

[Service Date September 12, 2003]

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

In the Matter of the Petition of) DOCKET NO. UT-030614
)
QWEST CORPORATION) ORDER NO. 15
)
For Competitive Classification of)
Basic Business Exchange) ORDER GRANTING PUBLIC
Telecommunications Services) COUNSEL REQUEST FOR ACCESS
) TO HIGHLY CONFIDENTIAL CLEC
.....) INFORMATION

- ¹ **Proceeding.** Docket No. UT-030614 involves a petition filed by Qwest Corporation (Qwest), for competitive classification of basic business exchange telecommunications services pursuant to RCW 80.36.330.
- ² **Appearances.** Lisa Anderl, attorney, Seattle, WA, represents Qwest. Jonathan C. Thompson, assistant Attorney General, represents Commission Staff. Simon ffitch, assistant Attorney General, represents Public Counsel Section of the Office of Attorney General. Letty S. D. Friesen, attorney, Denver, Colorado, represents AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on Behalf of TCG Seattle and TCG Oregon (AT&T). Karen J. Johnson, attorney, Beaverton, Oregon, represents Integra Telecom of Washington, Inc. (Integra). Michel Singer-Nelson, attorney, Denver, Colorado, represents WorldCom/MCI. Lisa Rackner and Arthur A. Butler, attorneys, Seattle, WA, represent Washington Electronic Business and Telecommunications Coalition (WeBTEC). Stephen S. Melnikoff, attorney, Arlington, Virginia, represents the United States Department of Defense and all other Federal Executive Agencies (DOD/FEA). Richard H. Levin represents Advanced TelCom, Inc. (ATG).
- ³ **Background.** The Commission convened a prehearing conference in this case on September 12, 2003 for the purpose of marking exhibits for hearing and addressing other matters related to the evidentiary hearing scheduled for September 16-18, 2003.

- 4 One of the issues raised during the prehearing conference was Public Counsel's objection to the highly confidential treatment accorded information supplied by competitive local exchange carriers (CLECs) pursuant to the Commission's Order No. 06, that required CLECs to disclose information about the local exchange business services they provide in the state of Washington. Order No. 06 stated that the information submitted by CLECs would be treated as highly confidential, but did not otherwise indicate how distribution of the information would be limited.
- 5 The Commission considered the issue of whether to allow Public Counsel access to this information in Order No. 05 and denied access based on similar orders entered in prior proceedings. As a result, Order No. 07 amended the existing protective order to provide for the disclosure of the highly confidential CLEC information to Staff only. Staff would aggregate the information received and provide the aggregation in exhibit form during the proceeding.
- 6 Public Counsel and WeBTEC then challenged Order Nos. 05 and 07, arguing that the existing protective order provided adequate assurance of confidentiality of any data submitted during the proceeding, including the CLEC data. The commission rejected their arguments in Order No. 08 on the basis of the concerns raised by Integra and AT&T about the need for greater protection for trade secrets, especially in view of Public Counsel and WeBTEC's representation of "customer" parties who might use the information to their advantage. The Commission also was concerned about Public Counsel's apparent joint participation in the case with WeBTEC and the potential for sharing confidential information inappropriately with such a party.
- 7 In Order No. 12, the Commission revisited the issue of the exclusion of Public Counsel from obtaining other highly confidential information, not related to the information solicited from CLECs pursuant to Order No. 06, on the same basis as Staff. Reasoning that Public Counsel had indicated that it was not sharing a witness or information with any other party to the proceeding, the Commission allowed Public Counsel access to other highly confidential information in parity with Staff.
- 8 During the September 12 prehearing conference, Public Counsel raised an objection to the use of the aggregated CLEC data submitted by Staff in the

hearing. The basis for the objection was that no other party had an opportunity to review the raw data and so there could be no meaningful cross-examination on the method and quality of Staff's aggregation.

9 It was also suggested during the course of the prehearing that the Commission might wish to review the raw data *in camera* with its own expert and policy advisor.

10 **Discussion.** During the prehearing conference, no party, including any CLEC party, objected to Public Counsel being allowed access to the raw data underlying Staff's aggregation of the CLEC data. If the raw data were to be reviewed by the Commission *in camera*, the CLEC parties stated that they would prefer that Public Counsel, at least, have an opportunity to review the data in order to cross-examine the Staff witness about the nature of the aggregation process and to assure its validity. In this way, the Commission would be assisted in performing an *in camera* review of the data.

11 WeBTEC and the Department of Defense voiced a continuing objection to their being excluded from review of the raw CLEC data, but agreed it would be preferable to have at least Public Counsel review the data.

12 Public Counsel stated that if it were permitted to review the raw data, it would abide by the usual terms of the protective order allowing access to highly confidential information to Staff and Public Counsel.

13 **Decision.** The Commission has the discretion to fashion protective orders to accommodate the needs of a particular adjudicative proceeding before it. The Commission continues to have a concern for the protection of highly sensitive CLEC commercial information and trade secrets. However, the Commission is cognizant of Public Counsel's statutory role in proceedings at the Commission. Based on the arguments made during the prehearing conference, the Commission is also persuaded of the benefit to the record if Public Counsel were permitted to review the raw CLEC data submitted to Commission Staff prior to cross-examination of the witnesses in this case. Public Counsel's cross-examination should be conducted in such a manner as not to reveal the actual raw data. Public Counsel must immediately advise the bench if such information will be revealed during cross-examination. At that time, the

Commission will determine whether it will be necessary to clear the hearing room pursuant to the terms of the protective order and whether other counsel will be able to remain in the hearing room.

ORDER

14 THE COMMISSION ORDERS That Commission Staff must immediately provide Public Counsel with a copy of the raw CLEC data submitted to Staff pursuant to Order No. 06.

DATED at Olympia, Washington and effective this 12th day of September 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE
Administrative Law Judge