

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of the

QWEST CORPORATION;  
CENTURYTEL OF WASHINGTON;  
CENTURYTEL OF INTERISLAND;  
CENTURYTEL OF COWICHE; AND  
UNITED TELEPHONE COMPANY OF  
THE NORTHWEST

to be Competitively Classified Pursuant to  
RCW 80.36.320

DOCKET UT-240029

COMMISSION STAFF'S MOTION  
FOR AMENDED PROTECTIVE  
ORDER WITH PROVISIONS  
GOVERNING HIGHLY  
CONFIDENTIAL INFORMATION

**I. INTRODUCTION**

1 In January 2024, the named petitioners (CenturyLink) filed a petition seeking classification as competitive telecommunications companies pursuant to RCW 80.36.320. The Commission has set the matter for an adjudication and entered a protective order (Order 03) with provisions governing the treatment of highly confidential information. Under the protective order, a person may only disclose highly confidential information to the Commissioners, Staff, the presiding officers, and counsel or expert witnesses who have signed the highly confidential non-disclosure agreement incorporated into Order 03 as Exhibit C.

2 In order to evaluate the state of competition in the telecommunications marketplace, Staff has sought data about the number of lines served by provider, by county, from the Federal Communications Commission (FCC). Specifically, Staff sought permission to use the information contained in the FCC's Form 477 (now Broadband Data Collection) voice subscribership data (the fixed voice data). The FCC has previously granted Staff access to that data, but its agreement limits the use of the data to Commission employees, and it has given permission for Staff to use the data in this case provided those restrictions on access

remain. Accordingly, Staff submits this Motion for an Amended Protective Order Governing Highly Confidential Information that treats data concerning the number of lines served by county and by provider received from the FCC as highly confidential and restricts access to the Commissioners, presiding ALJs, and Staff.

## II. RELIEF REQUESTED

3 Staff respectfully requests that the Commission amend Order 03 to treat line count data received from the FCC as highly confidential and limit access to this data to the Commissioners, the presiding ALJs, and Staff. Staff will aggregate the information into documents as appropriate and relevant to the proceeding and provide such documents to all parties requesting the information.

## III. STATEMENT OF FACTS

4 In January 2024, CenturyLink filed a petition in this docket to seek competitive classification for each of the CenturyLink ILECs pursuant to RCW 80.36.320.<sup>1</sup> The Commission, at a regularly scheduled open public meeting, suspended the petition and set it for adjudication.<sup>2</sup>

5 To govern the submission and exchange of information within the adjudication, the Commission entered Order 03. The order contains provisions governing the disclosure of both confidential and highly confidential information.<sup>3</sup> With regard to highly confidential information, Order 03 limits disclosure to the Commissioners, Staff, the presiding ALJs, counsel for parties that have signed the highly protective non-disclosure agreement, and

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<sup>1</sup> See generally *In re Petition of Qwest Corp.*, Docket UT-240029, CenturyLink Petition for Competitive Classification (Jan. 8, 2024).

<sup>2</sup> See generally *In re Petition of Qwest Corp.*, Docket UT-240029, Order 01 (Jan. 25, 2024).

<sup>3</sup> *In re Petition of Qwest Corp.*, Docket UT-240029, Order 03, 2-4 ¶¶ 7-12 (Feb. 5, 2024) (Order 03).

expert witnesses who have signed the same agreement.<sup>4</sup>

6           In order to evaluate the state of competition in the telecommunications marketplace, Staff is gathering data regarding the number of lines served by county for each provider.<sup>5</sup> The FCC has this in the form of its fixed voice data, which is commercially sensitive market information.<sup>6</sup> The Commission may access this data because, in 2018, it entered into an agreement with the FCC to obtain and protect this access.<sup>7</sup> Pursuant to the terms of this agreement, the Commission must protect the confidentiality of the source data and access to the data is limited to Commission employees.<sup>8</sup>

7           Staff has asked the FCC for permission to use the fixed voice data for purposes of compiling a Herfindahl Hirschman Index (HHI) in this docket.<sup>9</sup> To protect the confidentiality of the source FCC data, Staff has offered to secure a highly confidential protective order that would limit access to the fixed voice data to Commission personnel.<sup>10</sup> The FCC has indicated that such a course is acceptable to it because it effectively falls within the confines of the 2018 data sharing agreement, which the agency views as binding both the Commission and Staff.<sup>11</sup>

#### IV. STATEMENT OF ISSUES

8           Should the Commission treat as highly confidential data that includes the number of lines served by county and by provider received from the FCC's Form 477 (now Broadband Data Collection) voice subscribership data? Should the Commission restrict this data only

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<sup>4</sup> Order 03 at 3 ¶ 10.

<sup>5</sup> Decl. of Sean Bennett, 1 ¶ 4 (hereinafter Bennett Decl.).

<sup>6</sup> Bennett Decl. at 2 ¶ 7.

<sup>7</sup> Bennett Decl. at 1 ¶ 5.

<sup>8</sup> Bennett Dec. at 1 ¶ 5.

<sup>9</sup> Bennett Decl. at 1 ¶ 4.

<sup>10</sup> Bennett Decl. at 2 ¶ 6.

<sup>11</sup> Bennett Decl. at 2 ¶ 6.

to the Commissioners, the presiding ALJs, and to Staff, who will aggregate it into documents as appropriate and relevant to the proceeding and provide such documents to all parties requesting the information?

