

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	DOCKET NO. UT-030614
	)	
	)	ORDER NO. 05
QWEST CORPORATION	)	
	)	
	)	ORDER GRANTING IN PART STAFF
For Competitive Classification of	)	MOTION FOR PRODUCTION OF
Basic Business Exchange	)	INFORMATION/ESTABLISHING
Telecommunications Services	)	TERMS OF ADDITIONAL
.....	)	PROTECTIVE ORDER

**I. INTRODUCTION**

- 1 **Proceeding.** Docket No. UT-030614 involves a petition filed by Qwest Corporation (Qwest), for competitive classification of basic business exchange telecommunications services pursuant to RCW 80.36.330. Qwest’s petition, filed on May 1, 2003, stated an effective date of May 31, 2003. At its open meeting on May 28, 2003, the Commission suspended the effective date and directed that there be a hearing on the petition. The provisions of RCW 80.36.310 require that the Commission act on the petition within six months of the filing date, in this case, by November 1, 2003.
  
- 2 **Background.** The Commission convened a prehearing conference in this docket at Olympia, Washington on June 6, 2003 before Administrative Law Judge Theodora Mace. During the prehearing conference, the parties agreed upon a schedule of proceedings consistent with Qwest’s waiver to November 7, 2003 of the statutory deadline for Commission action on the petition.
  
- 3 On June 12, 2003, Commission Staff filed a motion pursuant to RCW 80.336.330(5), requesting that the Commission enter an order requiring that by July 11, 2003, competitive local exchange carriers (CLECs) provide Commission Staff with data necessary to determine whether the competitive classification of business services sought by Qwest is warranted.

4 On June 17 and 23, 2003, the parties filed answers to issues raised in Staff's motion.

5 **Appearances.** Lisa Anderl, attorney, Seattle, represents Qwest. Jonathan C. Thompson, assistant Attorney General, represents Commission Staff. Simon ffitch, assistant Attorney General, represents Public Counsel Section of the Office of Attorney General. Letty S. D. Friesen, attorney, Denver, Colorado, represents AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on Behalf of TCG Seattle and TCG Oregon (AT&T). Karen J. Johnson, attorney, Beaverton, Oregon, represents Integra Telecom of Washington, Inc. (Integra). Michel Singer-Nelson, attorney, Denver, Colorado, represents WorldCom/MCI. Lisa Rackner and Arthur A. Butler, attorneys, Seattle, represent Washington Electronic Business and Telecommunications Coalition (WeBTEC). Stephen S. Melnikoff, attorney, Arlington, Virginia, represents the United States Department of Defense and all other Federal Executive Agencies (DOD/FEA).

## **II. DISCUSSION AND DECISION**

### **A. Staff's Motion.**

6 Staff filed its motion requesting CLEC production of information pursuant to RCW 80.36.330(5). This provision reads:

Telecommunications companies are required to provide the Commission with the data the Commission deems necessary to determine whether competitive classification is warranted.

7 Staff requested Washington CLECs to provide the following:

1. If your company offers basic business exchange telecommunications, PBX, or centrex service in less than the entire state of Washington, please describe the geographic area in which your company offers such service, or plans to offer such service in the state of Washington within the coming 12 months.
2. For each Qwest wire center in Washington and for each type of telecommunications service that your company provides to business

customers (basic business exchange telecommunications, PBX, centrex service ) please provide the number of lines your company provided to business customers as of December 31, 2002. Please provide separate totals for those lines provided through (a) resale of Qwest service, (b) unbundled network element loops, (c) combinations of network elements such as UNE-P, and (d) facilities owned by your company.

3. For each Qwest wire center in Washington and for each type of telecommunications service that your company provides to business customers (basic business exchange telecommunications, PBX, centrex service) provide the total number of business customer locations your company served as of December 31, 2002. Please provide separate totals for those locations served through (a) resale of Qwest service, (b) unbundled network element loops, (c) combinations of network elements such as UNE-P, and (d) facilities owned by your company.

