

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

In the Matter of the Petition of	)	
	)	Docket No. UT-033044
QWEST CORPORATION	)	
	)	
To Initiate a Mass-Market Switching	)	AT&T'S OPPOSITION TO
and Dedicated Transport Case	)	CLEC MOTION FOR
Pursuant to the Triennial Review	)	ANONYMOUS DISCLOSURE
Order	)	OF CLEC DATA
_____	)	

AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Seattle and TGC Oregon (collectively "AT&T") file this Opposition to the Motion filed by several competitive local exchange companies ("CLECs") requesting that the Washington Utilities and Transportation Commission ("Commission") establish a procedure that would limit access to CLEC-specific data and states as follows:

1. On November 12, 2003, several CLECs filed a motion with this Commission requesting the Commission adopt a procedure that would allow CLECs to provide the Commission highly confidential ("HC") information, while other parties would receive anonymous (or masked) CLEC information, rather than following the procedures set forth in the Commission-ordered Protective Order. AT&T opposes the adoption of a process that would allow CLECs to mask all HC CLEC-specific information produced in this proceeding.

2. This issue was the subject of a lengthy discussion at the October 13, 2003 prehearing conference. As AT&T stated at the prehearing conference, this is a unique proceeding. AT&T expected there would be some CLEC-specific HC information that would be central to certain of the issues in the proceeding and that parties would need access to such information in order to fully and fairly participate in the proceeding. Tr., pp. 75-76. Qwest agreed. *Id.* at 83-85. At the prehearing conference, the Administrative Law Judge raised the

issue of alternative procedures, such as those used in the prior competitive classification cases in Washington. Tr., pp. 73-74. AT&T, Qwest and MCI opposed such alternative procedures for all CLEC data because of the unique nature of this proceeding and the relevance of CLEC information to some of the key issues in the case. *Id.* at 73-75. Mr. Kopta, on behalf of the petitioning CLECs, seemed to agree that some HC information would have to be disclosed to parties in the proceeding, but urged the Commission to keep at a bare minimum the amount of data that is revealed to all parties. Tr., pp. 78-79. As AT&T stated at the prehearing conference, AT&T, Qwest and MCI were fully cognizant of the concerns regarding disclosure of HC CLEC information and jointly proposed a protective order that included a HC section that attempted to balance the confidentiality concerns of the parties by severely limiting access to the HC data. *Id.* at 75. At the prehearing conference, AT&T also noted that some of the information that may be at issue in this proceeding does not lend itself to masking or aggregation. *Id.* at 75-76, 86-87. In addition, AT&T indicated that this was an issue that could not be addressed in the abstract and that a more practical approach would be to address special concerns regarding access to HC information on a case-by-case basis, rather than trying to devise a process that applied to all CLEC data. *Id.*

3. Ultimately, the Commission balanced all of these concerns and adopted the HC language proposed by AT&T, Qwest and MCI. No new basis has been offered by the petitioning CLECs that would support any change to the process adopted by the Commission. To the extent the petitioning CLECs have concerns regarding specific data, those concerns should be dealt with on a case-by-case basis. However, in all events parties should not be denied access to information that is critical to putting forward their case.

4. In support of their Motion, the petitioning CLECs contend that the inquiry established by the FCC is objective, not subjective and, therefore, access to CLEC-specific

information is not necessary. Motion, p. 2. That is not entirely true. While some of the analysis that will be required in this proceeding will be based upon a “hypothetical, efficient CLEC” which may not require the identification of any particular CLEC, the trigger analysis, for example, will require an assessment of specific CLEC activities in specific market areas. There will obviously be some CLECs that Qwest will contend satisfy the triggers established by the FCC. In order to assess Qwest’s contentions and, where appropriate, to rebut those claims, other parties will need to have specific information regarding the mass market activities of those identified CLECs. Absent access to HC CLEC-specific data, other parties would be unable to defend, enforce and protect their rights and interests in the proceeding, a fundamental due process right, and the Commission would be deprived of other parties’ review and assessment of critical evidence.