## V. EVIDENCE RELIED UPON

9 Staff relies upon the Declaration of Sean Bennett and its attachment.

## VI. ARGUMENT

10 Multiple sources of authority grant to the Commission the power to enter protective orders in adjudications before it.<sup>12</sup> The Commission's procedural rules provide for a standard form protective order that it may modify upon motion by a party.<sup>13</sup> These amended orders may provide for the treatment of highly confidential information, and may specify the individuals the movant wishes to restrict the access or disclosure of highly confidential information to.<sup>14</sup>

11 Staff seeks a second amendment<sup>15</sup> to the protective order entered in this docket to restrict access to the fixed voice data underlying the HHI it will submit in this docket if the Commission grants this motion. Doing so would honor the Commission's commitment to the FCC to keep the underlying data confidential.

12 The limitations Staff seeks are consistent with those imposed in prior cases in which the Commission has evaluated petitions for competitive classification and has considered the type of commercially sensitive market data at issue here.

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<sup>12</sup> *E.g.*, RCW 80.04.095; RCW 34.05.446; WAC 480-07-420.

<sup>13</sup> WAC 480-07-420(1), (2).

<sup>14</sup> WAC 480-07-420(2)(a).

<sup>15</sup> The initial amendment consisted of the provisions defining and limiting the disclosure and use of highly confidential information in this proceeding.

13 For example, in Docket No. UT-000883, US West Communications, Inc. filed with the Commission a request for competitive classification of specified wire centers in Washington.<sup>16</sup> In that case, the Commission sought market-sensitive data from individual competitive local exchange carriers (CLECs); specifically, the Commission required CLECs providing business service in the areas covered by US West’s petition to provide information on their service in these markets.<sup>17</sup>

14 The Commission determined that this data was of the type that might impose serious business risk if disseminated without heightened protection and designated it as “Highly Confidential.”<sup>18</sup> The Commission entered a protective order to limit access to the data to Staff only; Staff would aggregate the data “into such documents as appropriate and relevant to the proceeding, and provide such documents to all parties requesting the information.”<sup>19</sup> The protective order in Docket No. UT-000883 was patterned after the protective order in Docket No. UT-990022.<sup>20</sup>

15 In a subsequent case involving Qwest Corporation’s petition to competitively classify its basic business service,<sup>21</sup> the Commission considered whether to enter a protective order reflecting the highly confidential provisions contained in the protective order entered in Docket No. UT-000883.<sup>22</sup> In that case, docketed as No. UT-030614, the

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<sup>16</sup> *In re Petition of US West Communications, Inc.*, Docket UT-000883, Fifth Supplemental Order, 1 ¶1 (Sept. 22, 2000).

<sup>17</sup> *In re Petition of US West Communications, Inc.*, Docket No. UT-000883, Second Supplemental Order, 4 ¶12 (Aug. 1, 2000).

<sup>18</sup> *US West Communications, Inc.*, Docket No. UT-000883, Second Supplemental Order, at 4 ¶12.

<sup>19</sup> *US West Communications, Inc.*, Docket No. UT-000883, Second Supplemental Order, at 4 ¶12. In the Second Supplemental Order, the Commission also established procedures for Highly Confidential data other than the CLEC data. *Id.* at 4 ¶13-15.

<sup>20</sup> *US West Communications, Inc.*, Docket No. UT-000883, Fifth Supplemental Order, at 1 ¶2; see also *US West Communications, Inc.*, Docket No. UT-000883, Transcript Vol. 1, 11-12.

<sup>21</sup> *In re Petition of Qwest Corp.*, Docket UT-030614, Order 01, 1 ¶1 (May 30, 2003).

<sup>22</sup> *In re Petition of Qwest Corp.*, Docket No. UT-030614, Request for Responses on Issues Raised in Staff’s Motion Requesting Production of Information, at 2 (June 18, 2003).

Commission determined that it needed information from CLECs serving business customers in Qwest exchanges in Washington in order to evaluate whether Qwest's business services were subject to effective competition.<sup>23</sup> The Commission ordered all CLECs providing such service to file with the Commission certain information regarding their service, including line count information.<sup>24</sup> The Commission entered a protective order that designated the company-specific, market-sensitive data as highly confidential and initially restricted access to Commission Staff who would aggregate the data.<sup>25</sup>

16           The line count data that Staff seeks to utilize from the FCC in this docket is of the same type of data that the Commission has treated as highly confidential in previous competitive classification cases. It is the company-specific, market-sensitive data of CenturyLink's competitors. This data should therefore be designated as highly confidential. Furthermore, this data should be restricted to Staff with a directive that Staff aggregate the data and provide it to parties in a form that preserves confidentiality. Staff will do this through preparation of an HHI. This approach balances the procedural rights of the parties while protecting the confidential business information of CenturyLink's competitors in a manner that is consistent with both the protective orders issued in previous competitive classification cases. This approach will also allow Staff to present probative information in this docket regarding the state of competition in the telecommunications marketplace while adhering to the Commission's obligations under its agreement with the FCC relating to use of the Form 477 data.

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<sup>23</sup> *In re Petition of Qwest Corporation*, Docket UT-030614, Order 06, ¶ 3 (June 30, 2003).

<sup>24</sup> *In re Petition of Qwest Corporation*, Docket UT-030614, Order 06, at ¶ 5.

<sup>25</sup> *In re Petition of Qwest Corporation*, Docket UT-030614, Order No. 07, ¶ 11 (June 30, 2003). A later order in the docket amended the protective order to grant Public Counsel access to the raw data. *In re Petition of Qwest Corporation*, Docket No. UT-030614, Order No. 15 (Sept. 12, 2003).

## VII. CONCLUSION

17 Commission Staff respectfully requests that Order 03 be amended to treat data that includes the number of lines served by county and by provider received from the FCC's fixed voice data as highly confidential and limit access to this data to the Commissioners, the presiding ALJs, and Commission Staff, who will aggregate it into documents as appropriate and relevant to the proceeding and provide such documents to all parties requesting the information.

DATED this 21st day of March 2024.

Respectfully submitted,

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