be limited to regular business hours after reasonable notice by the requesting party.

5. Confidential Information Filed in the Record. Stamped confidential documents and other confidential information may be offered in the record of this proceeding, provided that such confidential information is furnished under seal. The party submitting confidential documents shall ensure that each page bears the legend "CONFIDENTIAL - SUBJECT TO FIRST PROTECTIVE ORDER IN WC DOCKET NO. 07-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION."

6. Commission Treatment of Confidential Information. If confidential documents are submitted to the Commission in accordance with paragraph 5, the materials shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents. The Commission may, *sua sponte* or by petition, determine that all or part of the information claimed by the producing party to be confidential is not entitled to such treatment. *See generally* 47 C.F.R. § 0.459.

7. Use. Persons obtaining access to stamped confidential documents under this order shall use the information only in the conduct of this proceeding and any judicial proceeding arising therefrom, and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings. Persons obtaining access to confidential information under the terms of this order may disclose, describe, or discuss the confidential information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed from which all confidential information is redacted. Persons filing pleadings

under seal based on confidential information provided by others shall serve such pleadings by hand or overnight delivery on the party originally requesting confidential treatment of the underlying information.

8. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of stamped confidential documents which a party has obtained under terms of this order, such party shall promptly notify the party and any other person who designated the document as confidential of the pendency of such subpoena or order.

9. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients regarding the forbearance proceeding in which a confidential document is submitted and, in the course thereof, relying generally on examination of stamped confidential documents submitted in that proceeding; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraph 3 above.

10. Prohibited Copying. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited." Application for relief from this restriction against copying may be made to the Commission, with notice to counsel so designating the document.

11. Non-Termination. The provisions of this order shall not terminate at the conclusion of this proceeding.

12. Modification Permitted. Nothing in this order shall prevent any party or other person from seeking modification of this order.

13. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of stamped confidential documents. Parties shall not duplicate any stamped confidential document except working copies and for purposes of filing at the Commission under seal.

14. Return of Confidential Documents. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), parties that have received stamped confidential documents shall either return all copies of such documents in their possession to the party that submitted the documents, or destroy all such confidential documents.

15. Penalties. In addition to any other penalties or remedies authorized under the Communications Act, the Commission's rules, the common law or other source of law, any failure to abide by the terms of this order may result in dismissal of a party's pleadings, or censure, suspension, or disbarment of the attorneys involved, *see* 47 C.F.R. § 1.24, or possible referral to the relevant local bar.

16. Accordingly, IT IS ORDERED that pursuant to sections 4(i), 4(j), and 10 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, and pursuant to authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291,[2] the First Protective Order IS ADOPTED, effective upon its release.

FEDERAL COMMUNICATIONS COMMISSION

Marcus Maher
Associate Chief, Wireline Competition Bureau

[2] *See* 47 U.S.C. § 155(c).

ATTACHMENT A

WC DOCKET NO. 07-97

I have received a copy of the *First Protective Order* in WC Docket No. 07-97. I have read the order and agree to comply with and be bound by the terms and conditions of the *First Protective Order*. The signatory understands, in particular, that unauthorized disclosure, or the use of the information for competitive commercial or business purposes, will constitute a violation of the *First Protective Order*.

SIGNATURE: Mariya Barmak

NAME PRINTED: MARIYA BARMAK

TITLE: assistant attorney general

ADDRESS: 1525 Sherman St, 7th floor
Denver, CO 80202

REPRESENTING: Colorado Public Utilities Commission
1560 Broadway, Ste 250
EMPLOYER: Denver, CO 80202

DATE: 9/5/08

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas	)	WC Docket No. 07-97

SECOND PROTECTIVE ORDER

Adopted: May 31, 2007 **Released: June 1, 2007**

By the Chief, Wireline Competition Bureau:

1. Today, the Wireline Competition Bureau (Bureau) issued a Protective Order (*First Protective Order*) regarding confidential or proprietary documents that may be submitted by Qwest Corporation (Qwest) or other parties to this proceeding (individually, Submitting Party and collectively, Submitting Parties).[1] We hereby adopt a *Second Protective Order* to ensure adequate protection for certain highly confidential and competitively sensitive information that may be submitted by the Submitting Parties.

2. Accordingly, we will permit Submitting Parties submitting such documents and information and those of a similarly competitively sensitive nature to designate those materials as Highly Confidential and, as provided below, we will limit access to such materials to outside counsel of record, their employees, and outside consultants and experts whom they retain to assist them in this proceeding.[2] We conclude that a *Second Protective Order* will give appropriate access to the public while protecting the Submitting Parties' competitively sensitive information. This *Second Protective Order* covers only those portions of documents or data that fall into one of the categories specified below. The remainder of the document (or a redacted version of the document) is not entitled to the additional protection provided by the *Second Protective Order*.

3. Any party seeking access to confidential documents subject to the *Second Protective Order* shall request access pursuant to the terms of the *Second Protective Order* and must sign the Acknowledgement of Confidentiality, attached as Appendix A (Acknowledgement).

---

[1] *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, First Protective Order, DA 07-2292 (WCB, rel. June 1, 2007) (*First Protective Order*).

[2] On other occasions, the Bureau has granted similar protection to materials which, if released to competitors, would allow those competitors to gain a significant advantage in the marketplace. *See, e.g., Petition of the Verizon Local and Long Distance Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services,* WC Docket No. 06-56, Second Protective Order, DA 07-1625 (WCB rel. Apr. 5, 2007) (adopting a second protective order); *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules as They Apply after Section 272 Sunsets*, WC Docket No. 05-333, Second Protective Order, 22 FCC Rcd 115 (WCB rel. Jan. 5, 2007) (same); *SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control,* WC Docket No. 05-65, Order, 20 FCC Rcd 8876 (WCB rel. May 9, 2005) (same).

4. *Definitions.* As used herein, capitalized terms, not otherwise defined herein, shall have the following meanings:

"Stamped Highly Confidential Document" means any document, or any part thereof, that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings it to the attention of a reasonable examiner) "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 07-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION," unless the Commission determines, *sua sponte* or by request pursuant to sections 0.459 or 0.461 of its rules, that any such document is not entitled to such confidential treatment. The term "document" means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. By designating a document a "Stamped Highly Confidential Document," a Submitting Party signifies that it contains information that the Submitting Party believes should be subject to protection under the Freedom of Information Act (FOIA), the Commission's implementing rules and this *Second Protective Order*.

"Highly Confidential Information" means information contained in Stamped Highly Confidential Documents or derived therefrom that is not otherwise available from publicly available sources. Specifically, Highly Confidential Information covered by the *Second Protective Order* refers to those portions of documents or data – or entire documents, if eligible in their entirety – that disclose the following: revenues or numbers of customers disaggregated by customer type and a market area smaller than the nation (such as a Metropolitan Statistical Area (MSA) or wire center service area) including carrier-specific E911 line count listings; details of the Submitting Party's future plans to compete for a customer or specific groups or types of customers (*e.g.*, business or wholesale customers) specifically including the Submitting Party's future pricing strategies, product strategies, or marketing strategies; detailed or granular engineering capacity information; information regarding the specific locations where an intermodal competitor is able to use its own network, including its own loop facilities, through which it is willing and able, within a commercially reasonable time, to offer substitute services for the incumbent local exchange carrier's (LEC) local service offerings; the identity or characteristics of specific customers or those with whom a company is negotiating; and those portions of documents that have some of the characteristics of more than one category of competitive sensitivity listed above. To the extent that a Submitting Party believes that future submissions fall into one of these categories, the Submitting Party must file a letter explaining which category the information falls within, and the Submitting Party may file under this *Second Protective Order* only those documents specifically authorized by the Bureau.

