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REGULATORY AUTH.
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OFFICE OF THE
EXECUTIVE SECRETARY

BELLSOUTH

BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300

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Guy M. Hicks
General Counsel

615 214 6301
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November 14, 2001

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Complaint of XO Tennessee, Inc. Against BellSouth Telecommunications, Inc.*

Complaint of Access Integrated Network, Inc. Against BellSouth Telecommunications, Inc.

Docket No. 01-00868

Dear Mr. Waddell:

Enclosed is the revised Protective Order executed by counsel for the parties in this proceeding. A copy is being provided to counsel of record. Please provide BellSouth a copy of the Order as soon as it is entered by the Hearing Officer. Thank you.

Very truly yours,

Guy M. Hicks

GMH:ch
Enclosure

420465

CERTIFICATE OF SERVICE

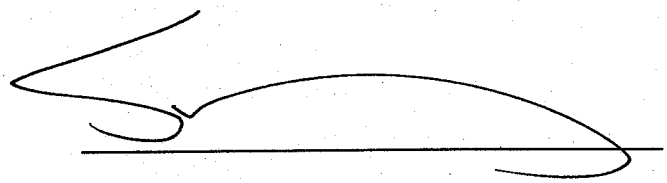
I hereby certify that on November 14, 2001, a copy of the foregoing document was served on the parties of record, via the method indicated:

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

Henry Walker, Esquire
Boult, Cummings, et al.
P. O. Box 198062
Nashville, TN 37219-8062

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

Chris Allen, Esquire
Office of Tennessee Attorney General
P. O. Box 20207
Nashville, Tennessee 37202



417580

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Complaint of XO Tennessee, Inc. Against BellSouth Telecommunications, Inc.*
Docket No. 01-00868

Complaint of Access Integrated Network, Inc. Against BellSouth Telecommunications, Inc.
Docket No. 01-00808

PROTECTIVE ORDER

To expedite the flow of filings, exhibits and other materials, and to facilitate the prompt resolution of disputes as to the confidentiality of such material, adequately protect material entitled to be kept confidential and to ensure that protection is afforded only to material so entitled; the Tennessee Regulatory Authority ("TRA") hereby orders that:

1. For the purpose of this Protective Order (the "Order"), proprietary or confidential information, hereinafter referred to as "CONFIDENTIAL INFORMATION" shall mean documents and information in whatever form which the producing party in good faith deems to contain or constitute trade secrets, confidential research, development, financial statements or other commercially sensitive information, and which has been so designated by the producing party. A "producing party" is defined as the party creating the confidential information as well as the party having actual physical possession of information produced pursuant to this Order. All summaries, notes, extracts, compilations or other direct or indirect reproduction from or of any protected materials, shall be entitled to protection under this Order, and shall be

stored, protected and maintained at the law offices of parties' counsel of record until such time that said material shall be returned, as provided for in paragraph 16. Documents containing CONFIDENTIAL INFORMATION shall be specifically marked as confidential on the cover. Any document so designated shall be handled in accordance with this Order. The provisions of any document containing CONFIDENTIAL INFORMATION may be challenged under Paragraph 11 of this Order.

2. Any individual or company subject to this Order, including producing parties or persons reviewing CONFIDENTIAL INFORMATION, shall act in good faith in discharging their obligations hereunder. Parties or nonparties subject to this Order shall include parties which are allowed by the TRA to intervene subsequent to the date of entry of this Protective Order.

3. CONFIDENTIAL INFORMATION shall be used only for purposes of this proceeding and shall be disclosed only to the following persons:

(a) counsel of record for the parties in this case and associates, secretaries, and paralegals actively engaged in assisting counsel of record in this and the designated related proceedings;

(b) TRA Directors and members of the staff of the TRA;

Under no circumstances shall any CONFIDENTIAL INFORMATION or copies therefore be disclosed to or discussed with anyone associated with the marketing of services in competition with the products, goods or services of the producing party. Counsel for the parties are expressly prohibited from disclosing CONFIDENTIAL INFORMATION

produced by another party to their respective clients, or to any other person or entity that does not have a need to know for purpose of preparing for or participating in this proceeding. Whenever an individual, other than counsel, is designated to have access, then notice (by sending a copy of the executed affidavit) must be given to adversary counsel prior to the access being given to that individual and that individual, prior to seeing the material, must execute an affidavit that the information will not be disclosed and will not be used other than in this proceeding.

