

October 16, 2003

VIA E-MAIL AND UPS OVERNIGHT

Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504-7250

Re: UT-033025 & UT 033044

Dear Ms. Washburn:

Yesterday, pursuant to Judge Rendahl's request during the October 13, 2003 prehearing conference in the above-referenced dockets, the parties filed their comments on Judge Rendahl's proposed Protective Order. MCI would like to take the opportunity to briefly respond to comments filed by Covad, the Joint CLECs, and Sprint.

The Joint CLECs have proposed language to create an exception for "small CLECs" to the Highly Confidential portions of the proposed Protective Order. The language proposed by the Joint CLECs is similar to language agreed to by MCI and adopted by the California Commission – except that the Joint CLECs' proposal includes CLECs with up to 5,000 employees in the definition of "small CLEC," whereas the California order covers CLECs with up to 3000 employees. MCI believes that 3,000 employees represents a more appropriate cut-off, and suggests that, in the event the Commission is inclined to include a small CLEC exception, the Joint CLECs' proposal should be revised accordingly. MCI proposes the following language adopted by the California Commission:

Parties with fewer than 3,000 employees, including the employees of affiliates within a common holding company, qualify as a "Small Company." For a Small Company, the individuals who may have access to the Confidential Information shall be limited to the receiving party's counsel of record, personnel or witness(es) acting at the direction of counsel (or, if the party is not represented by counsel, under the direction of a member of senior management), subject matter experts and independent consultants, employed by the receiving party and who are under the direction of the receiving party's counsel or senior management, provided that such personnel, witness(es), and independent consultants are not primarily involved in developing, planning, marketing, or selling services; strategic or

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business planning; OSS planning, or procurement; network planning or procurement and/or competitive assessment for the Small Company, unless the producing party gives prior written authorization for specific individuals in the prohibited categories above to review the Confidential Information. If the producing party refuses to give such written authorization, the receiving party may, for good cause shown, request an order from the ALJ or the Commission allowing individuals involved in the prohibited categories above to have access to the Confidential Information. The producing party shall be given the opportunity to respond to the request for access before any order granting such access is issued by the ALJ or the Commission.

In addition, Covad is requesting that the Commission decline to allow party representatives covered by the Highly Confidential portions of the Protective Order direct access to the parties' Highly Confidential information, and instead should "collect confidential and highly confidential information, remove company-identifying information from it, and distribute it to the parties in aggregate form only." MCI objects to Covad's proposal. In its Triennial Review Order, the FCC has imposed upon the Commission the task of collecting and analyzing granular information, and drawing from that data conclusions that will significantly impact the way in which competition develops in this State. In order to assist the Commission in its analysis, the parties will need to have access to granular information. Given the task before us, the proposed Protective Order strikes the right balance in affording individual companies with necessary protections for their confidential data, while at the same time allowing the parties and the Commission to fairly assess the evidence.

Finally, Sprint proposes to increase the number of employees and expand the class of employees eligible to view confidential information. MCI agrees with AT&T that accepting this language will simply decrease the number of companies that will readily cooperate in responding to discovery requests issued by the Commission.

Thank you for this opportunity to address the comments of Covad, the Joint CLECs, and Sprint.

Very truly yours,

Lisa F. Rackner

cc: Parties of record