8 Subsequent to receiving answers from the parties regarding Staff's motion, the Commission posed several additional questions to the parties:

1. For CLECs that provide facilities-based service, would adequate information be provided if responses were based on Qwest exchanges, or some other parameter, rather than on Qwest wire centers?
2. For CLECs that provide services based on Qwest's facilities, would Qwest be the logical provider of information Staff seeks regarding location of services by wire center?
3. Is there any objection to the inclusion of additional or revised requests for information as proposed by Public Counsel/WeBTEC?
4. If a further protective order is entered in this proceeding, should it reflect the highly confidential provisions contained in the protective order entered in Docket No. UT-000883, Second Supplemental – Protective Order, August 1, 2000?

5. Should the deadline for provision of the requested information be altered? Would Qwest be willing to further waive the statutory deadline for Commission action on the petition?

**B. ISSUES ADDRESSED IN ANSWERS TO STAFF'S MOTION.**

**1. Should facilities-based CLECs provide information by exchange, or other basis, rather than by Qwest wire center?**

- 9 Several parties indicated that providing CLEC information by wire center would be helpful because it would be easier to compare to the information contained in Qwest's petition. However, provision of CLEC information on an exchange basis would avoid the possibility of a skewed analysis of the existing competition. In addition, CLECs providing facilities-based competition may not be aware of all the Qwest wire centers.
- 10 For CLECs using Qwest facilities, it was suggested that Qwest map all resale and UNE wholesale service to its own wire centers. Qwest stated that it had already done that in its filing. MCI indicated it would be easier to provide information based on area code and prefix of the local phone number, and that it would be useful to provide the information based on geographic areas. Staff asked that the most specific geographic information available be provided. Staff preferred information by wire center, but otherwise by exchange or rate center. Public Counsel/WeBTEC asked that CLECs provide descriptions of actual locations of facilities if wire center information was not available.
- 11 **Decision.** Facilities-based CLECs must provide information by wire center if they are able to do so. If CLEC information is not organized by wire center, then the CLEC must provide the information requested by exchange or rate center, giving a clear and detailed description of the geographic area served. For non-facilities-based CLECs, to the extent the requested information is in Qwest's control, Qwest must provide the information, or refer to the location in its filing where the information is located. The CLECs must then verify the Qwest-provided information.

**2. Is Qwest the logical provider of information for non-facilities-based CLECs?**

12 Most parties agree that Qwest is the logical provider of information for such CLECs. However, Public Counsel/WeBTEC stated that it was important to obtain information from the CLECs too, so that the Commission could directly verify which CLECs were actually providing information and so that CLECs could verify the Qwest-provided information. Also, Qwest might not be aware of instances where the CLEC is using special access circuits to provide local service.

13 Qwest responds that the information Staff seeks has been provided in Qwest's petition.

14 **Decision.** As indicated above, to the extent the requested information is in Qwest's control, Qwest must provide it to both Commission Staff and the CLEC, or must point out where in the Qwest filing the information is located. CLECs must then verify the Qwest-provided information.

**3. Should the Commission require CLECs to respond to Public Counsel and WeBTEC's additional requests for information?**

15 Public Counsel and WeBTEC added questions or requested more detailed answers to questions Staff posed. In summary, Public Counsel/WeBTEC asked CLECs:

- a. To identify each business local exchange service (within the scope of the petition) provided and the price for each service;
- b. To identify separately the geographic areas where service is provided today and where it is planned to be provided in the future;
- c. To identify which type of loops they use;
- d. To report "loops owned by your company" as opposed to "facilities owned by your company" in Staff questions 2 and 3;
- e. To identify the number of lines provided or locations served through special access service, according to type of special access circuit;

- f. To report service installation and repair intervals for Qwest special access service;
- g. To identify all Qwest central offices in which they are collocated and which wire centers or exchanges they serve by purchasing transport from Qwest;
- h. To indicate whether they are Earnings Before Income Tax, Depreciation and Amortization (“EBITDA”) positive;
- i. To identify what types of business customers they target;
- j. To provide an ordinal description of the number of lines per customer in each wire center;
- k. To document service installation and repair delays, or other provisioning problems experienced with Qwest.

16 The CLECs that are parties to this proceeding generally object to these additional requests for information on grounds that Public Counsel and WeBTEC are capable of conducting their own discovery; that it would be extremely burdensome to provide the information; and, that the CLECs should not be required to respond particularly to those requests that Staff stated were irrelevant or unnecessary to a determination of the existence of effective competition.

