

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of)	
)	
QWEST CORPORATION)	DOCKET NO. UT-021120
)	
Regarding the Sale and Transfer of)	FIRST SUPPLEMENTAL ORDER:
Qwest Dex to Dex Holdings, LLC, a non-)	AMENDING PROTECTIVE
affiliate)	ORDER
)	
.....)	

1 **PROCEEDINGS:** Qwest Corporation (“Qwest”) filed its “Application Regarding Transfer and Sale of Directory Business and Notice of Possible Affiliated Interest Transaction on September 3, 2002. The Commission entered a Protective Order on September 12, 2002, and issued a Notice of Prehearing Conference on September 13, 2002, setting October 8, 2002, 2:30 p.m., as the date and time for its first prehearing conference in this proceeding.

2 **PARTIES:** Lisa A. Anderl, Senior Attorney, U S WEST, Inc. Seattle, Washington, represents Qwest Corporation. Gregory J. Kopta, Davis Wright Tremaine LLP, Seattle, Washington represents XO Washington, Inc., which filed a Petition To Intervene on September 27, 2002. Simon ffitc, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section, Office of Attorney General (“Public Counsel”). Greg Trautman, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (“Commission Staff” or “Staff”).

3 **MOTION TO AMEND PROTECTIVE ORDER:** On September 27, 2002, Qwest filed its “Motion To Amend Protective Order for Highly Confidential Documents.” Qwest states that there are documents that it is prepared to provide in connection with its application which contain information that is “extremely sensitive and potentially commercially valuable to competitors.” Qwest’s Motion refers specifically, for example, to documents that describe the nature and form of the debt and equity financing, disclosure of which could impair the ability of the Buyer under the Purchase Agreement to obtain necessary equity and debt financing. Qwest states that the documents it would designate as “Highly Confidential” also contain details about Qwest’s publishing business, including future product names, strategies, and information that would enable competitors to target their competitive efforts.

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COMMISSION DETERMINATION: The Commission grants the Motion and amends its Protective Order, entered in this proceeding on September 12, 2002, by adding the following language to the provisions governing **Disclosure of Confidential Information:**

Highly Confidential Information. This proceeding may involve participation by competitors, or potential competitors. Such parties may receive discovery requests that call for the disclosure of documents or information, the dissemination of which imposes a significant risk of competitive harm to the disclosing party. Parties may designate documents or information they consider to be of that nature as “Highly Confidential” and such documents or information will be disclosed only in accordance with the provisions of this Section.

Parties must scrutinize carefully responsive documents and information and limit the amount they designate as Highly Confidential information to only information that truly might impose a serious business risk if disseminated without the heightened protections provided in this Section. The first page and individual pages of a document determined in good faith to include Highly Confidential information must be marked by a stamp that reads: “Highly Confidential Per Protective Order in WUTC Docket No. UT-021120.” Placing a “Highly Confidential” stamp on the first page of a document indicates only that one or more pages contains Highly Confidential information and will not serve to protect the entire contents of a multipage document. Each page that contains Highly Confidential information must be marked separately to indicate where Highly Confidential information is redacted. The unredacted versions of each page containing Highly Confidential information, and provided under seal, also must be marked with the “Highly Confidential . . .” stamp and should be submitted on paper distinct in color from non-confidential information and “Confidential Information” as described in this Protective Order.

Parties other than Public Counsel and Staff who seek disclosure of Highly Confidential documents or information must designate one outside counsel and no more than one outside consultant, legal or otherwise, to receive and review unredacted materials marked “Highly Confidential.” In addition to executing the appropriate Agreement required by this Protective Order for “Confidential Information” each person designated as outside counsel or consultant for review of “Highly Confidential” documents or information must execute an affidavit, under oath, certifying that:

- a. They do not now, and will not for a period of five years, involve themselves in competitive decision making by any company or business organization that competes, or potentially competes, with the

company or business organization from whom they seek disclosure of Highly Confidential information.

b. They have read and understand, and agree to be bound by, the terms of the Protective Order in this proceeding and by this Amendment to the Protective Order.

Any party may object in writing to the designation of any individual counsel or consultant as a person who may review Highly Confidential documents or information. Any such objection must demonstrate good cause, supported by affidavit, to exclude the challenged counsel or consultant from the review of Highly Confidential documents or information. Written response to any objection must be filed within three days after service of the objection.

Designated outside counsel will maintain the Highly Confidential documents and information and any notes reflecting their contents in a secure location to which only designated counsel has access. No additional copies will be made. If another person is designated for review, that individual must not remove the Highly Confidential documents or information, or any notes reflecting their contents, from the secure location. Any testimony or exhibits prepared that reflect Highly Confidential information must be maintained in the secure location until removed to the hearing room for production under seal and under circumstances that will ensure continued protection from disclosure to persons not entitled to review Highly Confidential documents or information. Counsel will provide prior notice (at least one business day) of any intention to introduce such material at hearing, or refer to such materials in cross-examination of a witness. Appropriate procedures for including such documents or information will be determined by the Commission or by the presiding Administrative Law Judge following consultation with the parties.

The designation of any document or information as “Highly Confidential” may be challenged by motion of any party and the classification of the document or information as “Highly Confidential” will be considered in chambers by the Commission or by the Presiding Administrative Law Judge. The Commission may challenge any “Highly Confidential” designation on its own motion. If the Commission determines that information is not entitled to protection under this Order, the information continues to be protected under this Order for ten days thereafter to enable the producing party to seek judicial review of the determination, including a stay of the decision’s effect pending further review.

At the conclusion of this proceeding, and the exhaustion of any rights to appeal, designated outside counsel must return all Highly Confidential documents and information provided during the course of the proceeding, and

must certify in writing that all notes taken and any records made regarding Highly Confidential documents and information have been destroyed by shredding or incineration.

Highly Confidential documents and information will be provided to Staff and Public Counsel under the same terms and conditions of this Protective Order as govern the treatment of "Confidential Information" provided to Staff and Public Counsel and as otherwise provided by the terms of the Protective Order other than this section.

DATED at Olympia, Washington, and effective this ____ day of October 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE: Any petition for review of the provisions of this order must be filed within ten (10) days after the date of mailing of this statement, pursuant to WAC 480-09-760.