

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)
)
 INVESTIGATION CONCERNING THE)
 PROPRIETY OF INTERLATA SERVICES)
 BY BELLSOUTH) CASE NO. 2001-105
 TELECOMMUNICATIONS, INC.)
 PURSUANT TO THE)
 TELECOMMUNICATIONS ACT OF 1996)
)

PROTECTIVE AGREEMENT

STIPULATION AND AGREEMENT

To expedite the flow of discovery material, facilitate the prompt resolution of disputes over confidentiality, adequately protect material entitled to be kept confidential, and ensure that the protection is afforded to material so entitled, the undersigned parties, through their respective attorneys, hereby stipulate and agree as follows:

1. *Exchange of Confidential Information.* The parties will be bound by the terms of this Protective Agreement upon executing it. Parties may exchange Confidential Information pursuant to discovery upon executing this Protective Agreement. Any party, including Third Parties (as defined in paragraph 2), shall be entitled to seek enforcement of (or other appropriate relief pertaining to) this Protective Agreement before the Kentucky Public Service Commission (“PSC”), a member of the PSC, or any other authority having competent jurisdiction, for any breach or threatened breach of this Protective Agreement. This Protective Agreement shall control the production and disclosure of all materials deemed confidential pursuant to paragraphs 2 and 3 below, including both materials and information belonging to the parties of this Protective Agreement as well as Confidential Information belonging to Third Parties as defined more fully in paragraph 2 below.

2. *Confidential Information from Third Parties.* For the purposes of this Protective Agreement, “Third Party Confidential Information” shall mean information held by any party subject to existing, nondisclosure obligations to a third party (“Third Party”), such as PricewaterhouseCooper’s (“PWC”). Any Third Party Confidential Information that is produced pursuant to the conduct of discovery in “This Proceeding” may be produced as “Confidential Information” pursuant to paragraph 3 below. A Third Party under this Protective Agreement shall include, but is not limited to, the following companies:

PricewaterhouseCooper's

3. *Confidential Information.* Any materials generated or provided by a party in response to discovery may be designated as "Confidential Information" by that party if the party believes in good faith that the materials are confidential or proprietary and are entitled to protection from disclosure under Kentucky or Federal law, or are subject to existing non-disclosure obligations to a Third Party. The parties to this Protective Agreement agree that the designation of materials as "Confidential Information," or the failure to designate materials as "Confidential Information" shall in no way affect the right of the producing party to challenge the release of such materials by the United States in response to a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552, et seq. In particular, the designation of materials as "Confidential Information," or the failure to designate materials as "Confidential Information," shall in no way affect the right of the producing party to assert that such materials are exempt from disclosure under one or more of the exemptions to disclosure contained in the Freedom of Information Act, 5 U.S.C. § 552(b)(1-9). Any party asserting confidentiality for such material shall so indicate by clearly marking each page, or portion thereof, for which a Confidential Information designation is claimed with a marking such as "Confidential-Subject to Protective Agreement in Case No. 2001-105 Before the Kentucky Public Service Commission" or other markings that are reasonably calculated to alert custodians of the material to its confidential or proprietary nature. Except with the prior written consent of the party or other person who has designated a document to be stamped as Confidential Information, or as hereinafter provided, no Confidential Information may be disclosed to any person. For purposes of the Protective Agreement, the term "document" means all written, recorded or graphic material, and non-paginated items such as computer tapes, diskettes, and CD ROMs, whether produced or created by a party or another person, whether produced pursuant to the PSC's rules, subpoena, by agreement or otherwise. Interrogatory answers, responses to requests for admission, deposition transcripts and exhibits, pleadings, motions, affidavits, and briefs that quote, summarize, or contain materials entitled to protection are accorded status as a stamped confidential document, and to the extent feasible, shall be prepared in such a manner that the Confidential Information is bound separately from that not entitled to protection.

