

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE FILING BY SANCOM,)	PROTECTIVE ORDER
INC. D/B/A MITCHELL TELECOM FOR)	
APPROVAL OF ITS INTRASTATE SWITCHED)	TC07-128
ACCESS TARIFF AND FOR AN EXTENTION)	
OF AN EXEMPTION FROM DEVELOPING)	
COMPANY SPECIFIC COST-BASED)	
SWITCHED ACCESS RATES)	

On December 29, 2004, the South Dakota Public Utilities Commission (Commission) issued an order granting Sancom, Inc. d/b/a Mitchell Telecom (Sancom) a three year exemption from developing company specific cost-based intrastate switched access rates in accordance with ARSD 20:10:27:11. On December 28, 2007, Sancom filed a petition asking for an extension of that exemption. Additionally, Sancom is requesting to reduce its intrastate switched access rates to \$0.115 per originating and terminating MOU, a decrease of \$0.0075 from its current rates. On February 3, 2008, the Commission issued its Order Granting Intervention to Qwest Communications Corporation (Qwest) and AT&T Communications of the Midwest, Inc. (AT&T). On June 17, 2008, Sancom filed a Motion to Quash Subpoenas, Interrogatories and Data Requests. On June 25, 2008, Qwest filed a Response to Sancom's Motion to Quash and Affidavit of Chris Madsen in Response to Sancom's Motion to Quash. On July 1, 2008, Qwest filed a Supplement to Reply and Motion to Take Judicial Notice. On July 21, 2008, Sancom and Staff jointly filed a Joint Motion for Approval of Settlement Stipulation and Settlement Stipulation. On July 25, 2008, Staff filed a Commission Staff Memorandum in Support of Settlement Stipulation.

The Commission has jurisdiction in this matter pursuant to SDCL Chapter 1-26, particularly 1-26-19.2 and 1-26-20, SDCL Chapter 15-6, particularly 15-6-26(c), and SDCL Chapter 49-31, particularly 49-31-19, 49-31-12 and 49-31-12.4, ARSD Chapter 20:10:01, including 20:10:01:01.02, 20:10:01:17, 20:10:01:17.1, 20:10:01:19, 20:10:01:22.01 and 20:10:01:39 through 20:10:01:43, inclusive, and ARSD Chapters 20:10:27 through 20:10:29, inclusive, including 20:10:27:02, 20:10:27:07, 20:10:27:11 through 20:10:27:13, inclusive.

At its regularly scheduled meeting on July 29, 2008, the Commission considered Sancom's Motion to Quash Subpoenas, Interrogatories and Data Requests and deferred taking action on the Motion. At its regularly scheduled meeting on August 12, 2008, the Commission again considered Sancom's Motion to Quash. After hearing from the parties, the Commission voted unanimously to deny in part Sancom's Motion to Quash with respect to Qwest's Subpoena requesting production of Sancom's responses to Staff's Data Requests except for Sancom's responses to DR 1-23, 1-28 and 3-3. The Commission deferred action on the Motion to Quash with respect to Qwest's Interrogatories and Sancom's responses to Staff's Data Requests DR 1-23, 1-28 and 3-3. The Commission further required Sancom and/or Staff to produce to Qwest Sancom's responses to Staff's Data Requests, except for DR 1-23, 1-28 and 3-3, subject to a Protective Order that would preclude disclosure or use of the produced materials for any purpose other than this proceeding, including use in any other proceeding, other than any legal proceeding arising directly out of this proceeding, except pursuant to discovery in such other legal proceeding or an applicable order of the court or tribunal in such other proceeding.

It is therefore

ORDERED, that the following Protective Order is adopted by the Commission and shall be followed by the parties to this proceeding and their Qualified Persons:

1. "Designated Material" as used herein means the materials produced by Sancom and/or Staff in response to Qwest's Subpoena as ordered by the Commission in its Order Denying in Part Motion to Quash entered this date. "Confidential Material" as used herein means any document or other material in which the "Producing Party" has a good faith basis to assert the existence of confidential, proprietary or trade secret information, and which the producing party conspicuously designates and marks as including such information by marking the information as "Confidential." In recognition of the increased logistic difficulties to other parties and the Commission in handling Confidential Material as defined above, the producing party will make reasonable efforts to narrow the scope of information so designated and will confer in good faith to further narrow the scope of information so designated upon request of the receiving party.

2. Information designated as Confidential Material by the Producing Party shall not be disclosed to anyone other than the following individuals (the "Qualified Persons"):

- a. counsel of record for any Party in this action;
- b. paralegal, stenographic, clerical, or other employees of counsel of record in this action;
- c. court reporters and their employees engaged to record and transcribe testimony in this action;
- d. independent experts and consultants employed by counsel of record in this action to assist in the preparation or trial of this action;
- e. directors, officers, and employees of any Party in this action to the extent that disclosure of Confidential Material is necessary with respect to the active participation in this proceeding by such director, officer or employee of such Party;
- f. any witness from whom testimony is being taken during the course of his or her testimony or during the preparation thereof provided that such witness may not retain any Confidential Material; and
- g. subject to paragraphs 3.(iii) and 9., a court of competent jurisdiction and employees of such court.