"Outside Counsel of Record" or "Outside Counsel" means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing a party in these proceedings, provided that such persons are not involved in competitive decision-making, *i.e.*, Outside Counsel's activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or of any competitor of a Submitting Party nor the analysis underlying the business decisions. Outside Counsel of Record includes any attorney representing a non-commercial party in these proceedings, provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party.

"Outside Consultants" means consultants or experts retained for the purpose of assisting Counsel or a party in this proceeding, provided that the Outside Consultants are not involved in competitive decision-making, *i.e.*, Outside Consultants' activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or any competitor of a Submitting Party nor the analysis underlying the business decisions. Outside Consultants include any expert employed by a non-commercial party in these proceedings, provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party.

"Reviewing Party" means a person who has obtained access to Highly Confidential Information (including Stamped Highly Confidential Documents) pursuant to paragraphs 7 and 10 of this *Second Protective Order*.

5. *Use of Highly Confidential Information.* Persons obtaining access to Highly Confidential Information (including Stamped Highly Confidential Documents) under this *Second Protective Order* shall use the information solely for the preparation and conduct of this forbearance proceeding before the Commission as delimited in this and subsequent paragraphs, and any judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including, without limitation, business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to the contents of any of the Stamped Highly Confidential Documents or Highly Confidential Information in its decision in this proceeding, it will do so by redacting any Highly Confidential Information from the public version of the decision and by making the unredacted version of the decision available only to a court and to those persons entitled to access to Highly Confidential Information under this *Second Protective Order*.

6. *Non-Disclosure of Stamped Highly Confidential Information.* Except with the prior written consent of the Submitting Party, or as hereinafter provided under this *Second Protective Order*, neither a Stamped Highly Confidential Document nor any Highly Confidential Information may be disclosed by a Reviewing Party to any person other than the Commission and its staff.

7. *Permissible Disclosure.* Subject to the requirements of paragraph 10, Stamped Highly Confidential Documents may be reviewed by Outside Counsel and Outside Consultants. Outside Counsel and Outside Consultants may disclose Stamped Highly Confidential Documents and other Highly Confidential Information to: (1) paralegals or other employees of such Outside Counsel or Outside Consultants not described in clause 2 of this paragraph assisting Outside Counsel or Outside Consultants in this proceeding; (2) employees of such Outside Counsel or Outside Consultants involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding; and (3) employees of third-party contractors performing one or more of the functions set forth in clause 2 of this paragraph. Reviewing Parties may discuss and share the contents of the Stamped Highly Confidential Documents and Highly Confidential Information with any other Reviewing Party and with the Commission and its staff. A Submitting Party's Stamped Highly Confidential Documents and Highly Confidential Information may also be disclosed to employees and Counsel of the Submitting Party, as otherwise permitted.

8. *Protection of Stamped Highly Confidential Documents and Highly Confidential Information.* Persons described in paragraph 7 shall have the obligation to ensure that access to Stamped Highly Confidential Documents and Highly Confidential Information is strictly limited as prescribed in this *Second Protective Order*. Such persons shall further have the obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in this *Second Protective Order*; and (2) Stamped Highly Confidential Documents are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 14 below.

9. *Prohibited Copying.* If, in the judgment of the Submitting Party, a document contains information so sensitive (even given its Highly Confidential designation) 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 Commission, with notice to Outside Counsel of Record for the Submitting Party.

10. *Procedures for Obtaining Access to Highly Confidential Documents.* In all cases where access to Stamped Highly Confidential Documents and Highly Confidential Information is permitted pursuant to paragraph 7, before reviewing or having access to any Stamped Highly Confidential Documents or Highly Confidential Information, each person seeking such access shall execute the attached Acknowledgment of Confidentiality (Acknowledgment) and file it with the Bureau via the Commission's Electronic Comment Filing System (ECFS) for this docket. All such persons (except as described below) shall serve the Acknowledgement upon each Submitting Party through its Outside Counsel of Record so that the Acknowledgment is received by each Submitting Party at least five business days prior to such person's reviewing or having access to such Submitting Party's Stamped Highly Confidential Documents or Highly Confidential Information. Where the person seeking access is one described in either clause 2 or 3 of paragraph 7, the Acknowledgment shall be delivered promptly prior to the person obtaining access. Each Submitting Party shall have an opportunity to object to the disclosure of Stamped Highly Confidential Documents to any persons seeking access. Any objection must be filed at the Commission and served on Counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment (or where the person seeking access is one described in either clause 2 or 3 of paragraph 7, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Stamped Highly Confidential Documents or Highly Confidential Information. The Submitting Party shall make available for review the Stamped Highly Confidential Documents of such party at the offices of such party's Outside Counsel of Record or, if the Submitting Party does not have Outside Counsel of Record, at the offices of such party's in-house counsel; *provided, however*, that multiple Submitting Parties filing together shall make available for review all of their Stamped Highly Confidential Documents at the offices of one of the Submitting Parties' Outside Counsel of Record (the Submitting Parties' Custodian Counsel).

11. *Information in Electronic Format.* Upon written request as provided for in paragraph 10, a Reviewing Party may review and analyze Highly Confidential Information that is maintained in an electronic format. The Submitting Party may require such electronic information be reviewed at the office of Submitting Party's Custodian Counsel. Any other party submitting Highly Confidential Information in electronic format may require such electronic information be reviewed at the office of their Outside Counsel of Record. The Submitting Party must provide the Reviewing Party's Outside Counsel of Record and Outside Consultants adequate and secure computer capacity to load and run their software and assist in obtaining any off-site software licenses that may be required. Submitting Party's Custodian Counsel must afford the Reviewing Party's Outside Counsel and Outside Consultants a private and secure workplace, including private and secure storage and adequate shredding and disposal arrangements, where they may review and analyze the data and prepare their analysis. The Reviewing Party's Outside Counsel and Outside Consultants may use the secure workplace 24 hours a day, seven days a week, until their analysis is complete and ready to be submitted to the Commission, and thereafter on an as needed basis until this proceeding, including any appeal, is final and no longer subject to judicial review.

12. The Submitting Party must allow the Reviewing Party's Outside Counsel and Outside Consultants to perform an integrated analysis of the Submitting Party's Highly Confidential Information at a single location in the offices of the Submitting Party's Custodian Counsel. The Reviewing Party's Outside Counsel and Outside Consultants may print four copies of their analysis, three that are to be submitted to the Commission for purposes of this proceeding in accordance with paragraph 14 and one, identical to the analysis submitted to the Commission, which they may retain and use solely in accordance with the provisions of the *First Protective Order* and this *Second Protective Order*. The Reviewing Party's Outside Counsel and Outside Consultants may also print any intermediate steps or work product necessary to perform their analysis, including charts and graphs, *etc.*, and they may keep any printouts of

that intermediate work product at the private, secure workplace at the offices of the Submitting Party's Custodian Counsel until this proceeding, including any appeal, is final and no longer subject to judicial review; however, they are prohibited from removing any intermediate work product from the secure workplace. The Reviewing Party's Outside Counsel and Outside Consultants may take notes necessary to perform their analysis, and they may retain such notes until this proceeding, including any appeal, is final and no longer subject to judicial review. The Reviewing Party's Outside Counsel and Outside Consultants may, at their discretion, retain such notes at the secure workplace or remove them. If the Reviewing Party submits in the record any analysis that uses Highly Confidential Information, it must comply with the terms and conditions set forth in the *First Protective Order* and this *Second Protective Order*. After their analysis is completed, the Reviewing Party's Outside Counsel and Outside Consultants may retain the data and analysis at a private, secure location in the offices of Submitting Party's Custodian Counsel, where they may have access on an as needed basis until this proceeding, including any appeal, is final and no longer subject to judicial review. The Reviewing Party must submit an affidavit in the record of this proceeding, at the time it submits integrated analysis pursuant to paragraph 14, certifying that, as pertains to the review and analysis of Highly Confidential Information that is maintained in an electronic format pursuant to paragraphs 11 and 13, its Outside Counsel and Outside Consultants have removed from the offices of the Submitting Party's Custodian Counsel only their notes and four copies of the final work product that is being submitted to the Commission, that they have not removed any intermediate work product, and that they have filed everything (other than their notes and one copy of their analysis) that they have removed.