4. *Permissible Disclosure of Confidential Information.*

(a) Notwithstanding paragraph 3, Confidential Information provided pursuant to this Protective Agreement may be disclosed without prior consent only to the following persons, only in prosecuting This Proceeding, and only to the extent necessary to assist in prosecuting This Proceeding:

(1) Counsel of record representing a party in This Proceeding, any legal support personnel (e.g., paralegals and clerical employees) employed by such attorneys.

(2) Other employees, officers, or directors of a party, or consultants or experts retained by a party, who are not currently involved in the marketing, procurement, manufacturing, pricing, or development of telecommunications equipment, software or services. Individuals who become reviewing representatives under this paragraph use the Confidential Information to engage or consult in the marketing, procurement, manufacturing, pricing, or development of telecommunications equipment, software or services.

(3) The PSC or its staff.

(4) Court reporters, stenographers, or persons operating audio or video recording equipment at hearings or depositions.

(5) Any person designated by the PSC in the interest of justice, upon such terms as the PSC may deem proper.

(6) Persons noticed for depositions or designated as witnesses, to the extent reasonably necessary in preparing to testify or for the purpose of examination in This Proceeding.

(b) Persons obtaining access to Confidential Information under this Protective Agreement shall not disclose information designated as Confidential Information to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than in prosecuting This Proceeding before this PSC or any arbitrator appointed by this PSC. Each individual who is provided access to Confidential Information pursuant to paragraph 4(a), (1), (2), (5), or (6), must first sign, and have notarized, a statement affirmatively stating that the individual has reviewed this Protective Agreement and understands and agrees to be bound by the limitations it imposes on the signing party. The form of the notarized statement to be used is attached as Attachment A to this Agreement.

(c) No copies or notes of materials marked as Confidential Information may be made except copies or notes to be used by persons designated in paragraph (a) of this section. Each party shall maintain a log, recording the number of copies made of all Confidential Information, and the persons to whom the copies have been provided. Any note memorializing or recording of Confidential Information shall, immediately upon creation, become subject to all provisions of this Protective Agreement.

(d) Within ninety (90) days of termination of This Proceeding, including all appeals and petitions, all originals and reproductions of any Confidential Information, along with the log recording persons who received copies of such materials, shall be returned to the producing party. In addition, upon such termination, any notes or other work product, derived in whole or in part from the Confidential Information shall be destroyed, and

counsel of record for the receiving party shall notify counsel for the party who produced the materials in writing that this has been completed. If materials are destroyed rather than returned to the producing party, a sworn statement to that effect by counsel of record for the receiving party shall be provided to the producing party.

(e) Before disclosing a document marked as Confidential Information to any person listed in subparagraph 4(a)(5) or (a)(6) who is a competitor (or an employee or officer of a competitor) of the party, including a Third Party, that so designated the document, the party wishing to make such disclosure shall give at least ten (10) 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. If, within the ten day period, a motion is filed objecting to the proposed disclosure, a disclosure is not permissible unless and until the PSC has denied such motion.

(f) The number of reviewing representatives designated by a party to review Confidential Information under paragraphs 4(a) and 4(a)(2) may not exceed twenty (20) individuals (excluding paralegals and clerical employees) unless (i) the party producing the Confidential Information, and any third party whose Confidential Information is being disclosed, consent to additional reviewing representatives, or (ii) the PSC or a Commissioner denies a motion to bar disclosure of the Confidential Information to additional reviewing representatives. Failure to file such a motion within ten days after receiving written Notice that a reviewing party intends to designate additional reviewing representative(s) shall constitute consent to the designation. The written Notice shall (a) identify the additional reviewing representative(s), (b) identify the Confidential Information that is proposed to be disclosed, and (c) provide the current employment and position of the proposed additional reviewing representative(s). Notwithstanding the foregoing, the parties may designate in writing within ten (10) days from the entry of this Protective Agreement, not more than eleven (11) individuals from its legal support and/or consulting team which shall have access to the Confidential Information. If within five (5) days after the list is supplied to opposing parties, a motion is made objecting to the proposed disclosure, disclosure is not permissible unless and until the PSC or a Commissioner has denied the Motion. For any additional reviewing representatives, the parties must serve notice as specified above.