4. Prior to disclosure of CONFIDENTIAL INFORMATION to any employee or associate counsel for a party, officer or director of the parties, including any counsel representing the party who is to receive the CONFIDENTIAL INFORMATION shall provide a copy of this Order to the recipient employee or associate counsel who shall be bound by the terms of this Order.

5. If any party or non-party subject to this Order inadvertently fails to designate documents as CONFIDENTIAL in accordance with the provisions of this Order when producing such documents, such failure shall not constitute a waiver of confidentiality; provided the party or non-party who has produced the document shall notify the recipient of the document in writing within five (5) days of discovery of such inadvertent failure to designate the document as CONFIDENTIAL. At that time, the recipients will immediately treat the subject document as CONFIDENTIAL. An inadvertent failure to designate a document as CONFIDENTIAL shall not, in any way,

affect the TRA's determination as to whether the document is entitled to CONFIDENTIAL status.

6. If any party or non-party subject to this Order inadvertently fails to designate documents as CONFIDENTIAL in accordance with the provisions of this Order when producing such documents and such failure is not discovered in time to provide five (5) day notification to the recipient of the confidential nature of the documents referenced in the paragraph above, the failure shall not constitute a waiver of confidentiality and a party by written motion or by oral motion at a Pre-Hearing Conference called for the purpose or at the Hearing on the merits may request designation of such documents as CONFIDENTIAL, and if the motion is granted by the Pre-Hearing Officer, Administrative Law Judge, or the Authority, the recipients shall immediately treat the subject documents as CONFIDENTIAL. The Tennessee Regulatory Authority, the Pre-Hearing Officer or Administrative Law Judge may also, at his or her discretion, either before or during the Pre-Hearing Conference or hearing on the merits of the case, allow information to be designated CONFIDENTIAL and treated as such in accordance with the terms of this Order.

7. Any papers filed in this proceeding that contain, quote, paraphrase, compile or otherwise disclose documents covered by the terms of this Order, or any information contained therein, shall be filed and maintained with the Executive Secretary of the TRA in sealed envelopes marked CONFIDENTIAL and labeled to

reflect the style of this proceeding, the docket number, the contents of the envelope sufficient to identify its subject matter, and this Protective Order. Such envelopes shall be maintained in a locked filing cabinet. The envelopes shall not be opened or their contents reviewed by anyone except upon order of the TRA, Pre-Hearing Officer, or Administrative Law Judge after due notice to counsel of record. Notwithstanding the foregoing, the Directors and the Staff of the TRA may review any paper filed as CONFIDENTIAL without obtaining an order of the TRA, Pre-Hearing Officer or Administrative Law Judge, provided the Directors and Staff maintain the confidentiality of the paper in accordance with the terms of this Order.

8. Documents, information and testimony designated as CONFIDENTIAL, in accordance with this Order, may be disclosed in testimony at the hearing of this proceeding and offered into evidence used in any hearing related to this action, subject to the Tennessee Rules of Evidence and to such future orders as the TRA, the Pre-Hearing Officer, or the Administrative Law Judge may enter. Any party intending to use documents, information, or testimony designated CONFIDENTIAL shall inform the producing party and the TRA, the Pre-Hearing Officer, or the Administrative Law Judge, prior to the hearing on the merits of the case in the manner designated previously in this Order, of the proposed use; and shall advise the TRA, the Pre-Hearing Officer, or the Administrative Law Judge, and the producing party before use of such information during cross-examination so that appropriate measures can be

taken by the TRA, the Pre-Hearing Officer, or the Administrative Law Judge, and/or requested by the producing party in order to protect the confidential nature of the information.

9. Except for documents filed with the Executive Secretary of the TRA, all documents covered by the terms of this Order that are disclosed to the requesting party shall be maintained separately in files marked CONFIDENTIAL and labeled with reference to this Order at the offices of the requesting party's counsel of record and returned to the producing party pursuant to Paragraph 16 of this Order.