5. In their Motion, the petitioning CLECs represent that the Oregon and Minnesota commissions have not only adopted protective orders comparable to Order No. 02 in this case, but have also enhanced the protective orders by permitting CLECs only to disclose highly confidential data to the commission and commission staff (or equivalent entity). Motion, p. 2. The Motion further states that signatories to these states’ protective orders may obtain this raw data but not the names of the disclosing CLECs, which are identified only by a number or letter. *Id.* As is evident from the supplemental information submitted by the petitioning CLECs on November 13, 2003, the Motion misstates the status of masking in both Oregon and Minnesota.

6. In Oregon, the Commission has not entered any order permitting CLECs to provide information to the Commission and Commission Staff or permitting masking of the data. As the Order provided by the petitioning CLECs demonstrates, the parties agreed to “discuss” additional protections. Oregon First Prehearing Conference Report, p. 1. As a

result, the parties have discussed whether aggregation, not masking, of some data would be feasible, but there were objections registered regarding the aggregation of all CLEC HC information. In addition, the Oregon staff has objected to serving as the repository for CLEC data and the aggregator of CLEC data. As a result, parties have been asked to provide comment on the universe of potential discovery questions that might be served on CLECs and then another round of comments regarding which questions the CLECs contend would require the submission of aggregated data. Once that process is complete, the parties are to assist the Commission in revising the questions to avoid aggregation or to limit such aggregation. In short, this issue is still under discussion in Oregon, no process has been agreed to and no Commission order has been issued that would permit CLEC aggregation or masking.

7. Similarly, in Minnesota, no order has been issued requiring masking of CLEC information or any other alternative protections. The parties have been engaged in discussions regarding a potential masking procedure, similar to one that was agreed to in the Section 271 proceeding in Minnesota. While the parties are exploring the feasibility of such a masking process, parties have raised concerns regarding the masking of certain CLEC-specific information that is critical to some of the issues that must be decided in this proceeding, such as data relevant to the trigger analysis. This concern has not yet been fully addressed or resolved in Minnesota.

8. As a result of the various discussions that have occurred in Oregon and Minnesota, AT&T has numerous concerns regarding the wholesale masking or aggregation of CLEC information. First, as discussed above, the masking or aggregation of certain CLEC information will deprive the Commission and other parties of access to information that is central to certain key issues in the proceeding. Because of the critical nature of CLEC data to the assessment of the satisfaction of the triggers and, therefore, the ongoing availability of

UNE-P, all parties should have unmasked access to CLEC-specific information that bears on this assessment so they can adequately protect their rights and interests. Second, masking will not necessarily protect all CLEC information. The fact is that the identity of some CLECs may be obvious, despite masking. Thus, masking has potentially disparate consequences, where some CLECs will be able to hide behind masking, while others will not. Third, masking is an extremely cumbersome and onerous process, which will likely delay the production of information in this proceeding.

9. For all of these reasons, AT&T urges the Commission to retain the procedures currently in place in the protective order for the disclosure of HC information. The Commission should not adopt procedures that would deny parties to this proceeding wholesale access to CLEC-specific information. To the extent any special procedures are considered, such procedures should be addressed on a case-by-case basis and should be narrowly tailored to address specific categories of CLEC data. Such procedures should not be employed to deprive parties of access to information that is so critical to the impairment assessment that has been delegated to this Commission.

WHEREFORE, AT&T urges the Commission to deny the Joint CLEC Motion for Anonymous Disclosure of CLEC Data.

RESPECTFULLY SUBMITTED this 14th day of November, 2003.

**AT&T COMMUNICATIONS OF THE  
PACIFIC NORTHWEST, INC., AND AT&T  
LOCAL SERVICES ON BEHALF OF TCG  
SEATTLE AND TCG OREGON**

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