13. *Requests for Additional Disclosure*. If any person requests disclosure of Highly Confidential Information outside the terms of this *Second Protective Order*, such a request will be treated in accordance with sections 0.442 and 0.461 of the Commission's rules.

14. *Filings with the Commission*. Persons described in paragraph 7 may, in any documents that they file in this proceeding, reference Highly Confidential Information, but only if they comply with the following procedure: Two copies of each filing that contains or references Highly Confidential Information pursuant to this *Second Protective Order* (the Confidential Filing) must be delivered in person to Gary Remondino, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The filing should be accompanied by a cover letter prominently stating "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 07-97." Each page of the confidential or proprietary document should be stamped "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 07-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." In addition, the submitting party must file with the Secretary's Office one copy of the Confidential Filing and two copies of the Confidential Filing in redacted form (the Redacted Confidential Filing). The two copies of the Redacted Confidential Filing and their accompanying cover letters should be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential Filing should state that the Submitting Party is filing a redacted version of the particular Confidential Filing. Parties should not provide courtesy paper copies of filings containing Highly Confidential Information to Commission Staff unless the Bureau so requests, in which case the Submitting Party may print as many copies as the Bureau requests in addition to the four specified in paragraph 12. Any such courtesy copies shall be submitted under seal. All parties should submit an electronic copy of filings containing Highly Confidential Information to Jeremy Miller (Jeremy.Miller@fcc.gov) and Denise Coca (Denise.Coca@fcc.gov), but should not submit any additional unredacted electronic courtesy copies unless they are specifically requested by Bureau or Commission staff.

15. *Client Consultation*. Nothing in this *Second Protective Order* shall prevent or otherwise restrict Outside 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 Highly Confidential Documents or Highly Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client, outside Counsel shall not disclose Stamped Highly Confidential Documents or Highly Confidential Information.

16. *No Waiver of Confidentiality*. Disclosure of Highly Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Highly Confidential Information. Reviewing parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Highly Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

17. *Subpoena by Courts, Departments or Agencies*. If a court, or a federal or state department or agency issues a subpoena or orders production of Stamped Highly Confidential Documents or Highly Confidential Information that a party has obtained under terms of this *Second Protective Order*, such party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Highly Confidential Document or Highly Confidential Information.

18. *Violations of Second Protective Order*. Should a person that has properly obtained access to Highly Confidential Information under this *Second Protective Order* violate any of its terms, that person shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this *Second Protective Order*, including but not limited to suspension or disbarment of Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Highly Confidential Information in this or any other Commission proceeding. Nothing in this *Second Protective Order* shall limit any other rights and remedies available to the Submitting Party at law or in equity against any person using Highly Confidential Information in a manner not authorized by this *Second Protective Order*.

19. *Termination of Proceeding*. The provisions of this *Second Protective Order* shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, persons described by paragraph 7 shall destroy or return to the Submitting Party Stamped Highly Confidential Documents and all copies of the same. No material whatsoever derived from Stamped Highly Confidential Documents may be retained by any person having access thereto, except Outside Counsel (as described in paragraph 7) may retain, under the continuing strictures of this *Second Protective Order*, one copy of the pleading containing Highly Confidential Information prepared on behalf of that party. All Outside Counsel shall make certification of compliance herewith and shall deliver the same to Outside Counsel for the Submitting Party not more than three weeks after conclusion of this proceeding and any administrative or judicial review. The provisions of this paragraph regarding retention of Stamped Highly Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

20. Accordingly, IT IS ORDERED that pursuant to sections 4(i), 4(j), and 10 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, and pursuant to authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291,[3] the Second Protective Order IS ADOPTED, effective upon its release.

FEDERAL COMMUNICATIONS COMMISSION

Marcus Maher
Associate Chief, Wireline Competition Bureau

[3] *See* 47 U.S.C. § 155(c).

APPENDIX A

Acknowledgment of Confidentiality

WC Docket No. 07-97

I hereby acknowledge that I have received and read a copy of the foregoing *Second Protective Order* in the above-captioned proceeding, and I understand it. I agree that I am bound by the *Second Protective Order* and that I shall not disclose or use Stamped Highly Confidential Documents or Highly Confidential Information except as allowed by this *Second Protective Order*. I acknowledge that a violation of the *Second Protective Order* is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the *Second Protective Order* is due solely to my capacity as Outside Counsel of Record or Outside Consultant to a party or other person described in paragraph 7 of the foregoing *Second Protective Order* and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the *Second Protective Order*.

I acknowledge that it is my obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in the *Second Protective Order*; and (2) Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of paragraphs 8, 11, 12, and 14 of the *Second Protective Order*, and I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Stamped Highly Confidential Documents or Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the *Second Protective Order*.

Executed at Denver this 5th day of September, 2008

James K. Tripp

[Name]
[Position]
[Address]
[Telephone]
[Email]

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petitions of Qwest Corporation for Forbearance	)	WC Docket No. 07-97
Pursuant to 47 U.S.C. § 160(c) in the Denver,	)	
Minneapolis-St. Paul, Phoenix, and Seattle	)	
Metropolitan Statistical Areas	)	

SECOND PROTECTIVE ORDER

Adopted: May 31, 2007 **Released: June 1, 2007**

By the Chief, Wireline Competition Bureau:

1. Today, the Wireline Competition Bureau (Bureau) issued a Protective Order (*First Protective Order*) regarding confidential or proprietary documents that may be submitted by Qwest Corporation (Qwest) or other parties to this proceeding (individually, Submitting Party and collectively, Submitting Parties).[1] We hereby adopt a *Second Protective Order* to ensure adequate protection for certain highly confidential and competitively sensitive information that may be submitted by the Submitting Parties.

2. Accordingly, we will permit Submitting Parties submitting such documents and information and those of a similarly competitively sensitive nature to designate those materials as Highly Confidential and, as provided below, we will limit access to such materials to outside counsel of record, their employees, and outside consultants and experts whom they retain to assist them in this proceeding.[2] We conclude that a *Second Protective Order* will give appropriate access to the public while protecting the Submitting Parties' competitively sensitive information. This *Second Protective Order* covers only those portions of documents or data that fall into one of the categories specified below. The remainder of the document (or a redacted version of the document) is not entitled to the additional protection provided by the *Second Protective Order*.

3. Any party seeking access to confidential documents subject to the *Second Protective Order* shall request access pursuant to the terms of the *Second Protective Order* and must sign the Acknowledgement of Confidentiality, attached as Appendix A (Acknowledgement).

---

[1] *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, First Protective Order, DA 07-2292 (WCB, rel. June 1, 2007) (*First Protective Order*).

[2] On other occasions, the Bureau has granted similar protection to materials which, if released to competitors, would allow those competitors to gain a significant advantage in the marketplace. *See, e.g.*, *Petition of the Verizon Local and Long Distance Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 06-56, Second Protective Order, DA 07-1625 (WCB rel. Apr. 5, 2007) (adopting a second protective order); *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules as They Apply after Section 272 Sunsets*, WC Docket No. 05-333, Second Protective Order, 22 FCC Rcd 115 (WCB rel. Jan. 5, 2007) (same); *SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Order, 20 FCC Rcd 8876 (WCB rel. May 9, 2005) (same).

4. *Definitions.* As used herein, capitalized terms, not otherwise defined herein, shall have the following meanings:

"Stamped Highly Confidential Document" means any document, or any part thereof, that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings it to the attention of a reasonable examiner) "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 07-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION," unless the Commission determines, *sua sponte* or by request pursuant to sections 0.459 or 0.461 of its rules, that any such document is not entitled to such confidential treatment. The term "document" means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. By designating a document a "Stamped Highly Confidential Document," a Submitting Party signifies that it contains information that the Submitting Party believes should be subject to protection under the Freedom of Information Act (FOIA), the Commission's implementing rules and this *Second Protective Order*.