10. Nothing herein shall be construed as preventing any party from continuing to use and disclose any information (a) that is in the public domain, or (b) that subsequently becomes part of the public domain through no act of such party, or (c) that is disclosed to it by a third party, where said disclosure does not itself violate any contractual or legal obligation, or (d) that is independently developed by a party, or (e) that is known or used by it prior to this proceeding. The burden of establishing the existence of (a) through (e) shall be upon the party attempting to use or disclose such information.

11. Any party may contest the designation of any document or information as CONFIDENTIAL by applying to the TRA, Pre-Hearing Officer, Administrative Law Judge or the courts, as appropriate, for a ruling that the documents information, or testimony should not be so treated. All documents, information and testimony

designated as CONFIDENTIAL, however, shall be maintained as such until the TRA, the Pre-Hearing Officer, the Administrative Law Judge, or a court orders otherwise. A Motion to contest must be filed not later than ten (10) days prior to the Hearing on the Merits. Any Reply from the Company seeking to protect the status of their CONFIDENTIAL INFORMATION must be received not later than five (5)days prior to the Hearing on the Merits and shall be presented to the Authority at the Hearing on the merits for a ruling.

12. Nothing in this Order shall prevent any party from asserting any objection to discovery other than an objection based upon grounds of confidentiality. Nothing in this Order is intended to limit or expand the statutory authority of the Attorney General or the Consumer Advocate Division as expressed in *T.C.A. § 10-7-504(a)* titled *Confidential Records, T.C.A. § 65-4-118* titled *Consumer Advocate Division,* and Title 8.

13. Non-party witnesses shall be entitled to invoke the provisions of this Order by designating information disclosed or documents produced for use in this action as CONFIDENTIAL in which event the provisions of this Order shall govern the disclosure of information or documents provided by the non-party witness. A non-party witness' designation of information as confidential may be challenged under Paragraph 11 of this Order.

14. No person authorized under the terms herein to receive access to documents, information, or testimony designated as CONFIDENTIAL shall be granted access until such person has complied with the requirements set forth in paragraph 4 of this Order.

15. Any person to whom disclosure or inspection is made in violation of this Order shall be bound by the terms of this Order.

16. Upon an order becoming final in this proceeding or any appeals resulting from such an order, all the filings, exhibits and other materials and information designated CONFIDENTIAL and all copies thereof shall be returned to counsel for the party who produced (or originally created) the filings, exhibits and other materials, within fifteen (15) days . Counsel who received the filings, exhibits and other materials shall certify to counsel for the producing party that all the filings, exhibits and other materials, plus all copies or extracts from the filings, exhibits and other materials and all copies of the extracts from the filings, exhibits and other materials thereof have been delivered to counsel for the producing party.

17. After termination of this proceeding, the provisions of this Order relating to the secrecy and confidential nature of CONFIDENTIAL DOCUMENTS, information and testimony shall continue to be binding upon parties herein and their officers, employers, employees, agents, and/or others for five years unless this Order is vacated or modified.

18. Nothing herein shall prevent entry of a subsequent order, upon an appropriate showing, requiring that any documents, information or testimony designated as CONFIDENTIAL shall receive protection other than that provided herein.

_____
Hearing Officer

ATTEST:

_____
EXECUTIVE SECRETARY

APPROVED FOR ENTRY

_____
Guy M. Hicks
Attorney for BellSouth Telecommunications, Inc.

_____
Henry Walker
Attorney for ACCESS Integrated Networks, Inc.

_____

Henry Walker
Attorney for XO of Tennessee, Inc.

_____

Chris Allen
Office of Tennessee Attorney General
Consumer Advocate and Protection Division

APPROVED FOR ENTRY

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Guy M. Hicks
Attorney for BellSouth Telecommunications, Inc.

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Attorney for ACCESS Integrated Networks, Inc.

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Attorney for XO of Tennessee, Inc.

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Chris Allen
Office of Tennessee Attorney General
Consumer Advocate and Protection Division

ATTEST:

EXECUTIVE SECRETARY

APPROVED FOR ENTRY

Guy M. Hicks
Attorney for BellSouth Telecommunications, Inc.

Henry Walker
Attorney for ACCESS Integrated Networks, Inc.

Henry Walker
Attorney for XO of Tennessee, Inc.

Chris Allen, Assistant Attorney General
Office of Tennessee Attorney General
Consumer Advocate and Protection Division