

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

QWEST CORPORATION

For Competitive Classification of Basic
Business Exchange Telecommunications
Services

DOCKET NO. UT-030614

COMMISSION STAFF'S
RESPONSE TO WEBTEC'S
PETITION FOR
RECONSIDERATION OR
CLARIFICATION OF ORDER
NO. 08

1 WebTEC filed a petition for reconsideration and clarification of Order No. 08.
Pursuant to notice dated August 5, 2003, Commission Staff submits the following response.

2 WebTEC bases its petition on three arguments. The first argument is that Public
Counsel should not be subject to the “one attorney/one expert” requirement. This issue has
been resolved by Order No. 12, and Commission Staff offers no further analysis.

3 The second argument WebTEC propounds is the Commission should clarify Order
No. 08 with regard to joint action and coordination between Public Counsel and other
parties with common interests. Commission Staff takes no position on this issue.

4 The third argument addresses the affidavit requirement regarding highly confidential
data submitted in this docket. Specifically, WebTEC argues that the affidavit required is too

vague and overbroad. (WeBTEC's Petition at 7.)

5 The Commission does have discretion to determine the appropriate terms of a protective order governing the disclosure of proprietary or confidential information in contested proceedings. See RCW 34.05.446; RCW 80.04.095; WAC 480-09-015. The purpose of such protective orders is to encourage disclosure of relevant and necessary information, while protecting the disclosing party from the risk that the information will be available to those able to use the information in a "competitive or otherwise hostile manner." *WUTC v. US West Communications, Inc.*, Docket No. UT-950200, Eighth Supplemental Order (October 3, 1995).

6 In this case, the ALJ determined that heightened protection is required to protect sensitive market information submitted by Washington CLECs. In addition, parties may designate certain other data as highly confidential. See Order No. 05, ¶¶ 32-33. The heightened protective order has been amended a number of times, the most recent revision appended to Order No. 12.

7 Staff agrees that the affidavit language regarding a company or business organization that "potentially competes" with the entity providing the highly confidential information is vague. Potential competition is speculative and difficult to measure. Limiting the affidavit language to companies or organizations that compete with the entity providing the highly confidential information is sufficient to protect against harm.

8 The language regarding “competitive decision making” is not overly vague. There are potentially numerous ways to use highly confidential information to the disadvantage of the disclosing party, and it would be difficult to anticipate all of those uses. Thus, clarification of “competitive decision making” is not necessary.

9 It is important to note that the aggregation of CLEC data provided by Staff to the other parties is designated as confidential, rather than highly confidential, pursuant to Order No. 10. The affidavit required to view highly confidential data is not required to view the aggregated CLEC information: parties who have submitted a confidentiality agreement under Order No. 03 have access to the aggregated information. In any event, no party other than Staff has access to the highly confidential raw CLEC data.

DATED this 8th day of August, 2003.

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