

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

In the Matter of the Petition of)
QWEST CORPORATION) DOCKET NO. UT-030614
)
) AT&T’S RESPONSE IN
) OPPOSITION TO
For Competitive Classification of) WeBTEC’S PETITION FOR
Basic Business Exchange) RECONSIDERATION AND
Telecommunications Services.) CLARIFICATION OF ORDER
) NO. 08, PARAGRAPHS 17 & 18

Pursuant to Administrative Law Judge (“ALJ”) Mace’s Notice of Opportunity to Respond to WeBTEC’s Petition for Reconsideration and Clarification of Order No. 8, AT&T Communications of the Pacific Northwest, Inc.; AT&T Local Services on behalf of TCG Seattle; and TCG Oregon (collectively “AT&T”) hereby respond in opposition to WeBTEC’s Petition for Reconsideration and Clarification of Order No. 8 on paragraphs 17 and 18.

1. In its Petition for Reconsideration, WeBTEC essentially requests that the Commission “limit the employment restraint to those situations where disclosure or misuse of the protected information would be *inevitable* and would result in economic harm to the party producing the information” and states that such prohibition would not apply to legal and outside experts.¹ In addition, WeBTEC further amplifies its loosening of restrictions such as it seeks that the Commission reduce the protections of highly confidential material by limiting employment restrictions “to those circumstances where disclosure or use of the trade secrets is “impossible” not to result.”²

¹ Petition at 2 (emphasis added).

² *Id.* at 7.

2. WeBTEC further asserts, allegedly in support of its request, that the three-year abstention from competing provision somehow “violates acceptable limits on competitive restraints found in the law of covenants not to compete and trade secret misappropriation.”³ With respect to the ideas of “inevitable disclosure,” the “impossibility” standard and the notion of covenants not to compete, WeBTEC’s assertions miss the mark and are inconsistent with the law on point. What WeBTEC fails to mention is that covenants not to compete are typically provided for in the context of employment or joint venture agreements⁴ and that “inevitable disclosure” and “impossibility” are not the standard under those covenants for which employees may be barred from certain employment so as not to reveal or put at risk of revelation the former employers’ or ventures’ trade secrets.

3. Moreover, covenants not to compete are not at issue here; rather, WeBTEC seeks loosened standards with other entities’ competitively sensitive information or property⁵ solely for its benefit and use in an adjudicative proceeding to which it is a party by choice. Neither its outside experts or its members need to see the individualized or highly confidential information to participate in this proceeding, and if the three-year abstention period is too burdensome for its outside experts or any individual within its organization, then that person poses an *enormous risk* of misuse and wrongful disclosure in the first instance. This is a risk that AT&T is not willing nor should it be ordered to bear. This is not a matter of diminishing someone’s livelihood; rather, it is a matter of

³ *Id.* at 7 – 8.

⁴ *Winston Research Corp. v. Minnesota Mining and Manufacturing*, 350 F.2d 134, 137-138 (9th Cir. 1965)(former employer/employee relationship at issue); *Knights, Vale & Gregory v. McDaniel*, 680 P.2d 448, 452 (Wash. Ct. App. 1984) (former employee/employer relationship at issue); *Boeing Co. v Sierracin Corp.*, 738 P.2d 665 (Wash. 1987) (designer/supplier agreement at issue).

⁵ *U.S. v. O’Hagan*, 521 U.S. 642, 654 (1997) (company confidential information qualifies as property to which company has exclusive right to use and disclose); *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1002 (1984) (property right in trade secret exists to extent owner protects secret from disclosure).

protecting AT&T's property rights that WeBTEC would not otherwise have access to, but for this regulatory forum.

4. RCW § 80.04.095, regarding protection of commercial information, not only justifies the three-year abstention period, but it expressly allows the Commission to tailor the appropriate protections.⁶ This statute expressly governs the disclosures in this proceeding and not case law related to covenants not to compete in the employment relationships context.

WHEREFORE, AT&T requests that the Commission reject WeBTEC's attempt to further diminish the protections afforded AT&T and others in disclosing highly confidential and competitively sensitive information in this regulatory forum.

Respectfully submitted this 8th day of August 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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⁶ RCW § 80.04.095 ("Nothing in this section shall prevent the use of protective orders by the commission governing disclosure of proprietary or confidential information in contested proceedings.").