"Highly Confidential Information" means information contained in Stamped Highly Confidential Documents or derived therefrom that is not otherwise available from publicly available sources. Specifically, Highly Confidential Information covered by the *Second Protective Order* refers to those portions of documents or data – or entire documents, if eligible in their entirety – that disclose the following: revenues or numbers of customers disaggregated by customer type and a market area smaller than the nation (such as a Metropolitan Statistical Area (MSA) or wire center service area) including carrier-specific E911 line count listings; details of the Submitting Party's future plans to compete for a customer or specific groups or types of customers (*e.g.*, business or wholesale customers) specifically including the Submitting Party's future pricing strategies, product strategies, or marketing strategies; detailed or granular engineering capacity information; information regarding the specific locations where an intermodal competitor is able to use its own network, including its own loop facilities, through which it is willing and able, within a commercially reasonable time, to offer substitute services for the incumbent local exchange carrier's (LEC) local service offerings; the identity or characteristics of specific customers or those with whom a company is negotiating; and those portions of documents that have some of the characteristics of more than one category of competitive sensitivity listed above. To the extent that a Submitting Party believes that future submissions fall into one of these categories, the Submitting Party must file a letter explaining which category the information falls within, and the Submitting Party may file under this *Second Protective Order* only those documents specifically authorized by the Bureau.

"Outside Counsel of Record" or "Outside Counsel" means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing a party in these proceedings, provided that such persons are not involved in competitive decision-making, *i.e.*, Outside Counsel's activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or of any competitor of a Submitting Party nor the analysis underlying the business decisions. Outside Counsel of Record includes any attorney representing a non-commercial party in these proceedings, provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party.

"Outside Consultants" means consultants or experts retained for the purpose of assisting Counsel or a party in this proceeding, provided that the Outside Consultants are not involved in competitive decision-making, *i.e.*, Outside Consultants' activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or any competitor of a Submitting Party nor the analysis underlying the business decisions. Outside Consultants include any expert employed by a non-commercial party in these proceedings, provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party.

"Reviewing Party" means a person who has obtained access to Highly Confidential Information (including Stamped Highly Confidential Documents) pursuant to paragraphs 7 and 10 of this *Second Protective Order*.

5. *Use of Highly Confidential Information*. Persons obtaining access to Highly Confidential Information (including Stamped Highly Confidential Documents) under this *Second Protective Order* shall use the information solely for the preparation and conduct of this forbearance proceeding before the Commission as delimited in this and subsequent paragraphs, and any judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including, without limitation, business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to the contents of any of the Stamped Highly Confidential Documents or Highly Confidential Information in its decision in this proceeding, it will do so by redacting any Highly Confidential Information from the public version of the decision and by making the unredacted version of the decision available only to a court and to those persons entitled to access to Highly Confidential Information under this *Second Protective Order*.

6. *Non-Disclosure of Stamped Highly Confidential Information*. Except with the prior written consent of the Submitting Party, or as hereinafter provided under this *Second Protective Order*, neither a Stamped Highly Confidential Document nor any Highly Confidential Information may be disclosed by a Reviewing Party to any person other than the Commission and its staff.

7. *Permissible Disclosure*. Subject to the requirements of paragraph 10, Stamped Highly Confidential Documents may be reviewed by Outside Counsel and Outside Consultants. Outside Counsel and Outside Consultants may disclose Stamped Highly Confidential Documents and other Highly Confidential Information to: (1) paralegals or other employees of such Outside Counsel or Outside Consultants not described in clause 2 of this paragraph assisting Outside Counsel or Outside Consultants in this proceeding; (2) employees of such Outside Counsel or Outside Consultants involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding; and (3) employees of third-party contractors performing one or more of the functions set forth in clause 2 of this paragraph. Reviewing Parties may discuss and share the contents of the Stamped Highly Confidential Documents and Highly Confidential Information with any other Reviewing Party and with the Commission and its staff. A Submitting Party's Stamped Highly Confidential Documents and Highly Confidential Information may also be disclosed to employees and Counsel of the Submitting Party, as otherwise permitted.

8. *Protection of Stamped Highly Confidential Documents and Highly Confidential Information*. Persons described in paragraph 7 shall have the obligation to ensure that access to Stamped Highly Confidential Documents and Highly Confidential Information is strictly limited as prescribed in this *Second Protective Order*. Such persons shall further have the obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in this *Second Protective Order*; and (2) Stamped Highly Confidential Documents are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 14 below.

9. *Prohibited Copying*. If, in the judgment of the Submitting Party, a document contains information so sensitive (even given its Highly Confidential designation) 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 Commission, with notice to Outside Counsel of Record for the Submitting Party.

10. *Procedures for Obtaining Access to Highly Confidential Documents.* In all cases where access to Stamped Highly Confidential Documents and Highly Confidential Information is permitted pursuant to paragraph 7, before reviewing or having access to any Stamped Highly Confidential Documents or Highly Confidential Information, each person seeking such access shall execute the attached Acknowledgment of Confidentiality (Acknowledgment) and file it with the Bureau via the Commission's Electronic Comment Filing System (ECFS) for this docket. All such persons (except as described below) shall serve the Acknowledgement upon each Submitting Party through its Outside Counsel of Record so that the Acknowledgment is received by each Submitting Party at least five business days prior to such person's reviewing or having access to such Submitting Party's Stamped Highly Confidential Documents or Highly Confidential Information. Where the person seeking access is one described in either clause 2 or 3 of paragraph 7, the Acknowledgment shall be delivered promptly prior to the person obtaining access. Each Submitting Party shall have an opportunity to object to the disclosure of Stamped Highly Confidential Documents to any persons seeking access. Any objection must be filed at the Commission and served on Counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment (or where the person seeking access is one described in either clause 2 or 3 of paragraph 7, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Stamped Highly Confidential Documents or Highly Confidential Information. The Submitting Party shall make available for review the Stamped Highly Confidential Documents of such party at the offices of such party's Outside Counsel of Record or, if the Submitting Party does not have Outside Counsel of Record, at the offices of such party's in-house counsel; *provided, however,* that multiple Submitting Parties filing together shall make available for review all of their Stamped Highly Confidential Documents at the offices of one of the Submitting Parties' Outside Counsel of Record (the Submitting Parties' Custodian Counsel).

11. *Information in Electronic Format.* Upon written request as provided for in paragraph 10, a Reviewing Party may review and analyze Highly Confidential Information that is maintained in an electronic format. The Submitting Party may require such electronic information be reviewed at the office of Submitting Party's Custodian Counsel. Any other party submitting Highly Confidential Information in electronic format may require such electronic information be reviewed at the office of their Outside Counsel of Record. The Submitting Party must provide the Reviewing Party's Outside Counsel of Record and Outside Consultants adequate and secure computer capacity to load and run their software and assist in obtaining any off-site software licenses that may be required. Submitting Party's Custodian Counsel must afford the Reviewing Party's Outside Counsel and Outside Consultants a private and secure workplace, including private and secure storage and adequate shredding and disposal arrangements, where they may review and analyze the data and prepare their analysis. The Reviewing Party's Outside Counsel and Outside Consultants may use the secure workplace 24 hours a day, seven days a week, until their analysis is complete and ready to be submitted to the Commission, and thereafter on an as needed basis until this proceeding, including any appeal, is final and no longer subject to judicial review.

