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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Qwest Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order

Docket No. UT-033044

QWEST’S RESPONSE TO MOTION FOR ANONYMOUS DISCLOSURE OF CLEC DATA

Qwest Corporation (“Qwest”) hereby files its response in opposition to the Joint CLECs’ Motion for Anonymous Disclosure of CLEC Data (“Joint Motion”).¹ The Commission should deny the Joint Motion for at least the following three reasons. First, the motion is late-filed and is contrary to the position taken by the Joint CLECs on this issue at the prehearing conference on October 13, 2003. Second, the Joint CLECs have made no showing that the Commission’s protective order is or will be insufficient to protect any highly confidential CLEC data. Third, the joint motion, if granted, would effectively stifle the discovery process and could preclude Qwest from gathering the data needed to prove its case.

On October 13, 2003, the Commission convened a prehearing conference in order to discuss specifically the issues of discovery and the protective order in this proceeding. All of the parties were

¹ The “Joint CLECs” are Advanced TelCom, Inc., Eschelon Telecom of Washington, Integra Telecom of Washington, Inc., Global Crossing Local Services, Inc., McLeod USA Telecommunications, Inc., Pac-West Telecomm, Inc., Time Warner Telecom of Washington, LLC, and XO Washington, Inc.

1 given an opportunity to attend the prehearing conference and provide oral comments. Parties were also
2 permitted to file written comments by October 15, 2003.

3 The issue of masking or aggregating CLEC data was specifically discussed at the prehearing
4 conference. Counsel for the Joint CLECs acknowledged that masking or aggregating data would likely
5 not work in this proceeding because of the parties' desire or need to see the highly confidential data
6 provided by each party. *Tr.*, p. 77, ll. 19-24. The Joint CLECs indicated that they wished to minimize
7 the amount of highly confidential data they were required to disclose, but also emphasized that every party
8 needed to have equal access to whatever information is disclosed to all parties. *Tr.*, p. 80, ll. 12-20.
9 Thus, it is clear that this issue was thoroughly considered and addressed at the prehearing conference.

10 Furthermore, the Joint CLECs also filed written comments on October 15, 2003. Those
11 comments made a number of suggestions with regard to the protective order and specifically asked that
12 certain restrictions and limitations be removed for "small companies" in order that those small companies
13 might have access to confidential and highly confidential information in a way that was not unduly
14 burdensome or expensive for the small companies. No mention was made in those comments about the
15 need for anonymous disclosure of CLEC data.

16 Based on the comments provided by the parties, the Commission issued a protective order in this
17 case consistent with those comments. That protective order provides assurances to parties that highly
18 confidential information will be protected, but specifically does not require or allow masking or
19 aggregation, in recognition of the need for each party to be able to review and analyze the more granular
20 data. Thus, it seems clear that the issues raised in the Joint Motion filed November 12, 2003, should
21 have and could have been raised and addressed on either October 13 or 15, 2003. The concerns raised
22 in the Joint Motion are both untimely and inconsistent with the positions those same parties took less than
23 a month ago.

24 The Joint Motion is silent as to the issue of whether or not protective order in its current form
25 provides adequate protection for highly confidential data. Qwest submits that absent a showing that the
26 present form of the protective order would work a prejudice to some party or would fail to protect highly

1 confidential information, there has been no showing of cause to modify or amend the protective order.
2 The discussion at the prehearing conference clearly indicates that the Commission was aware of the issue
3 of masking and/or aggregation of data and the Commission made an explicit determination in this case that
4 such masking and aggregation would not serve the parties' needs in this case.²

5 Finally, the motion by the Joint CLECs, if granted, would effectively stifle discovery in this case.
6 The Commission has issued bench requests in this matter and has also permitted each party to seek
7 discovery from other parties. If the Joint CLECs are permitted to mask and/or aggregate their data in
8 filing responses to bench requests, Qwest (and other parties) would have no way of following up with an
9 individual CLEC on those answers to do further discovery or ask follow-on questions. Additionally,
10 when Qwest submits data requests to each of the CLECs in this case, as it will, it is unclear from the Joint
11 Motion how Qwest would receive responses to those data requests. If Staff is to mask and aggregate the
12 data, Qwest would never know whether one or more CLECs failed to respond completely to a data
13 request. This would effectively preclude Qwest from submitting follow-up discovery or filing a motion to
14 compel.³ In light of the clear recognition in the Protective Order that masking and aggregating data will
15 simply not work in a proceeding of this type, it is unclear how the Joint Motion would address these
16 issues or resolve the problems presented if the motion were granted.

17 In summary, Qwest believes that the mere fact that different types of protective orders have been
18 entered in other states does not mandate a change to the Protective Order in Washington which was
19 entered after due consideration of all of the issues already raised by the Joint CLECs. The Joint Motion
20 is untimely, presents no showing that the existing protective order is insufficient, and, if granted, would
21 effectively preclude and stifle discovery in this case. For those reasons, this Commission should deny the

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23 ² The Commission specifically noted in the Protective Order at ¶ 1(c) that the nature of the Commission's inquiry in
24 this procedure precludes the masking and aggregating of data. The fact that the Commission considered this explicitly
25 and made an affirmative decision on this issue is clear both from plain language of the Protective Order and from the
26 fact that the Commission's order in this case is much different from the Commission's order in another pending docket,
Docket No. UT-030614. In that case, the Commission entered a protective order preventing most parties from seeing
highly confidential CLEC data and instead required Staff to perform the task of aggregating the data prior to any
disclosure.

³ Furthermore, Qwest and others would also be precluded from cross-examining witnesses on the data, since the
data could not be linked to the company or witness sponsoring it.

1 motion.

2 RESPECTFULLY SUBMITTED this _____ day of November, 2003.

3 QWEST

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