3. Information designated as Confidential Material shall not be disclosed to persons specified in 2(d), (e), and (f) until such persons have signed a confidentiality agreement in the form that is attached hereto and incorporated herein as Exhibit A, agreeing to be bound by the terms and conditions of this Protective Order. The agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. The completed Exhibit A then must be distributed to the parties in this proceeding. Each party and each Qualified Person (i) shall not reveal any Confidential Material to anyone other than another person who meets any criteria established pursuant to paragraph (2) and who shall also have read this Order and completes and signs Exhibit A; (ii) shall utilize any Confidential Material solely for purposes of preparation for and conduct of this proceeding and not for any other purpose, including any other legal proceeding other than appeals arising directly out of this Docket; and (iii) shall keep all Confidential Material secure at all times in accordance with the purpose and intent of this Order.

Where any qualified person currently has or may in the future have responsibilities for marketing, product development, market analysis, market entry, or strategic planning for a competitor of any of the parties to this action now or in the future, that person shall take reasonable steps to limit his/her exposure to designated materials to those materials relevant to that person's testimony or involvement in this matter and it shall be made a violation of this Order for such person to rely on Confidential Materials obtained through discovery in this case to carry out marketing, product development, market analysis, market entry or strategic planning responsibility duties for any party or any other entity employing the person now or in the future.

4. The term "Confidential Materials" as defined in paragraph 1 and the provisions of this Protective Order affording protection to Confidential Materials will not apply to any information that can be satisfactorily shown (i) to be or have become publicly available without breach of this Protective Order; (ii) to have been known by the Receiving Party at the time of its receipt from the Producing Party; (iii) to have been rightfully received from a third party who did not acquire or disclose such information by a wrongful or tortious act; or (iv) to have been independently developed by the Receiving Party without reference to any Confidential Information. Unless there is agreement by the party making the disclosure as to the applicability of any of the exclusions set forth in this paragraph, the entitlement of the material to an exclusion under this section shall be made by the Commission or another tribunal having jurisdiction as provided in paragraph 9.

5. Only Designated Material that has been appropriately marked as "Confidential" shall be treated as confidential (unless such status is specifically waived by the producing party or the Commission specifically finds that such material need not be so treated). Such "Confidential Material" shall be held in confidence and used only in connection with this Docket, and shall be treated in accordance with any restrictions on the person or classes of persons to whom such material may be disclosed which are established by any party producing Confidential Material. All parties shall exercise reasonable steps to safeguard the confidentiality of the Confidential Material.

6. Neither the Confidential Material nor any summaries or compilations of the whole or any part thereof disclosed by a producing party to another party's attorneys in this case shall be revealed or distributed to anyone other than Qualified Persons to this Order.

7. No more than five (5) copies shall be made of the Confidential Materials. Copies shall prominently bear the statement "Confidential" or that disclosure of the contents is prohibited. All copies shall be returned, without further notice, to counsel for the producing party or, at the option of the parties receiving the copies, destroyed at the conclusion of this proceeding, including any rehearing or appeals. Notes, memoranda, or other written or recorded materials of any kind containing confidential and proprietary data or summaries or compilations of the whole or any part of any of the Confidential Material shall be destroyed when no longer needed in the conduct of this proceeding.

8. Any reference to Confidential Material filed with the Commission in testimony, exhibits or Briefs shall be marked to readily identify the contents as Confidential Material and marked "Confidential," shall be separately filed with the Commission, shall be distributed only to individuals who are Qualified Persons to this Order and members of the Commission Staff participating in this proceeding and shall be retained by the Commission under seal and not as part of the public record.

9. This Order establishes a procedure for permitting access to Designated Material that the producing parties hereto claim contains information which is confidential or proprietary or a trade secret and shall not be construed as an agreement or concession by the parties that any document or data provided under the terms of this Order in fact contains confidential or proprietary or trade

secret information. This Order does not waive any party's rights to contest before the Commission or a court or other tribunal having jurisdiction the designation of any particular document, data or portion thereof as containing confidential, proprietary or trade secret information.

10. It is further agreed that the parties hereto shall not be deemed to have waived any objections to the relevancy, materiality, or admissibility in the record of this proceeding of any of the Designated Material furnished or received pursuant to this Order.

11. This Order is binding with respect to each party and Qualified Person in accordance with its terms and each executed copy of this Order shall be deemed the original by the party executing the same.

Dated at Pierre, South Dakota, this 22nd day of August, 2008.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.
By: <u>Melaine Kolbo</u>
Date: <u>8/22/08</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Steve Kolbeck
STEVE KOLBECK, Commissioner

Dustin M. Johnson
DUSTIN M. JOHNSON, Commissioner
dk

EXHIBIT A

NONDISCLOSURE AGREEMENT

I hereby certify that I am familiar with the terms and conditions of the Protective Order entered by the Commission in the above-captioned docket and agree to be bound by the terms and conditions thereof.

I further agree that the information requested shall be used only for the valid purposes of these proceedings as provided in said Order.

DATED this _____ day of _____, 2008.

Signature: _____

Name (type or print): _____

Address and Telephone: _____

Representing: _____

Position: _____