12. The Submitting Party must allow the Reviewing Party's Outside Counsel and Outside Consultants to perform an integrated analysis of the Submitting Party's Highly Confidential Information at a single location in the offices of the Submitting Party's Custodian Counsel. The Reviewing Party's Outside Counsel and Outside Consultants may print four copies of their analysis, three that are to be submitted to the Commission for purposes of this proceeding in accordance with paragraph 14 and one, identical to the analysis submitted to the Commission, which they may retain and use solely in accordance with the provisions of the *First Protective Order* and this *Second Protective Order*. The Reviewing Party's Outside Counsel and Outside Consultants may also print any intermediate steps or work product necessary to perform their analysis, including charts and graphs, *etc.*, and they may keep any printouts of

that intermediate work product at the private, secure workplace at the offices of the Submitting Party's Custodian Counsel until this proceeding, including any appeal, is final and no longer subject to judicial review; however, they are prohibited from removing any intermediate work product from the secure workplace. The Reviewing Party's Outside Counsel and Outside Consultants may take notes necessary to perform their analysis, and they may retain such notes until this proceeding, including any appeal, is final and no longer subject to judicial review. The Reviewing Party's Outside Counsel and Outside Consultants may, at their discretion, retain such notes at the secure workplace or remove them. If the Reviewing Party submits in the record any analysis that uses Highly Confidential Information, it must comply with the terms and conditions set forth in the *First Protective Order* and this *Second Protective Order*. After their analysis is completed, the Reviewing Party's Outside Counsel and Outside Consultants may retain the data and analysis at a private, secure location in the offices of Submitting Party's Custodian Counsel, where they may have access on an as needed basis until this proceeding, including any appeal, is final and no longer subject to judicial review. The Reviewing Party must submit an affidavit in the record of this proceeding, at the time it submits integrated analysis pursuant to paragraph 14, certifying that, as pertains to the review and analysis of Highly Confidential Information that is maintained in an electronic format pursuant to paragraphs 11 and 13, its Outside Counsel and Outside Consultants have removed from the offices of the Submitting Party's Custodian Counsel only their notes and four copies of the final work product that is being submitted to the Commission, that they have not removed any intermediate work product, and that they have filed everything (other than their notes and one copy of their analysis) that they have removed.

13. *Requests for Additional Disclosure.* If any person requests disclosure of Highly Confidential Information outside the terms of this *Second Protective Order*, such a request will be treated in accordance with sections 0.442 and 0.461 of the Commission's rules.

14. *Filings with the Commission.* Persons described in paragraph 7 may, in any documents that they file in this proceeding, reference Highly Confidential Information, but only if they comply with the following procedure: Two copies of each filing that contains or references Highly Confidential Information pursuant to this *Second Protective Order* (the Confidential Filing) must be delivered in person to Gary Remondino, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The filing should be accompanied by a cover letter prominently stating "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 07-97." Each page of the confidential or proprietary document should be stamped "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 07-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." In addition, the submitting party must file with the Secretary's Office one copy of the Confidential Filing and two copies of the Confidential Filing in redacted form (the Redacted Confidential Filing). The two copies of the Redacted Confidential Filing and their accompanying cover letters should be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential Filing should state that the Submitting Party is filing a redacted version of the particular Confidential Filing. Parties should not provide courtesy paper copies of filings containing Highly Confidential Information to Commission Staff unless the Bureau so requests, in which case the Submitting Party may print as many copies as the Bureau requests in addition to the four specified in paragraph 12. Any such courtesy copies shall be submitted under seal. All parties should submit an electronic copy of filings containing Highly Confidential Information to Jeremy Miller (Jeremy.Miller@fcc.gov) and Denise Coca (Denise.Coca@fcc.gov), but should not submit any additional unredacted electronic courtesy copies unless they are specifically requested by Bureau or Commission staff.

15. *Client Consultation.* Nothing in this *Second Protective Order* shall prevent or otherwise restrict Outside 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 Highly Confidential Documents or Highly Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client, outside Counsel shall not disclose Stamped Highly Confidential Documents or Highly Confidential Information.

16. *No Waiver of Confidentiality*. Disclosure of Highly Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Highly Confidential Information. Reviewing parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Highly Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

17. *Subpoena by Courts, Departments or Agencies*. If a court, or a federal or state department or agency issues a subpoena or orders production of Stamped Highly Confidential Documents or Highly Confidential Information that a party has obtained under terms of this *Second Protective Order*, such party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Highly Confidential Document or Highly Confidential Information.

18. *Violations of Second Protective Order*. Should a person that has properly obtained access to Highly Confidential Information under this *Second Protective Order* violate any of its terms, that person shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this *Second Protective Order*, including but not limited to suspension or disbarment of Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Highly Confidential Information in this or any other Commission proceeding. Nothing in this *Second Protective Order* shall limit any other rights and remedies available to the Submitting Party at law or in equity against any person using Highly Confidential Information in a manner not authorized by this *Second Protective Order*.

19. *Termination of Proceeding*. The provisions of this *Second Protective Order* shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, persons described by paragraph 7 shall destroy or return to the Submitting Party Stamped Highly Confidential Documents and all copies of the same. No material whatsoever derived from Stamped Highly Confidential Documents may be retained by any person having access thereto, except Outside Counsel (as described in paragraph 7) may retain, under the continuing strictures of this *Second Protective Order*, one copy of the pleading containing Highly Confidential Information prepared on behalf of that party. All Outside Counsel shall make certification of compliance herewith and shall deliver the same to Outside Counsel for the Submitting Party not more than three weeks after conclusion of this proceeding and any administrative or judicial review. The provisions of this paragraph regarding retention of Stamped Highly Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

20. Accordingly, IT IS ORDERED that pursuant to sections 4(i), 4(j), and 10 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, and pursuant to authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291,[3] the Second Protective Order IS ADOPTED, effective upon its release.

FEDERAL COMMUNICATIONS COMMISSION

Marcus Maher
Associate Chief, Wireline Competition Bureau

[3] *See* 47 U.S.C. § 155(c).

APPENDIX A

Acknowledgment of Confidentiality

WC Docket No. 07-97

I hereby acknowledge that I have received and read a copy of the foregoing *Second Protective Order* in the above-captioned proceeding, and I understand it. I agree that I am bound by the *Second Protective Order* and that I shall not disclose or use Stamped Highly Confidential Documents or Highly Confidential Information except as allowed by this *Second Protective Order*. I acknowledge that a violation of the *Second Protective Order* is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the *Second Protective Order* is due solely to my capacity as Outside Counsel of Record or Outside Consultant to a party or other person described in paragraph 7 of the foregoing *Second Protective Order* and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the *Second Protective Order*.

I acknowledge that it is my obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in the *Second Protective Order*; and (2) Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of paragraphs 8, 11, 12, and 14 of the *Second Protective Order*, and I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Stamped Highly Confidential Documents or Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the *Second Protective Order*.

Executed at Denver, CO this 5th day of September, 08.

Mariya Barmak

[Name] MARIYA BARMAK
[Position] Assistant Attorney General
[Address] 1525 Sherman St, 7th floor
[Telephone] Denver, CO 80202
[Email] mariya.barmak@state.co.us

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas	))))	WC Docket No. 07-97

FIRST PROTECTIVE ORDER

Adopted: May 31, 2007 **Released: June 1, 2007**

By the Chief, Wireline Competition Bureau:

1. Documents submitted to the Commission in the course of forbearance proceedings may represent or contain confidential or proprietary information. This *First Protective Order* is intended to facilitate and expedite the review of confidential information submitted by parties to this proceeding, including privileged and confidential information, such as trade secrets or financial information. To ensure that documents and materials in the above-referenced proceeding considered by Submitting Parties to be confidential and proprietary are afforded protection, the Wireline Competition Bureau hereby enters this *First Protective Order*.[1]

2. Non-Disclosure. Except with the prior written consent of the person originally designating a document to be stamped as a confidential document, or as hereinafter provided under this order, no stamped confidential document may be disclosed to any person. A "stamped confidential document" means any document which bears the legend (or which otherwise has had the legend recorded upon it in a way that brings it to the attention of a reasonable examiner) "CONFIDENTIAL – SUBJECT TO FIRST PROTECTIVE ORDER IN WC DOCKET NO. 07-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION" to signify that it contains information believed to be subject to protection under the Commission's rules. For purposes of this order, the term "document" means all written, recorded, or graphic material, whether produced or created by a party or another person, whether produced pursuant to the Commission's rules, pursuant to subpoena, by agreement, or otherwise. Documents that quote, summarize, or contain materials entitled to protection may be accorded status as a stamped confidential document, but, to the extent feasible, shall be prepared in such a manner that the confidential information is bound separately from that not entitled to protection.