17 In addition, MCI objects to providing information about its future service plans. MCI argues that RCW 80.36.330 concerns the state of competition existing at the time of the petition, including the current state of the market. Information about future plans is speculative in light of the uncertainties created by the pending issuance of the Federal Communications Commission’s Triennial Review Order. Furthermore, MCI contends that information about future plans is highly confidential.

18 MCI also objects to providing information about services provided by using Qwest special access service. MCI points out that access services are currently

subject to local and long distance usage restrictions and that this case relates to Qwest business local service. CLEC toll services are not relevant. In addition, MCI contends that the question broadens the scope of the proceeding and burdens the parties.

- 19 Staff argues that it is more concerned with the geographic location of future services than it is with the services to be provided. Staff agrees that CLECs should describe their loops rather than their facilities. However, Staff considers irrelevant, unnecessary, or already reported, Public Counsel/WeBTEC's questions about: the types of loops a CLEC uses; special access lines; special access service and repair intervals; collocation and transport; EBITDA; business customers targeted; ordinal description of numbers of lines per customer per wire center; and, service installation and repair delays.
- 20 Public Counsel argues that it needs information about the types of loops used by CLECs and about special access services because in Docket No. UT-000883 the Commission based its decision on the types of facilities used by CLECs in specific areas, finding that provision of special access service over high capacity loops was competitive. Public Counsel also states that just because Staff doesn't need certain information does not mean that the Commission or another party should not be allowed to obtain it.
- 21 **Decision.** In determining whether to classify telecommunications services as competitive, the Commission must determine whether the services are subject to effective competition. Effective competition means that there are reasonably available alternatives to the company's customers and that the company does not have a significant captive customer base. The Commission must consider the following factors: number and size of alternative providers; extent to which services are available from those providers in the relevant market; ability of those providers to provide equivalent or substitute services; and, other indicators of market power such as market share, growth in market share, ease of entry and affiliation of providers. *RCW 80.36.330.*
- 22 In addition, RCW 80.36.330(5) gives the Commission the authority to compel CLECs to produce information the Commission would find useful in coming to a determination on the petition. This provision does not specifically authorize

Staff alone to propound questions for CLEC response. Rather, the provision seeks information useful to the Commission.

- 23 Reviewing the questions proffered by Commission Staff, Public Counsel and WeBTEC in light of these statutory provisions, the following should be incorporated into Staff's questions directed to CLECs:
- a. CLECs should provide a detailed description of each business local exchange service and location where they offer the service, whether by Qwest exchange, wire center or other parameter, as discussed above. CLECs need not describe business local exchange services that are of a type not included in the petition, nor do they need to include the price of the services, since CLEC prices are not germane to the statutory issues identified above.
  - b. CLECs need only provide information about geographic areas where service is provided as of the date the petition was filed. Information about future plans is not probative of market share, or growth of market share, and is too speculative to be of value in making a determination of effective competition.
  - c. CLECs must identify the types of loops they provide in their business local exchange services. The Commission found this type of information useful in prior competitive classification cases.
  - d. CLECs must report by "loops owned" rather than by "facilities owned."
  - e. CLECs must identify the number of lines provided or locations served through special access service, according to type of special access circuit. The Commission found this type of information useful in prior competitive classification cases.
- 24 The additional information requested by Public Counsel/WeBTEC is reported elsewhere or would not assist the Commission in determining whether there is effective competition. The Commission will enter separately an order directing CLECs and Qwest to disclose information to Commission Staff in accord with the findings contained above. **Staff must revise accordingly the website**



**spreadsheet that will be used by the CLECs and Qwest to enter the information the Commission will order them to provide.**

