

1 **THE PUBLIC UTILITIES COMMISSION OF NEVADA**

2 Annual Reports submitted by
3 Telecommunications companies
4 operating in Nevada pursuant to
NRS 703.191 and NAC 704.7483.

5 _____ /
6 **PROTECTIVE AGREEMENT**

7 WHEREAS, the Regulatory Operations Staff (“Staff”) of the Public Utilities
8 Commission of Nevada (“Commission”) has requested to review information that
9 _____ (“Company”) has provided to the Commission as part
10 of Staff’s investigation regarding the annual reports required to be filed with the Commission
11 pursuant to Nevada Revised Statutes (“NRS”) 703.191 and Nevada Administrative Code
12 (“NAC”) 704.225; and

13 WHEREAS, Company claims that some portion of the information requested is
14 confidential, proprietary and/or privileged in nature; and

15 WHEREAS, pursuant to NAC 703.527, NAC 703.5274(8), this Protective Agreement
16 is being executed in order to expedite access to such information by Staff and to establish the
17 parameters for use, treatment and maintenance of such information or material.

18 NOW, THEREFORE, the parties hereby agree as follows:

19 1. Company shall agree that that the information which the Company claims to be
20 confidential or proprietary and was provided to the Commission with the annual report may
21 be reviewed by Staff. For the purpose of this agreement, said confidential or proprietary
22 information shall include any information that is claimed to be “confidential” or “proprietary”
23 by the Company or is designated as confidential by the Commission. Staff shall not disclose
24 any information furnished by the Company that the Company has designated as confidential
25 or proprietary pursuant to the terms of this Protective Agreement, except as disclosure of such
26 information by Staff is expressly provided herein.

27 2. All documents and information furnished subject to the terms of this Protective
28 Agreement shall be clearly stamped “Confidential” or “Proprietary” and shall hereinafter be

1 referred to as "Protected Materials." All Protected Materials shall be accepted, maintained and
2 utilized in conformance with the provisions of NAC 703.5274 and this Protective Agreement.
3 Protected Materials shall also include any handwritten notes or computer files which
4 summarize all or portions of Protected Materials or otherwise disclose the substance of such
5 materials.

6 3. It is specifically agreed and understood that Protected Materials shall not
7 include any information or documents contained in the public files of the Commission or of
8 any federal or state court, tribunal, regulatory agency or other legal entity. Nor shall it include
9 any document or information which at any prior time has been disclosed by the Company or
10 any other party who may have been in lawful possession of such material without the benefit
11 of a written confidentiality agreement or other protective agreement or device.

12 4. Staff shall not be deemed, by reason of this Protective Agreement, to have
13 waived the opportunity to argue before the Commission, or any other appropriate body, that
14 any Protected Materials are not confidential, proprietary or privileged in nature. However, it is
15 specifically agreed that unless otherwise agreed by the Parties or ordered by the Commission,
16 all documents and other discovery materials or portions thereof that have been designated as
17 Protected Materials pursuant to the terms of this Agreement shall only be used in accordance
18 with the terms of this Agreement and the applicable law.

19 5. Protected Materials shall only be disclosed to and used by counsel of record for
20 Staff, Staff Counsel, Staff Counsel's administrative assistants and Staff's technical experts.
21 Each such counsel, assistant, or expert shall review and abide by the terms of this Agreement.
22 Outside counsel or consultants retained by Staff may be provided access to password
23 protected electronic material for the purpose of the instant proceeding only. In the event Staff
24 uses outside counsel or consultants to assist it in this proceeding, such outside counsel or
25 consultants shall evidence their agreement to the terms of this Protective Agreement in
26 writing, and such written agreement shall be promptly provided to the Company before Staff
27 grants access to any Protective Materials.

