

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
NORTHERN DIVISION**

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<b>S&amp;S COMMUNICATIONS,</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
v.	)	<b>Case No. 02-1028</b>
	)	
<b>LOCAL EXCHANGE CARRIERS</b>	)	<b>STIPULATED ORDER</b>
<b>ASSN., INC.,</b>	)	<b>REGARDING CONFIDENTIAL</b>
	)	<b>DOCUMENTS</b>
<b>Defendants.</b>	)	
	)	

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To expedite the flow of discovery material, facilitate the prompt resolution of disputes over confidentiality, adequately protect material entitled to be kept confidential, and insure that confidentiality is afforded only to material so entitled, it is stipulated among the parties and pursuant to the Court's authority under Fed. R. Civ. P. 26(c) hereby ORDERED:

1. Non-Disclosure of Confidential and Highly Confidential Documents and Information. Except with the prior written consent of the producing party or other producing person originally designating a document as confidential or highly confidential, no document that is stamped or otherwise identified as confidential or highly confidential in a way that brings its attention to a reasonable examiner, or the confidential information contained therein, may be disclosed to any person or used in any manner except as provided herein.

2. Definitions. As used in this Order a "confidential document" means any document that bears the legend (or which shall otherwise have recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL" or bears a similar legend to signify that it contains "material entitled to protection" (as defined in Paragraph 3 below). A "highly confidential document" means any document that bears the legend (or which shall otherwise have recorded upon it in a way that brings its attention to a reasonable examiner) "HIGHLY CONFIDENTIAL" or bears a similar legend to signify that it contains "material entitled to protection" (as defined in Paragraph 3 below). For purpose 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 Rule 34, subpoena, by agreement , or otherwise. Interrogatory answers, responses to requests for admission, deposition transcripts and exhibits, pleadings, motions, affidavits, and briefs may be accorded the same protection as a confidential or highly confidential document pursuant to paragraph 3, but shall be prepared in such a manner that the confidential information is prominently marked, "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL."

3. Material Entitled to Protection. A party or other person shall designate for confidential treatment only documents, items or information which the party believes in good faith contain material not accessible to the public. A party or other person shall designate for highly confidential treatment only documents, items or information which the party believes in good faith contain material of a highly confidential nature, such as trade secrets or other confidential, commercial, or proprietary information including without limitation, non-public financial statements, accounting records, information about business methods or processes, merchandising practices, strategies, cost data, pricing data, other

sales data, financial data, advertising and marketing data, customer identification, employee identification, business and marketing plans, and information relating to intellectual property.

4. Permissible Use and Disclosures. All documents, material and information produced in this litigation and designated confidential may be used and disclosed only in connection with this litigation. In addition, subject to the provisions of subparagraph (d), highly confidential documents and information may be used only in connection with this litigation and may be disclosed only to:

(a) outside counsel who are actively engaged in the conduct of this litigation; to the partners, associates, secretaries, legal assistants, and employees of such attorneys to the extent reasonably necessary to render professional services; and to court officials involved in this litigation (including court reporters or persons operating video recording equipment at depositions);

(b) to any person designated by the court in the interest of justice, upon such terms as the court may deem proper;

(c) to witnesses at deposition or trial or in preparation of such witnesses, and to the counsel representing the witness in connection with this litigation, to the extent counsel determines in good faith that such disclosure is reasonably necessary to prepare such witnesses; to outside consultants or experts retained for the purpose of assisting counsel in this litigation; and to third-party contractors engaged in one or more aspects of organizing, filing, coding, converting, storing, or retrieving data or designing programs for handling data connected with these actions, including the performance of such duties in relation to a computerized litigation support system;

(d) however, before disclosure of any protected material is made to any person described in subparagraphs (b) or (c), such person shall sign a certification in the form attached hereto stating -

(1) that the signatory has read, understands, and will abide by the terms of this Order;

(2) that the signatory will not disclose the confidential document or the confidential information contained therein to any person not

authorized by this Paragraph to receive, disclose or use the confidential document or information for any purpose other than the conduct of this litigation; and

(3) that the signatory understands that unauthorized disclosure of the confidential documents may constitute contempt of court.

5. Declassification. Should any party object to the designation of material as confidential or highly confidential, counsel for the objecting party may challenge the designation by letter to counsel for the party or person making the designation. If the challenged material is not declassified in writing within 10 business days thereafter, counsel for the party objecting to the designation may apply to the Court for a ruling that the material (or category of material) designated confidential is not entitled to such status and protection. The party or other person that designated the material as confidential shall be given notice of the application and an opportunity to respond. To maintain confidential status, the proponent of confidentiality must show by a preponderance of the evidence that the material is entitled to protection pursuant to the standards of Fed. R. Civ. P.26(c).

6. Confidential and Highly Confidential Information in Depositions.

(a) A deponent who is not a party or a representative of a party shall be furnished a copy of this Order before being examined about confidential or highly confidential documents or information.