**4. Should the Commission enter a Protective Order with heightened confidentiality provisions?**

- 25 In this proceeding, two CLECs, Integra and AT&T, state that they would require a protective order like the one in Docket No. UT-000883 (“Highly Confidential Protective Order”),<sup>1</sup> for sensitive information they would submit pursuant to Staff’s request. In addition, AT&T urges the Commission to enter an order that would require Staff to aggregate the information received from CLECs so as not to reveal its source. AT&T further states that, as to other highly confidential matter submitted by parties to this proceeding, Staff and Public Counsel should be bound by procedures in the highly confidential protective order, except that they would not be required to hire outside counsel.
- 26 MCI states that the protective order currently in place would provide adequate protection for information it would submit in this case.
- 27 Qwest states that it should be allowed to review the raw data submitted by CLECs and that if an individual party wished heightened protection it should request that the Commission enter an order to that effect.
- 28 Public Counsel and WeBTEC object to entry of a highly confidential protective order. They state that they should be permitted full review of CLEC information. Restricted access to information should be limited to competitors of the entity producing the highly confidential information. They argue that access should not be limited to Staff alone.
- 29 Public Counsel/WeBTEC also object to the requirement in paragraph 15 of the highly confidential protective order that restricts access to other highly confidential information, aside from the data requested from CLECs by Staff, to only one outside counsel or one outside expert. Public Counsel/WeBTEC claim

---

<sup>1</sup> *In the Matter of the Petition of U S West Communications, Inc. for Competitive Classification of Business Services in Specified Wirecenters*, Docket No. UT-000883, Second Supplemental Order, Protective Order, August 1, 2000.

that the critical factor is the “outside” nature of the expert or counsel, not the number of “outside” people working on the matter. Furthermore, the administrative staff of the lawyer or expert should have access to the information. Otherwise the party is needlessly handicapped in dealing with the information provided. Similarly, the parties should not be limited to reviewing one set of highly confidential documents.

30 Finally, Public Counsel/WeBTEC complain about the breadth of the language in the affidavit required under the highly confidential protective order.

31 Commission Staff does not object to inclusion of Public Counsel/WeBTEC as parties who could review the raw data submitted by CLECs.

32 **Decision.** In its Fifth Supplemental Order in Docket No. UT-000883, the Commission addressed issues raised by its entry of a highly confidential protective order. The purpose of the highly confidential order was to protect information supplied by Washington CLECs pursuant to the Commission’s order requiring disclosure of information.<sup>2</sup> The protective order also permitted other information designated by parties to the proceeding to be submitted on a highly confidential basis. The Commission observed that similar protective orders had been entered in other earlier proceedings before the Commission to protect sensitive company-specific data submitted by CLECs and the parties. These protective orders also restricted the submission of certain highly confidential data to Commission Staff only. The Commission further noted that Public Counsel had the ability to contact CLECs separately to obtain such data or to obtain the CLECs’ consent to release of the raw information to it by Staff.

33 Similar concerns in this proceeding about protecting very sensitive market information being requested of CLECs pursuant to RCW 80.36.330(5) require that similar protective provisions be put in place. Commission Staff stands in a special position in relation to the Commission and to the other parties to the proceeding. Commission Staff is charged with the responsibility of preserving confidentiality while providing a meaningful aggregation of the results of the information submitted by the CLECs. Public Counsel may rely on that

---

<sup>2</sup> *In the Matter of the Petition of U S West Communications, Inc. for Competitive Classification of Business Services in Specified Wirecenters*, Docket No. UT-000883, Order Requiring Disclosure of Information, August 11, 2000.

aggregation or seek information from the CLECs by other means available. While it is important that competitors of the CLECs not have access to CLEC market sensitive information, it is equally important that such information not be disseminated to customer parties, such as WeBTEC, who may also make improper or anticompetitive use of it.

- 34 With regard to procedures designed to protect highly confidential information other than that supplied by CLECs pursuant to Commission request, Public Counsel/WeBTEC argue persuasively that prohibiting any administrative staff access to information under paragraph 15 of the highly confidential protective order is needlessly restrictive. Just as access to information is limited to one outside expert and one outside attorney under this provision, one administrative support person should also be permitted access. However, application of the “one expert/one attorney” limitation to Public Counsel and Staff, as suggested by AT&T, is unwarranted, because they represent neither specific competitors nor customers. Furthermore, Public Counsel’s complaint about the terms of the affidavit is unpersuasive because the protective order is designed to provide heightened protection, and accomplishes this by means of including such terms.
- 35 For these reasons, the Commission will separately enter an amended protective order providing heightened confidentiality for both CLEC submissions and for other highly confidential information submitted by the parties during the course of the proceeding.

