

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

In the Matter of the Petition of)	DOCKET NO. UT-030614
)	
QWEST CORPORATION)	ORDER NO. 07
)	
For Competitive Classification of)	
Basic Business Exchange)	AMENDING PROTECTIVE ORDER
Telecommunications Services)	
.....)	

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.

2 **Appearances.** Lisa Anderl, attorney, Seattle, represents Qwest. Jonathan C. Thompson, assistant Attorney General, represents Commission Staff. Simon ffitich, 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).

3 **Background -- Protective Order.** On June 6, 2003, the Commission convened a prehearing conference in this docket at Olympia, Washington before Administrative Law Judge Theodora Mace. During the prehearing conference, the parties requested entry of a protective order to maintain the confidentiality of material that might be submitted during the course of the proceeding. The Commission entered a protective order on June 12, 2003.

4 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, 2002, 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.

- 5 The parties filed answers to issues raised by Staff's motion on June 17 and June 23, 2003. Among the issues addressed was the question of whether or not CLECs would require a protective order containing heightened protection for market sensitive information requested as a result of Staff's motion. AT&T and Integra, both CLEC parties to this proceeding, requested such a protective order. Other parties objected to the need for such an order and to various provisions of the order.
- 6 In Order No. 5 in this case, the Commission addressed the parties concerns and determined that entry of a protective order with a heightened level of protection for information provided by CLECs pursuant to Staff's motion was appropriate. The higher level of protection would also become available for other highly confidential information submitted by the parties during the course of the proceeding.
- 7 The Commission enters this order, which is based upon the form of orders entered in this proceeding and prior proceedings, altered to accommodate the requirements of this particular proceeding, in accord with Order No. 5 entered in this docket. Any provision relating to the handling of highly confidential material by Commission Staff or any of the parties may be waived by the CLEC or party providing the material, with one exception. Where Qwest is providing CLEC information for non-facilities-based CLECs, only the CLEC may waive highly confidential handling of the information. To the extent that a waiver is granted in writing and filed with the Commission, parties may alter the order's handling requirements.
- 8 The request for highly confidential protections appears to serve the interest of justice and to be consistent with the public interest by facilitating the submission of information relevant to the Commission's determinations in this type of proceeding. In accord with Order No. 5, the request is granted.

ORDER

- 9 The Commission Orders That Order No. 3, Protective Order, entered in this proceeding on July 12, 2003, is amended by adding the following:
- 10 **Disclosure of Highly Confidential Information.** Qwest and CLECs who are parties to this proceeding are competitors, or potential competitors. CLECs that are not parties to this proceeding, but who must submit information pursuant to Commission order, are also competitors or potential competitors. Any of these parties may receive discovery requests that call for the disclosure of highly confidential documents or information, the disclosure of which imposes a significant risk of competitive harm to the disclosing party. Parties may designate documents or information they consider to be "Highly Confidential" and such documents or information will be disclosed only in accordance with the provisions of this Section.
- 11 In this proceeding, the Commission has determined that it will treat as "Highly Confidential" certain information required to be filed by Competitive Local Exchange Companies (CLECs) pursuant to Commission Order No. 6. The company-specific market-sensitive data filed in response to the Commission's Order is of the type that might impose a serious business risk if disseminated without heightened protections and should be designated "Highly Confidential." Access to this data will be limited to Commission Staff who have executed the confidentiality agreement attached to this Protective Order. Staff will aggregate this data into such documents as appropriate and relevant to the proceeding, and provide such documents to all parties requesting the information. Similarly, other company-specific data filed by Qwest and intervenor CLECs in response to discovery requests may be designated as "Highly Confidential."
- 12 With respect to other potential "Highly Confidential" data, 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.

- 13 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-030614." 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 excited colored paper distinct in color from non-confidential information and "Confidential Information" as described in Part A of this Protective Order.
- 14 Parties other than Public Counsel and Staff who seek access to or disclosure of highly confidential documents or information must designate one outside counsel, no more than one outside consultant, legal or otherwise, and one administrative support person to receive and review 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, consultant or administrative support staff 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 provision of the Protective Order.
- 15 Any party may object in writing to the designation of any individual counsel, consultant, or administrative support staff 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 individual 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.

- 16 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 presiding Administrative Law Judge following consultation with the parties.
- 17 The designation of any document or information as "Highly Confidential" may be challenged by motion and the classification of the document or information as "Highly Confidential" will be considered in chambers by the Presiding Administrative Law Judge, or by the Commission.
- 18 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.
- 19 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.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE
Administrative Law Judge