3. Permissible Disclosure. Notwithstanding paragraph 2, stamped confidential documents may be disclosed subject to the provisions of subparagraphs (a) and (b), to the following persons if disclosure is reasonably necessary for such persons to render professional services in this proceeding: counsel of record for parties that may file in this proceeding, including in-house counsel who are actively engaged in the conduct of this proceeding; partners, associates, secretaries, paralegal assistants, and employees of such counsel; outside consultants or experts retained to render professional services in this proceeding, provided

[1] We also adopt today a *Second Protective Order* to govern the submission and disclosure of highly confidential information in this proceeding. *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, Second Protective Order, DA 07-2293 (WCB, rel. June 1, 2007) (*Second Protective Order*).

that they are under the supervision of the counsel of record; and in-house economists and regulatory analysts, provided that they are under the supervision of the counsel of record. Such documents may also be disclosed to relevant employees of regulatory agencies, Commission employees involved in this proceeding, and to any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

(a) Notwithstanding any other provision of this order, before any disclosure shall occur, any individual (other than a Commission employee) to whom confidential information is disclosed must certify in writing that he/she has read and understands this *First Protective Order*, agrees to abide by its terms, and understands that unauthorized disclosures of the stamped confidential documents are prohibited. A copy of each such certification shall be provided to the party that designated the information confidential. (*See* Attachment A for a model certification.)

(b) Before disclosing a stamped confidential document to any person who is described in paragraph 3 (other than an attorney) and who is employed by a competitor or potential competitor of the party that so designated the document, the party seeking such disclosure shall give at least five days' advance notice in writing to the counsel who designated such information as confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. Such notice shall also be filed in the Commission's Electronic Comment Filing System (ECFS) for this docket. No such disclosure shall be made within the five-day period. If, within the five-day period, a motion is filed objecting to the proposed disclosure, disclosure is not permissible until the Commission has denied such motion and disclosure is permitted under 47 C.F.R. § 0.459. Any such motion shall be hand-served on the party seeking such disclosure.

4. Access to Confidential Information. Any party producing confidential information pursuant to this order shall designate a Washington, D.C., location and such other locations as may be convenient at which all parties shall be permitted access to and review of requested confidential information pursuant to the other terms of this order, or pursuant to alternative arrangements agreed upon by the parties. Any such access or review may be limited to regular business hours after reasonable notice by the requesting party.

5. Confidential Information Filed in the Record. Stamped confidential documents and other confidential information may be offered in the record of this proceeding, provided that such confidential information is furnished under seal. The party submitting confidential documents shall ensure that each page bears the legend "CONFIDENTIAL - SUBJECT TO FIRST PROTECTIVE ORDER IN WC DOCKET NO. 07-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION."

6. Commission Treatment of Confidential Information. If confidential documents are submitted to the Commission in accordance with paragraph 5, the materials shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents. The Commission may, *sua sponte* or by petition, determine that all or part of the information claimed by the producing party to be confidential is not entitled to such treatment. *See generally* 47 C.F.R. § 0.459.

7. Use. Persons obtaining access to stamped confidential documents under this order shall use the information only in the conduct of this proceeding and any judicial proceeding arising therefrom, and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings. Persons obtaining access to confidential information under the terms of this order may disclose, describe, or discuss the confidential information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed from which all confidential information is redacted. Persons filing pleadings

under seal based on confidential information provided by others shall serve such pleadings by hand or overnight delivery on the party originally requesting confidential treatment of the underlying information.

8. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of stamped confidential documents which a party has obtained under terms of this order, such party shall promptly notify the party and any other person who designated the document as confidential of the pendency of such subpoena or order.

9. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients regarding the forbearance proceeding in which a confidential document is submitted and, in the course thereof, relying generally on examination of stamped confidential documents submitted in that proceeding; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraph 3 above.

10. Prohibited Copying. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited." Application for relief from this restriction against copying may be made to the Commission, with notice to counsel so designating the document.

11. Non-Termination. The provisions of this order shall not terminate at the conclusion of this proceeding.

12. Modification Permitted. Nothing in this order shall prevent any party or other person from seeking modification of this order.

13. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of stamped confidential documents. Parties shall not duplicate any stamped confidential document except working copies and for purposes of filing at the Commission under seal.

14. Return of Confidential Documents. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), parties that have received stamped confidential documents shall either return all copies of such documents in their possession to the party that submitted the documents, or destroy all such confidential documents.

15. Penalties. In addition to any other penalties or remedies authorized under the Communications Act, the Commission's rules, the common law or other source of law, any failure to abide by the terms of this order may result in dismissal of a party's pleadings, or censure, suspension, or disbarment of the attorneys involved, *see* 47 C.F.R. § 1.24, or possible referral to the relevant local bar.

16. Accordingly, IT IS ORDERED that pursuant to sections 4(i), 4(j), and 10 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, and pursuant to authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291,[2] the First Protective Order IS ADOPTED, effective upon its release.

FEDERAL COMMUNICATIONS COMMISSION

Marcus Maher
Associate Chief, Wireline Competition Bureau

[2] *See* 47 U.S.C. § 155(c).

ATTACHMENT A

WC DOCKET NO. 07-97

I have received a copy of the *First Protective Order* in WC Docket No. 07-97. I have read the order and agree to comply with and be bound by the terms and conditions of the *First Protective Order*. The signatory understands, in particular, that unauthorized disclosure, or the use of the information for competitive commercial or business purposes, will constitute a violation of the *First Protective Order*.

SIGNATURE:

NAME PRINTED: Matthew Baker

TITLE: Co Public Utilities commissioner

ADDRESS: 1560 Broadway, suite 250
Denver CO 80202

REPRESENTING: Co Public Utilities commission

EMPLOYER: State of Colorado

DATE: 9/5/08

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas	))))	WC Docket No. 07-97

SECOND PROTECTIVE ORDER

Adopted: May 31, 2007 **Released: June 1, 2007**

By the Chief, Wireline Competition Bureau:

1. Today, the Wireline Competition Bureau (Bureau) issued a Protective Order (*First Protective Order*) regarding confidential or proprietary documents that may be submitted by Qwest Corporation (Qwest) or other parties to this proceeding (individually, Submitting Party and collectively, Submitting Parties).[1] We hereby adopt a *Second Protective Order* to ensure adequate protection for certain highly confidential and competitively sensitive information that may be submitted by the Submitting Parties.

2. Accordingly, we will permit Submitting Parties submitting such documents and information and those of a similarly competitively sensitive nature to designate those materials as Highly Confidential and, as provided below, we will limit access to such materials to outside counsel of record, their employees, and outside consultants and experts whom they retain to assist them in this proceeding.[2] We conclude that a *Second Protective Order* will give appropriate access to the public while protecting the Submitting Parties' competitively sensitive information. This *Second Protective Order* covers only those portions of documents or data that fall into one of the categories specified below. The remainder of the document (or a redacted version of the document) is not entitled to the additional protection provided by the *Second Protective Order*.

3. Any party seeking access to confidential documents subject to the *Second Protective Order* shall request access pursuant to the terms of the *Second Protective Order* and must sign the Acknowledgement of Confidentiality, attached as Appendix A (Acknowledgement).

---

[1] *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, First Protective Order, DA 07-2292 (WCB, rel. June 1, 2007) (*First Protective Order*).

