

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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P.S.C.

In the Matter of:

REVIEW OF FEDERAL COMMUNICATIONS)	
COMMISSION'S TRIENNIAL REVIEW ORDER)	CASE NO.
REGARDING UNBUNDLING REQUIREMENTS)	2003-00379
FOR INDIVIDUAL NETWORK ELEMENTS)	

JOINT PROTECTIVE AGREEMENT

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

Definitions:

1. The term "Confidential Information" refers to any information in written, oral or other tangible or intangible forms which may include, but is not limited to, ideas, concepts, know-how, models, diagrams, flow charts, data, computer programs, marketing plans, business plans, customer information, and other technical, financial or business information, designated as "Confidential Information" by a producing party if the party believes in good faith that the material is confidential or proprietary and is entitled to protection from disclosure under any provision of Kentucky or Federal law and the material is furnished pursuant to discovery requests, depositions, or otherwise produced during this Proceeding. "Confidential Information" shall not include information contained in the public files of any federal or state agency that is subject to

disclosure under relevant Kentucky statutes nor shall it include information that, at the time it is provided through discovery or otherwise during this Proceeding or prior thereto, is or was public or that becomes public other than through disclosure in violation of this Agreement. Nor shall "Confidential Information" include information found by the Kentucky Commission or its representative/agent or a court of competent jurisdiction not to merit the protection afforded Confidential Information under the terms of this Agreement.

2. The term "This Proceeding," for the purposes of this Protective Agreement, shall include only Review of Federal Communications Commission's Triennial Review Order Regarding Unbundling Requirements for Individual Network Elements (KPSC 2003-00379) and any appeals thereof to the FCC or a court of competent jurisdiction, as well as any other state proceedings in any of the nine states in the BellSouth region that relate to the state's implementation of the FCC's Triennial Review Order, together with any appeals related to such proceedings to the FCC or to a court of competent jurisdiction.

Confidential Information

1. **General.** The parties will be bound by the terms of this Protective Agreement upon its execution and may thereafter exchange Confidential Information. Either party shall be entitled to seek enforcement of (or other appropriate relief, including sanctions, pertaining to) this Protective Agreement before the Kentucky Commission, or any other authority having competent jurisdiction, for any breach or threatened breach of this Protective Agreement. With respect to the foregoing, the Parties agree that monetary damages would be an inadequate remedy for any breach

or threatened breach of this Protective Agreement and that injunctive relief from a court of competent jurisdiction is appropriate for any breach or threatened breach of this Protective Agreement. This Protective Agreement shall control the production and disclosure of all materials deemed "Confidential Information."

2. **Designation of Material.** Confidential written information shall be so indicated 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 Kentucky (Docket No. 2003-00379)" or other markings that are reasonably calculated to alert custodians of the material to its confidential or proprietary nature. 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 under this Agreement 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. Confidential non-written information shall be so indicated by asserting the confidentiality of such information at the time of disclosure.

3. **Material Provided to the Parties.** Except with the prior written consent of the party who has designated a document or other non-written information as "Confidential Information," or as hereinafter provided, no Confidential Information may be disclosed to any person.

4. **Permissible Disclosure of Confidential Information.**

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

(i) Counsel of record representing a party in this Proceeding and any legal support personnel (e.g., paralegals and clerical employees) acting at the direction of counsel.

(ii) Other employees, officers, or directors of a party, or consultants or experts retained by a party, who are not engaged in strategic or competitive decision making, including, but not limited to, the sale or marketing or pricing of any products or services on behalf of the receiving party, unless the producing party gives prior written authorization for specific individuals in the prohibited categories above, to review the Confidential Information. If the producing party refuses to give such written authorization, the receiving party may, for good cause shown, request an order from the Kentucky Commission or its designated representative, allowing an individual involved in the prohibited categories above to have access to the Confidential Information. Individuals who become reviewing representatives under this paragraph agree that they will not use the Confidential Information made available in this Proceeding to engage or consult in the development, planning, marketing, procurement, manufacturing, pricing or selling of

telecommunication services, equipment, software or other offerings, strategic or business planning, competitive assessment, and/or network planning, operations or procurement.