1 6. Such Protected Materials shall not be included in any public files or records of
2 the Commission, whether in print or electronic format. Protected Material shall not be
3 photocopied or otherwise duplicated unless agreed to by the Company. Staff may file
4 Protected Materials with the Commission pursuant to NAC 703.5274. Protected Materials
5 may be included in Staff Counsel's electronic database maintained for discovery purposes and
6 may be reproduced for the sole purpose of inclusion in the electronic database.¹

7 7. In the event Staff (a) is subpoenaed or as a result of other legal obligation or
8 compulsion intends to disclose Protected Materials to any person to whom disclosure is not
9 authorized by this Agreement, (b) wishes to include, use, or disclose the substance of
10 Protected Materials in non-confidential testimony or exhibits, or (c) wishes to object to the
11 designation of certain information or materials as Protected Materials, prior to such disclosure
12 or objection, Staff will notify counsel for the Company in writing and identify with
13 particularity the Protected Material to be used, disclosed, or objected to and the manner and
14 substance of such proposed use, disclosure, or objection.

15 8. If the Company objects to such proposed reclassification or disclosure, the
16 Company shall notify Staff in writing of their position and the reasons therefore within three
17 (3) working days of receipt of the notice described in Paragraph 7 above. Thereafter, if Staff
18 and the Company are unable to resolve the dispute, the Company or Staff may request a
19 determination from the Commission regarding the manner in which Staff should be allowed to
20 utilize such Protected Materials. Such procedure will be in conformity with NAC 703.5282.
21 The notification and response procedure and time schedule described in Paragraphs 7 and 8 of
22 this Agreement shall not apply to the unintended, unplanned and unforeseen identification,
23 reference to, or discussion of any Protected Materials during any public hearing. Should any
24 Protected Materials specifically covered by this Agreement be identified or become the
25 subject of any public testimony or inquiry at any time during a public hearing, the parties to
26 this Agreement shall immediately seek and obtain a ruling from the Presiding Officer, in
27

28 ¹ The Protected Materials in Staff Counsel's electronic database are maintained by Staff Counsel Division personnel only and access to such documents is controlled by Staff Counsel's office.

1 conformity with NAC 703.5282, as to the status of the specific Protected Materials at issue
2 prior to further public disclosure or additional discussion or examination.

3 9. By providing access to Staff for the documents or information pursuant to this
4 Agreement, the Company retains, in all respects, every privilege and claim to confidentiality it
5 heretofore has had and hereafter may have with respect to such documents or information.
6 Such limited provision of the Protected Materials shall not be deemed in any way to constitute
7 either (a) disclosure of the Protected Materials or (b) full or partial waiver of any claim or
8 privilege as to the subject matter of the documents in this or any other proceedings or action.
9 It is expressly understood that the Company bears the burden of showing that documents or
10 discovered material or portions thereof are entitled to be protected according to the terms of
11 this Agreement.

12 10. Nothing in this Agreement shall be construed to prevent Staff from attempting
13 to obtain through discovery, or in any other judicial or administrative action, any or all of the
14 Protected Materials subject to this Agreement.

15 11. This Protective Agreement is intended to cover any confidential material
16 submitted each year to the Commission over a five-year period of required annual reporting
17 pursuant to NRS 703.191 and NAC 704.225. At the end of the five-year period, a new
18 Protective Agreement will need to be executed for annual reports in subsequent years.

19 12. After the conclusion of the Commission's proceedings in this docket, this
20 Protective Agreement shall continue to be binding upon all parties and all persons to whom
21 the Protected Materials have been disclosed or communicated pursuant to this Agreement as
22 stated herein. Any outside counsel and consultants hired by Staff shall destroy or return to
23 Staff all copies of any documents, notes, workpapers, computer files, etc., containing any
24 Protected Materials, and Staff shall notify the Company thereof in writing. Pursuant to NAC
25 703.5274(2)(c), Protected Materials will be treated as confidential for a period of five years
26 following receipt by the Commission. After the five-year period, the Protected Materials will
27 no longer be retained consistent with Nevada law.

1 13. This Protective Agreement embodies the full agreement by and between the
2 parties.

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5
6
7 _____
8 COMPANY NAME (please print)

9 Dated: _____

By:

10 _____
11 Company Representative Name

12
13 _____
14 Company's Street Address

15 _____
16 City/State/Zip

17
18
19
20 REGULATORY OPERATIONS STAFF

21 Dated: _____

By:

22 _____
23 Donald Lomoljo, Staff Counsel

24
25
26
27 Please return the completed, executed Protective Agreement to the attention of Staff Counsel, at
28 pucn.sc@puc.nv.gov, fax (775) 684-6109, or at the Commission's offices at: 1150 East William
Street, Carson City, Nevada 89701.