[2] On other occasions, the Bureau has granted similar protection to materials which, if released to competitors, would allow those competitors to gain a significant advantage in the marketplace. *See, e.g.*, *Petition of the Verizon Local and Long Distance Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 06-56, Second Protective Order, DA 07-1625 (WCB rel. Apr. 5, 2007) (adopting a second protective order); *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules as They Apply after Section 272 Sunsets*, WC Docket No. 05-333, Second Protective Order, 22 FCC Rcd 115 (WCB rel. Jan. 5, 2007) (same); *SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Order, 20 FCC Rcd 8876 (WCB rel. May 9, 2005) (same).

4. *Definitions.* As used herein, capitalized terms, not otherwise defined herein, shall have the following meanings:

"Stamped Highly Confidential Document" means any document, or any part thereof, that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings it to the attention of a reasonable examiner) "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 07-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION," unless the Commission determines, *sua sponte* or by request pursuant to sections 0.459 or 0.461 of its rules, that any such document is not entitled to such confidential treatment. The term "document" means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. By designating a document a "Stamped Highly Confidential Document," a Submitting Party signifies that it contains information that the Submitting Party believes should be subject to protection under the Freedom of Information Act (FOIA), the Commission's implementing rules and this *Second Protective Order*.

"Highly Confidential Information" means information contained in Stamped Highly Confidential Documents or derived therefrom that is not otherwise available from publicly available sources. Specifically, Highly Confidential Information covered by the *Second Protective Order* refers to those portions of documents or data – or entire documents, if eligible in their entirety – that disclose the following: revenues or numbers of customers disaggregated by customer type and a market area smaller than the nation (such as a Metropolitan Statistical Area (MSA) or wire center service area) including carrier-specific E911 line count listings; details of the Submitting Party's future plans to compete for a customer or specific groups or types of customers (*e.g.*, business or wholesale customers) specifically including the Submitting Party's future pricing strategies, product strategies, or marketing strategies; detailed or granular engineering capacity information; information regarding the specific locations where an intermodal competitor is able to use its own network, including its own loop facilities, through which it is willing and able, within a commercially reasonable time, to offer substitute services for the incumbent local exchange carrier's (LEC) local service offerings; the identity or characteristics of specific customers or those with whom a company is negotiating; and those portions of documents that have some of the characteristics of more than one category of competitive sensitivity listed above. To the extent that a Submitting Party believes that future submissions fall into one of these categories, the Submitting Party must file a letter explaining which category the information falls within, and the Submitting Party may file under this *Second Protective Order* only those documents specifically authorized by the Bureau.

"Outside Counsel of Record" or "Outside Counsel" means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing a party in these proceedings, provided that such persons are not involved in competitive decision-making, *i.e.*, Outside Counsel's activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or of any competitor of a Submitting Party nor the analysis underlying the business decisions. Outside Counsel of Record includes any attorney representing a non-commercial party in these proceedings, provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party.

"Outside Consultants" means consultants or experts retained for the purpose of assisting Counsel or a party in this proceeding, provided that the Outside Consultants are not involved in competitive decision-making, *i.e.*, Outside Consultants' activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or any competitor of a Submitting Party nor the analysis underlying the business decisions. Outside Consultants include any expert employed by a non-commercial party in these proceedings, provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party.

"Reviewing Party" means a person who has obtained access to Highly Confidential Information (including Stamped Highly Confidential Documents) pursuant to paragraphs 7 and 10 of this *Second Protective Order*.

5. *Use of Highly Confidential Information*. Persons obtaining access to Highly Confidential Information (including Stamped Highly Confidential Documents) under this *Second Protective Order* shall use the information solely for the preparation and conduct of this forbearance proceeding before the Commission as delimited in this and subsequent paragraphs, and any judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including, without limitation, business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to the contents of any of the Stamped Highly Confidential Documents or Highly Confidential Information in its decision in this proceeding, it will do so by redacting any Highly Confidential Information from the public version of the decision and by making the unredacted version of the decision available only to a court and to those persons entitled to access to Highly Confidential Information under this *Second Protective Order*.

6. *Non-Disclosure of Stamped Highly Confidential Information*. Except with the prior written consent of the Submitting Party, or as hereinafter provided under this *Second Protective Order*, neither a Stamped Highly Confidential Document nor any Highly Confidential Information may be disclosed by a Reviewing Party to any person other than the Commission and its staff.

7. *Permissible Disclosure*. Subject to the requirements of paragraph 10, Stamped Highly Confidential Documents may be reviewed by Outside Counsel and Outside Consultants. Outside Counsel and Outside Consultants may disclose Stamped Highly Confidential Documents and other Highly Confidential Information to: (1) paralegals or other employees of such Outside Counsel or Outside Consultants not described in clause 2 of this paragraph assisting Outside Counsel or Outside Consultants in this proceeding; (2) employees of such Outside Counsel or Outside Consultants involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding; and (3) employees of third-party contractors performing one or more of the functions set forth in clause 2 of this paragraph. Reviewing Parties may discuss and share the contents of the Stamped Highly Confidential Documents and Highly Confidential Information with any other Reviewing Party and with the Commission and its staff. A Submitting Party's Stamped Highly Confidential Documents and Highly Confidential Information may also be disclosed to employees and Counsel of the Submitting Party, as otherwise permitted.

8. *Protection of Stamped Highly Confidential Documents and Highly Confidential Information*. Persons described in paragraph 7 shall have the obligation to ensure that access to Stamped Highly Confidential Documents and Highly Confidential Information is strictly limited as prescribed in this *Second Protective Order*. Such persons shall further have the obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in this *Second Protective Order*; and (2) Stamped Highly Confidential Documents are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 14 below.

9. *Prohibited Copying*. If, in the judgment of the Submitting Party, a document contains information so sensitive (even given its Highly Confidential designation) 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 Commission, with notice to Outside Counsel of Record for the Submitting Party.

10. *Procedures for Obtaining Access to Highly Confidential Documents.* In all cases where access to Stamped Highly Confidential Documents and Highly Confidential Information is permitted pursuant to paragraph 7, before reviewing or having access to any Stamped Highly Confidential Documents or Highly Confidential Information, each person seeking such access shall execute the attached Acknowledgment of Confidentiality (Acknowledgment) and file it with the Bureau via the Commission's Electronic Comment Filing System (ECFS) for this docket. All such persons (except as described below) shall serve the Acknowledgement upon each Submitting Party through its Outside Counsel of Record so that the Acknowledgment is received by each Submitting Party at least five business days prior to such person's reviewing or having access to such Submitting Party's Stamped Highly Confidential Documents or Highly Confidential Information. Where the person seeking access is one described in either clause 2 or 3 of paragraph 7, the Acknowledgment shall be delivered promptly prior to the person obtaining access. Each Submitting Party shall have an opportunity to object to the disclosure of Stamped Highly Confidential Documents to any persons seeking access. Any objection must be filed at the Commission and served on Counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment (or where the person seeking access is one described in either clause 2 or 3 of paragraph 7, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Stamped Highly Confidential Documents or Highly Confidential Information. The Submitting Party shall make available for review the Stamped Highly Confidential Documents of such party at the offices of such party's Outside Counsel of Record or, if the Submitting Party does not have Outside Counsel of Record, at the offices of such party's in-house counsel; *provided, however*, that multiple Submitting Parties filing together shall make available for review all of their Stamped Highly Confidential Documents at the offices of one of the Submitting Parties' Outside Counsel of Record (the Submitting Parties' Custodian Counsel).

11. *Information in Electronic Format.* Upon written request as provided for in paragraph 10, a Reviewing Party may review and analyze Highly Confidential Information that is maintained in an electronic format. The Submitting Party may require such electronic information be reviewed at the office of Submitting Party's Custodian Counsel. Any other party submitting Highly Confidential Information in electronic format may require such electronic information be reviewed at the office of their Outside Counsel of Record. The Submitting Party must provide the Reviewing Party's Outside Counsel of Record and Outside Consultants adequate and secure computer capacity to load and run their software and assist in obtaining any off-site software licenses that may be required. Submitting Party's Custodian Counsel must afford the Reviewing Party's Outside Counsel and Outside Consultants a private and secure workplace, including private and secure storage and adequate shredding and disposal arrangements, where they may review and analyze the data and prepare their analysis. The Reviewing Party's Outside Counsel and Outside Consultants may use the secure workplace 24 hours a day, seven days a week, until their analysis is complete and ready to be submitted to the Commission, and thereafter on an as needed basis until this proceeding, including any appeal, is final and no longer subject to judicial review.

12. The Submitting Party must allow the Reviewing Party's Outside Counsel and Outside Consultants to perform an integrated analysis of the Submitting Party's Highly Confidential Information at a single location in the offices of the Submitting Party's Custodian Counsel. The Reviewing Party's Outside Counsel and Outside Consultants may print four copies of their analysis, three that are to be submitted to the Commission for purposes of this proceeding in accordance with paragraph 14 and one, identical to the analysis submitted to the Commission, which they may retain and use solely in accordance with the provisions of the *First Protective Order* and this *Second Protective Order*. The Reviewing Party's Outside Counsel and Outside Consultants may also print any intermediate steps or work product necessary to perform their analysis, including charts and graphs, *etc.*, and they may keep any printouts of

that intermediate work product at the private, secure workplace at the offices of the Submitting Party's Custodian Counsel until this proceeding, including any appeal, is final and no longer subject to judicial review; however, they are prohibited from removing any intermediate work product from the secure workplace. The Reviewing Party's Outside Counsel and Outside Consultants may take notes necessary to perform their analysis, and they may retain such notes until this proceeding, including any appeal, is final and no longer subject to judicial review. The Reviewing Party's Outside Counsel and Outside Consultants may, at their discretion, retain such notes at the secure workplace or remove them. If the Reviewing Party submits in the record any analysis that uses Highly Confidential Information, it must comply with the terms and conditions set forth in the *First Protective Order* and this *Second Protective Order*. After their analysis is completed, the Reviewing Party's Outside Counsel and Outside Consultants may retain the data and analysis at a private, secure location in the offices of Submitting Party's Custodian Counsel, where they may have access on an as needed basis until this proceeding, including any appeal, is final and no longer subject to judicial review. The Reviewing Party must submit an affidavit in the record of this proceeding, at the time it submits integrated analysis pursuant to paragraph 14, certifying that, as pertains to the review and analysis of Highly Confidential Information that is maintained in an electronic format pursuant to paragraphs 11 and 13, its Outside Counsel and Outside Consultants have removed from the offices of the Submitting Party's Custodian Counsel only their notes and four copies of the final work product that is being submitted to the Commission, that they have not removed any intermediate work product, and that they have filed everything (other than their notes and one copy of their analysis) that they have removed.

13. *Requests for Additional Disclosure.* If any person requests disclosure of Highly Confidential Information outside the terms of this *Second Protective Order*, such a request will be treated in accordance with sections 0.442 and 0.461 of the Commission's rules.

14. *Filings with the Commission.* Persons described in paragraph 7 may, in any documents that they file in this proceeding, reference Highly Confidential Information, but only if they comply with the following procedure: Two copies of each filing that contains or references Highly Confidential Information pursuant to this *Second Protective Order* (the Confidential Filing) must be delivered in person to Gary Remondino, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The filing should be accompanied by a cover letter prominently stating "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 07-97." Each page of the confidential or proprietary document should be stamped "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 07-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." In addition, the submitting party must file with the Secretary's Office one copy of the Confidential Filing and two copies of the Confidential Filing in redacted form (the Redacted Confidential Filing). The two copies of the Redacted Confidential Filing and their accompanying cover letters should be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential Filing should state that the Submitting Party is filing a redacted version of the particular Confidential Filing. Parties should not provide courtesy paper copies of filings containing Highly Confidential Information to Commission Staff unless the Bureau so requests, in which case the Submitting Party may print as many copies as the Bureau requests in addition to the four specified in paragraph 12. Any such courtesy copies shall be submitted under seal. All parties should submit an electronic copy of filings containing Highly Confidential Information to Jeremy Miller (Jeremy.Miller@fcc.gov) and Denise Coca (Denise.Coca@fcc.gov), but should not submit any additional unredacted electronic courtesy copies unless they are specifically requested by Bureau or Commission staff.

15. *Client Consultation.* Nothing in this *Second Protective Order* shall prevent or otherwise restrict Outside 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 Highly Confidential Documents or Highly Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client, outside Counsel shall not disclose Stamped Highly Confidential Documents or Highly Confidential Information.

16. *No Waiver of Confidentiality*. Disclosure of Highly Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Highly Confidential Information. Reviewing parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Highly Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

17. *Subpoena by Courts, Departments or Agencies*. If a court, or a federal or state department or agency issues a subpoena or orders production of Stamped Highly Confidential Documents or Highly Confidential Information that a party has obtained under terms of this *Second Protective Order*, such party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Highly Confidential Document or Highly Confidential Information.

18. *Violations of Second Protective Order*. Should a person that has properly obtained access to Highly Confidential Information under this *Second Protective Order* violate any of its terms, that person shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this *Second Protective Order*, including but not limited to suspension or disbarment of Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Highly Confidential Information in this or any other Commission proceeding. Nothing in this *Second Protective Order* shall limit any other rights and remedies available to the Submitting Party at law or in equity against any person using Highly Confidential Information in a manner not authorized by this *Second Protective Order*.

19. *Termination of Proceeding*. The provisions of this *Second Protective Order* shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, persons described by paragraph 7 shall destroy or return to the Submitting Party Stamped Highly Confidential Documents and all copies of the same. No material whatsoever derived from Stamped Highly Confidential Documents may be retained by any person having access thereto, except Outside Counsel (as described in paragraph 7) may retain, under the continuing strictures of this *Second Protective Order*, one copy of the pleading containing Highly Confidential Information prepared on behalf of that party. All Outside Counsel shall make certification of compliance herewith and shall deliver the same to Outside Counsel for the Submitting Party not more than three weeks after conclusion of this proceeding and any administrative or judicial review. The provisions of this paragraph regarding retention of Stamped Highly Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

20. Accordingly, IT IS ORDERED that pursuant to sections 4(i), 4(j), and 10 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, and pursuant to authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291,[3] the Second Protective Order IS ADOPTED, effective upon its release.

FEDERAL COMMUNICATIONS COMMISSION

Marcus Maher
Associate Chief, Wireline Competition Bureau

[3] *See* 47 U.S.C. § 155(c).

APPENDIX A

Acknowledgment of Confidentiality

WC Docket No. 07-97

I hereby acknowledge that I have received and read a copy of the foregoing *Second Protective Order* in the above-captioned proceeding, and I understand it. I agree that I am bound by the *Second Protective Order* and that I shall not disclose or use Stamped Highly Confidential Documents or Highly Confidential Information except as allowed by this *Second Protective Order*. I acknowledge that a violation of the *Second Protective Order* is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the *Second Protective Order* is due solely to my capacity as Outside Counsel of Record or Outside Consultant to a party or other person described in paragraph 7 of the foregoing *Second Protective Order* and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the *Second Protective Order*.

I acknowledge that it is my obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in the *Second Protective Order*; and (2) Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of paragraphs 8, 11, 12, and 14 of the *Second Protective Order*, and I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Stamped Highly Confidential Documents or Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the *Second Protective Order*.

Executed at Denver Colorado this 7 day of September 2008

[Name] MATT BAER
[Position] Commissioner
[Address] 1560 Broadway, Ste 260
[Telephone] 303-894-2007
[Email] matt.baer@dora.state.co.us