**5. Should the Commission extend the due date for responses from CLECs?**

- 36 Various CLEC parties requested extensions of from seven days to ten weeks to respond to requests for CLEC information. Qwest did not indicate any willingness on its part to further waive the statutory deadline for Commission action.
- 37 In light of the statutory time frame, a lengthy extension of the deadline for responses is not possible. However, Staff indicates that provision of the information by July 18, rather than July 11, would still allow enough time for it to prepare its aggregation of the information and to prepare for hearing. Therefore, CLECs and Qwest must provide the information requested on or before July 18,

2003. CLECs must verify information Qwest provides on their behalf on or before July 25, 2003.

**III. ORDER**

THE COMMISSION ORDERS That

- 38 (1) CLECs and Qwest must provide the information identified in this order and contained in a separately entered Order Requiring Disclosure to Commission Staff by July 18, 2003. Qwest must provide information on behalf of non-facilities-based CLECs by July 18, 2003 to Commission Staff and the CLECs. CLECS must verify Qwest-provided information by July 25, 2003.
- 39 (2) A separately entered amended protective order with provisions for protecting highly confidential information may be invoked by CLECs wishing to protect the market sensitive information they supply to the Commission. Non-facilities-based CLECs may invoke the amended protective order with regard to information submitted on their behalf by Qwest. Parties to the proceeding may also invoke provisions the amended order protecting other highly confidential information in complying with the order requesting production of information pursuant to RCW 80.36.330(5).

Dated at Olympia, Washington, and effective this 30th day of June, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE  
Administrative Law Judge

## Appendix A

<b><u>PARTIES REPRESENTATIVES</u></b>				
<b>DOCKET NO. UT-030614</b>				
<b>Updated 6/12/03</b>				
<b>COMPANY</b>	<b>REPRESENTATIVE AND ADDRESS</b>	<b>PHONE NUMBER</b>	<b>FAX NUMBER</b>	<b>E-MAIL ADDRESS</b>
<b>Qwest Corporation</b>	LISA ANDERL 1600 – 7 <sup>th</sup> Avenue Rm 3206 Seattle, WA 98191	206-345-1574	206-343-4040	<a href="mailto:lisa.anderl@qwest.com">lisa.anderl@qwest.com</a>
<b>AT&amp;T Communication of the Pacific Northwest</b>	LETTY FRIESEN 1875 Lawrence Street, Floor 15 Denver, CO 80202	303-298-6475	303-298-6301	<a href="mailto:lsfriesen@att.com">lsfriesen@att.com</a>
<b>Integra Telecom of Washington, Inc.</b>	KAREN JOHNSON 19545 NW Von Neumann Drive Suite 200 Beaverton, OR 97006	503-748-2048	503-748-1976	<a href="mailto:karen.Johnson@integratelecom.com">karen.Johnson@integratelecom.com</a>
<b>Commission Staff</b>	JONATHAN THOMPSON 1400 S Evergreen Park Dr. SW Olympia, WA 98504	360-664-1225	360-586-5522	<a href="mailto:jthompso@wutc.wa.gov">jthompso@wutc.wa.gov</a>
<b>Public Counsel</b>	SIMON FFITCH 900-4 <sup>th</sup> Avenue Suite 2000 Seattle, WA 98164	206-389-2055	206-389-2058	<a href="mailto:simonf@atg.wa.gov">simonf@atg.wa.gov</a>
<b>WeBTEC</b>	ARTHUR BUTLER Ater, Wynne, LLP 601 Union Street Suite 5450 Seattle, WA 98101	206-623-4711	206-467-8406	<a href="mailto:aab@aterwynne.com">aab@aterwynne.com</a>
<b>DOD/FEA</b>	STEPHEN MELNIKOFF US Army Litigation Ctr. 901 N. Stuart Street #700 Arlington, VA 22203	703-696-1643	703-696-2960	<a href="mailto:stephen.melnikoff@hqda.army.mil">stephen.melnikoff@hqda.army.mil</a>
<b>WorldCom/MCI</b>	MICHEL SINGER NELSON 707-17 <sup>th</sup> Street Suite 4200 Denver, CO 80202	303-390-6106	303-390-6333	<a href="mailto:michel.singer_nelson@mci.com">michel.singer_nelson@mci.com</a>