(1) Each expert or consultant for the party reviewing the Third-Party Confidential Information may take notes regarding the information. The notes shall be taken in notebooks. The notes and any subsequent work product based on the notes may not be replicated or copied, except as necessary for distribution to other representatives of the party who are authorized to receive Third-Party Confidential Information and have signed the notarized affidavit set forth in Attachment A hereto, or except in connection with offering such notes or work product into evidence or otherwise into the record pursuant to paragraph 7

below. At the conclusion of This Proceeding, including all appeals and/or petitions therefrom, all such work product and any other Confidential Information obtained hereunder, including any copies or notes, (other than any copies submitted to and included in the official PSC record) shall be assembled from the persons having same and destroyed, and the receiving party's counsel of record shall notify BST's counsel in writing that this destruction has been completed.

5. *Declassification.* A party may apply, to the PSC for a ruling that documents, categories of documents, or deposition transcripts, stamped or designated as confidential, are not entitled to such status and protection. The party or other person that designated the document or testimony as Confidential Information shall be given notice of the application and an opportunity to respond.

6. *Confidential Information in Depositions.* In the event that depositions are to be taken in This Proceeding:

(a) A deponent may, during the deposition, be shown and examined about Confidential Information if the deponent already knows the Confidential Information contained therein or if the provisions of paragraph 4 above are complied with.

(b) Parties (and deponents) may, within fifteen (15) days after receiving a deposition transcript, designate pages of the transcript (and exhibits thereto) as Confidential Information. Confidential Information within the deposition transcript may be designated by marking the portions of the pages that are confidential and marking such pages with the following legend: "Confidential - Subject To Protective Agreement in Case No. 2001-105, Before the Kentucky Public Service Commission." Until expiration of the 15-day period, the entire deposition will be treated as Confidential Information subject to protection against disclosure under this Protective Agreement. If no party or deponent timely designates Confidential Information in a deposition, then none of the transcript or its exhibits shall be filed (to the extent such filing may be required) under seal separately from the portions and exhibits not so marked.

7. *Confidential Information Offered in Evidence or Filed in the Record.* Subject to the PSC's rules and applicable state statutes, Confidential Information may be offered into evidence or in the record made by the parties and submitted to the PSC (or to an arbitrator appointed by the PSC) in This Proceeding, provided that the proponent does so in the manner set forth in this Protective Agreement and provides reasonable advance written notice of the party's intent to do so. Pursuant to this Agreement, any party may move before the PSC (or a presiding officer of the PSC, or an arbitrator appointed by the PSC) for any order that the evidence be received in camera or under other conditions to prevent unnecessary disclosure. The PSC, presiding officer, or arbitrator will then determine whether the proffered evidence should continue

to be treated as Confidential Information and, if so, what protection, if any, may be afforded such information at any hearing or other proceeding.

8. *Subpoena by Courts or Other Agencies.* If a court or other administrative agency subpoenas or orders production of Confidential Information which a party has obtained under the terms of this Protective Agreement, such party shall promptly (within two (2) business days) notify the party (or other person who designated the document as confidential) of the pendency of such subpoena or order to allow that party time to object to that production or seek a protective order.

9. *Filing.* Confidential Information need not be filed with the PSC's Secretary except when required in connection with motions under the PSC's rules and regulations or other matters pending before the PSC or an arbitrator appointed by the PSC. If filed, such information shall be filed under seal and shall remain sealed while in the Secretary's office or such other office as the PSC may designate so long as they retain their status as Confidential Information.

10. *Client Consultation.* Nothing in this Protective Agreement shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course thereof, relying generally on examination of Confidential Information provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure or reference to any Confidential Information except under the procedures or paragraph 4 above.

11. *Use.* Persons obtaining access to Confidential Information under this Protective Agreement shall use the information only for preparation of and the conduct of litigation in This Proceeding and any related appeals or review proceedings, and shall not use such information for any other purpose, including business or commercial purposes, or governmental or other administrative or judicial proceedings.

12. *Non-Termination.* The provisions of this Protective Agreement shall not terminate at the conclusion of This Proceeding.

13. *Modification Permitted.* Nothing in this Protective Agreement shall prevent any party from objecting to discovery that it believes to be otherwise improper.

14. *Responsibilities of the Parties.* The parties are responsible for employing reasonable measures to control, consistent with this Protective Agreement, duplication of, access to, and distribution of Confidential Information.

15. *Definition of "This Proceeding".* For the purposes of this Protective Agreement, the phrase "This Proceeding" shall only include Kentucky Public Service Commission Case No. 2001-105 and any appeals thereof.

16. *Damages.* Because the Third-Party Confidential Information represents substantial commercial value to the current and future business of the Third Parties, the parties agree that any material disclosure of the Third Party Confidential Information would result in substantial damages to the commercial operations of the Third Parties. In the event that Third Party Confidential Information is disclosed in violation of this Protective Agreement by any employee, agent, attorney, expert or consultant for a party to this Protective Agreement, then such party agrees that it will serve as a guarantor for the payment of any damages caused by the violation. The parties agree to submit to the jurisdiction of state or federal courts within the State of Kentucky.

17. *Counterparts.* This Protective Agreement may be executed by one or more parties to this Protective Agreement on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument binding on and inuring to the benefit of each party so executing this Protective Agreement with the same effect as if all such parties had signed the same instrument at the same time and place.

Dated: _____, 2001

403472

[Signature Page to Protective Agreement - Case No. 2001-105 Before the Kentucky PSC]

BELLSOUTH TELECOMMUNICATIONS, INC.

By: _____

Attest: _____

[Signature Page to Protective Agreement - Case No. 2001-105 Before the Kentucky PSC]

AT&T COMMUNICATIONS OF THE SOUTH
CENTRAL STATES, INC.

By: _____

Attest: _____

[Signature Page to Protective Agreement - Case No. 2001-105 Before the Kentucky PSC]

SPRINT COMMUNICATIONS CO., LP

By: _____

Attest: _____

[Signature Page to Protective Agreement - Case No. 2001-105 Before the Kentucky PSC]

WORLD.COM, SECCA, AND COVAD

By: _____

Attest: _____

[Signature Page to Protective Agreement - Case No. 2001-105 Before the Kentucky PSC]

LCI INTERNATIONAL TELECOM
CORPORATION, D/B/A QWEST
COMMUNICATIONS SERVICES

By: _____

Attest: _____

[Signature Page to Protective Agreement - Case No. 2001-105 Before the Kentucky PSC]

E.SPIRE

By: _____

Attest: _____

[Signature Page to Protective Agreement - Case No. 2001-105 Before the Kentucky PSC]

DELTACOM, INC.

By: _____

Attest: _____

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ICG

By: _____

Attest: _____

[Signature Page to Protective Agreement - Case No. 2001-105 Before the Kentucky PSC]

MILLER ISAR, INC.

By: _____

Attest: _____

STATE OF _____

COUNTY OF _____

CERTIFICATE OF AUTHORIZED REVIEWING REPRESENTATIVE

BEFORE ME , the undersigned authority, duly Commissioned and qualified in and for the State and County aforesaid, personally came and appeared _____(insert name), who, being by me first duly sworn, deposed and said as follows:

I certify my understanding that Confidential Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Agreement in Kentucky Public Service Commission Case No. 2001-105, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of “ Confidential Information”, and any notes, memoranda, or any other form of information regarding or derived from Confidential Information shall not be disclosed to anyone other than in accordance with the Protective Agreement and shall be used only for the purposes of the proceedings in Kentucky PSC Case No. 2001-105.

Signature:

Date of Execution: _____
(Type or Print below)

Name: _____

Title: _____

Company: _____

Address: _____

Requesting Party: _____

SWORN TO AND SUBSCRIBED BEFORE ME on this _____ day of _____, 2001.

My Commission expires: _____

(NOTARY PUBLIC) (SEAL)