(b) Parties and deponents may, within 10 days after receiving a deposition, designate pages of the transcript (and exhibits thereto) as confidential or highly confidential to the extent they contain material entitled to protection (as defined in Paragraph 3). Such confidential or highly confidential information within the deposition transcript may be designated by marking the entire deposition "CONFIDENTIAL" or

"HIGHLY CONFIDENTIAL" or by marking such individual pages with the legend: "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." Until the expiration of the 10-day period during which designations may be made, the entire deposition will be treated as subject to protection as highly confidential under this Order. If a designation is made, the confidential and highly confidential portions and exhibits when filed shall be filed under seal, separate from the portions and exhibits not so marked. If confidential or highly confidential material entitled to protection (as defined at Paragraph 3) is included in answers to interrogatories, such interrogatory answers shall be marked with the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" and separately bound.

(c) Parties or non-parties who are not entitled to access to confidential or highly confidential information may be excluded from any portion of any deposition where such information may be disclosed.

7. Inadvertent Failure to Designate. Inadvertent failure to designate documents or other material as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" as those terms are defined in paragraph 2 herein, at the time of production or disclosure shall not operate to waive a party's right to later designate such documents or material as confidential or highly confidential. Any designation of documents or other material as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" after initial production of such documents or other material shall be made within 30 days of production or else is waived; provided, however, that no party shall be held in breach of this Stipulated Order if, prior to notification of such later designation, such material or information has been disclosed or used in a manner inconsistent with such later designation. Once such a designation has been made, however, the relevant documents or material shall be treated as confidential or highly

confidential in accordance with this Order. If a party has made a disclosure that would be prohibited by a later designation, that party shall then inform the entity to whom the disclosure was made of the terms of this Order, and shall make a good faith effort to obtain the certification set forth in Paragraph 4(d).

8. Filing of Confidential and Highly Confidential Information. Any documents designated confidential or highly confidential, or interrogatory answers or portions of deposition transcript duly marked as confidential or highly confidential, if filed with the Court, or briefs or other documents filed with the Court that make use of confidential or highly confidential documents or information shall be separately filed under seal in an envelope marked with the title (or a general description) of its contents and the legend: "Filed Under Seal Pursuant to Confidentiality Order."

9. Confidential and Highly Confidential Information at Trial. Subject to the Federal Rules of Evidence, confidential and highly confidential documents and other confidential and highly confidential material may be offered in evidence at trial or any court hearing. Any party or person may move the Court for an order that the evidence be received in camera or under other conditions to prevent unnecessary disclosure. The Court will then determine whether the proffered evidence should continue to be treated as confidential or highly confidential information and, if so, what protection, if any, may be afforded to such information at the trial or hearing.

10. Client Consultation. Nothing in this Order shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course thereof, relying generally on examination of confidential and highly confidential documents; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not

make any disclosure of the substance of the material so designated or the materials themselves except as otherwise provided in paragraph 4.

11. Further Requests for Production. If, at any time, any confidential or highly confidential documents or information in the possession, custody or control of any person other than the person who originally produced such confidential or highly confidential material is subpoenaed or requested by any court, administrative agency, legislative body or other person or entity, the party to whom the subpoena or request is directed shall immediately provide written notice to the person who originally produced such confidential or highly confidential material.

12. Termination. The provisions of this Order shall continue to be binding after final termination of this litigation. Within 90 days after final conclusion of all aspects of this litigation, including all appeals, any party or person who received documents designated for confidential or highly confidential treatment must return or certify in writing that he/she has destroyed (other than exhibits filed under seal with the court) those documents and the portions of all other material containing such confidential or highly confidential information.

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

14. 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 confidential and highly confidential documents.

15. The terms of this Order shall be binding upon all current and future parties to this action and their counsel.

16. Any third party producing documents in this litigation may avail themselves

of the confidential and highly confidential treatment provided for in this Order for their documents or information by following the procedures provided herein.

17. The parties signing this Stipulation and Order agree, pending the entry of this Stipulation and Order by the Court, to be fully bound by the terms hereof as if an Order had been entered.

18. Nothing contained in this Stipulation and Order shall affect the right, if any, of any party or its attorneys from disclosing or using, in any manner or for any purpose, any information or documents from the party's own files which the party itself has designated as Confidential or Highly Confidential.

19. This Stipulation and Order is without prejudice to the right of any party to seek relief from the Court, upon good cause shown, from any of the provisions herein.

Stipulated By:

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David U. Fierst #912899  
STEIN, MITCHELL & MEZINES, LLP  
1100 Connecticut Avenue, N.W.  
Suite 1100  
Washington, D.C. 20036  
(202) 737-7777

*for* 202-296-8312

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Darla Rogers  
MEYER & ROGERS  
320 East Capital  
P.O. Box 1117  
Pierre, South Dakota 57501  
Counsel for Defendants

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John W. Burke  
Barker, Wilson, Reynolds & Burke, L.L.P.  
117 Fifth Avenue  
P.O. Box 100  
Belle Fourche, South Dakota 57717-0100  
Counsel for Plaintiff

**SO ORDERED,**

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**United States District Judge**

Date: \_\_\_\_\_