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

(iv) 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 the Kentucky Commission. Each individual who is provided access to Confidential Information must receive a copy of this Agreement and 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 before being provided copies of any Confidential Information. The form of the notarized statement to be used is attached as Attachment A to this Agreement.

(i) No copies or notes of materials marked as Confidential Information may be made except copies or notes to be used by persons designated in paragraphs (A) - (D) 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.

(ii) Within ninety (90) days of the completion of this Proceeding, including all motions and appeals, all originals and reproductions of Confidential Information, along with the log recording persons who received copies of such materials, shall be returned to the producing party or destroyed. 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.

(C) Before a Party that has received Confidential Information may disclose a document or other non-written information designated as or marked as Confidential Information to any person who (i) has executed a Certificate of Authorized Reviewing Representative agreeing to be bound by the Provisions of this Protective Agreement and (ii) is employed by a competitor of the party that so designated the document or other non-written information, the party wishing to make such disclosure shall give at least five (5) days advance notice in writing to the counsel or party 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 five day period, a motion is filed objecting to the proposed disclosure, a disclosure is not permissible unless and until the Kentucky Commission has denied such motion.

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

6. **Confidential Information Offered in Evidence or Filed in the Record.** Subject to paragraph 5, Confidential Information may be offered into evidence or in the record made by the parties and submitted to the Kentucky Commission in this proceeding provided that the submission is done in camera or under seal, as applicable. If Confidential Information will be the subject of any cross-examination questions by a party or otherwise made a part of the record in the Proceeding, the cross-examining party or party desiring to offer the information into the record shall provide advance notice, either verbally or in writing, to the party who provided the Confidential Information and allow the providing party a reasonable time to ask the Kentucky Commission to impose protective measures to preserve the confidentiality of the Confidential Information.

7. **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 one (1) business day) notify the party (or other person who designated the document or non-written information 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.

8. **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 on paragraph 4 above.

9. **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.

10. **Non-Termination.** The obligations of the parties with respect to Confidential Information received pursuant to this Protective Agreement shall survive and continue after any expiration or termination of this Agreement.

11. **Preservation of Rights.** Nothing in this Protective Agreement shall prevent any party from objecting to discovery or challenging the admissibility of any and all information and data that it believes to be otherwise improper.

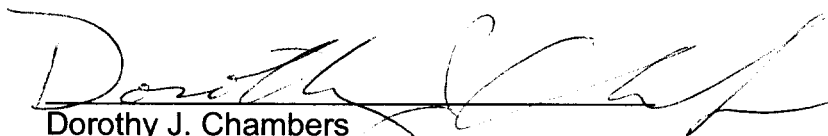
12. **Responsibilities of the Parties.** The parties are responsible for employing reasonable measures to control, consistent with this Protective Agreement, duplication of, access to, and distribution of Confidential Information. A receiving Party shall protect such Confidential Information by using the same degree of care (which shall be no less than reasonable care) to prevent its unauthorized disclosure as the receiving Party exercises in the protection of its own confidential information.

13. **Severability and Jurisdiction.** It is further agreed that if any provision of this agreement shall contravene any statute or constitutional provision or amendment either now in affect or which may, during the term of this agreement be enacted, then that conflicting provision in the agreement shall be deemed null and void with respect to the Kentucky Commission. The parties agreed to submit to the jurisdiction of state or federal courts within the Commonwealth of Kentucky.

14. **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 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.

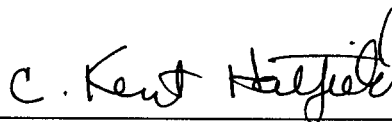
Respectfully submitted,



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COUNSEL FOR COMPSOUTH

508220

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 appeared _____ (insert name), who, being by me first duly sworn, deposed and said as follows:

I understand that the Confidential Protected Materials that will be provided to me in this proceeding are being provided pursuant to the terms and restrictions of the Protective Agreement in KPSC 2003-00379, 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 these proceedings in KPSC 2003-00379 as set forth in the Protective Agreement.

Signature:

Date of Execution: _____
(Type or Print below)

Name: _____

Title: _____

Company: _____

Address: _____

Requesting Party: _____

SWORN TO AND SUBSCRIBED BEFORE ME on this ____ day of ____, 2003.

(NOTARY PUBLIC)

My Commission expires:
