

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

In the Matter of the Petition of)
QWEST CORPORATION) DOCKET NO. UT-030614
)
) AT&T AND MCI'S
) RESPONSE TO STAFF'S
For Competitive Classification of) MOTION REQUESTING THE
Basic Business Exchange) COMMISSION ORDER
Telecommunications Services.) CLECS TO PRODUCE
) INFORMATION & REQUEST
) FOR A FURTHER PROTECTIVE
) ORDER

Pursuant to Administrative Law Judge (“ALJ”) Mace’s notice to provide answers issued June 13, 2003, AT&T Communications of the Pacific Northwest, Inc.; AT&T Local Services on behalf of TCG Seattle; and TCG Oregon; and MCI WorldCom Communications, Inc. and MCImetro Transmission Services, LLC (collectively the “Joint Respondents”) hereby provide their answer to Commission Staff’s Motion Requesting the Commission order competitive local exchange carriers (“CLECs”) to produce information.

ANSWER

1. On June 13, 2003, the Joint Respondents became aware that Commission Staff had filed a motion essentially seeking expedited discovery responses from CLECs of highly confidential, trade secret information on a statewide basis. In general, Staff requests that CLECs identify all the geographic locations throughout the entire State wherein they offer basic business service, all of those customers’ locations and all the lines provided for such customers.

2. In addition to the confidential information sought, Staff would like the CLECs to organize such information by Qwest wire centers as currently located throughout the State and by wholesale provisioning methodology (*e.g.*, CLEC retail service offered via resale, unbundled network elements or facilities-owned).

3. Finally, Staff would like the CLECs to also provide their extremely confidential future “plans to offer such service in the state of Washington within the coming 12 months.”¹

4. Staff seeks all this information by July 11, 2003.

5. Staff cites RCW 80.36.330(5) as justification for its procedural approach and demand for the information. RCW 80.36.330(5) states:

Telecommunications companies shall provide the commission with all data it deems necessary to implement this [competitive classification] section.

6. While the Joint Respondents understand Staff’s desire to obtain the information in the manner and time frame within which Staff seeks the information, the Joint Respondents recognize several difficulties and thereby base the following objections to providing the information as sought upon those difficulties.

a. First, the Joint Respondents are nationwide carriers operating through the use of regional centers. Thus, the information sought must come from centers that have responsibility for work in Washington as well as in other states. As a consequence, it will require several weeks to obtain information about the types of services provided in Washington, the methodology for providing the services and the business customer locations. Moreover, at this time, Joint Respondents

¹ Staff Request No. 1.

do not know whether they will be able to organize the information as requested by Staff.

b. Second, while the CLECs generally know where some of Qwest's wire centers are, if the CLECs were to be able to organize the information by Qwest wire center, the Joint Respondents would need location maps of all Qwest's wire centers to even begin to map their relevant service offerings to Qwest's wire centers. Rather than merely producing the data as it's kept in the ordinary course of business, Staff's requests would also require the Joint Respondents to expend resources and additional time to create data mapping and research that does not currently exist.²

c. Third, future business plans do not constitute "effective competition"³ under the relevant statute and thus are absolutely irrelevant to this particular investigation. Plans for the coming 12 months are also speculative, particularly given the impending release of the Federal Communications Commission's ("FCC's") Triennial Review Order.

d. Finally, the information sought is highly confidential and otherwise protected as trade secret information under the laws of the State of Washington. As a consequence, the Joint Respondents must protect such information in a manner consistent with those laws. That is, they must strictly limit the disclosure, use and access to such information. The Joint Respondents do not believe the current protective order is sufficient to meet their respective needs. In previous

² Under such circumstances Joint Respondents will ask to be compensated for the expenditures.

³ Under the statute, "effective competition" means, "that customers of the service have reasonably available alternatives and that the service is not provided to a significant captive customer base." RCW 80.36.330(1).

cases before this Commission, protective orders with heightened protections where entered to further minimize any harm to carriers that may result through the release of their trade secret information in a regulatory proceeding such as this one.

7. For the foregoing reasons, the Joint Respondents request that the Commission: (a) reject the time frames within which Staff seeks the production of the information sought and allow the parties mutually to agree to a date by which responsive information can be provided; (b) disallow Staff's requests that the CLECs organize the data for Staff by Qwest wire center, service location and provisioning methodology and (c) disallow Staff's request for future business plans because the request calls for speculation and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Joint Respondents propose that Staff receive the data as it is kept in the ordinary course of business.

8. The Joint Respondents further seek a protective order that provides heightened protection to prevent the loss of trade secret status of the information sought and produced in whatever forms the Commission orders.

REQUEST FOR FURTHER PROTECTIVE ORDER

9. Washington is among the many states that have adopted the Uniform Trade Secrets Act.⁴ This act generally defines trade secret as information, including but not limited to formulas, pattern compilations, programs, devices, methods, techniques, customer lists, or processes, that: (a) derive independent economic value, actual or potential, *from being secret*; and (b) the subject of reasonable efforts to maintain its

⁴ Unif. Trade Secrets Act, 14 U.L.A. 152 (1985 & Supp. 1989); *see also*, RCWA 19.108.010 to 19.108.940 (Wash. Uniform Trade Secrets Act).

secrecy.⁵ “A purpose of trade secrets law is to maintain and promote standards of commercial ethics and fair dealing in protecting those secrets.”⁶ Furthermore, the “necessary element of secrecy is not lost . . . if the holder of the trade secret reveals the trade secret to another in confidence”⁷ Thus, the secret may not be disclosed in any form other than that authorized by the owner.⁸ Under the law, it is the owner of the trade secret that is charged with maintaining its secrecy, and therefore, the owner must obtain the necessary protection when disclosure is required.

10. Numerous types of information have been determined by the courts interpreting these uniform acts to fit the definition of trade secret, including business and strategic plans.⁹ The information sought by Staff in its data requests constitutes trade secret information. If satisfactory protection were not afforded, the CLECs would be forced to disclose such information and thereby be placed at substantial risk of, among other things, losing the economic value of their secrets and, importantly, their ability to compete with the ILEC. The current protective order is inadequate to ensure the secrecy of this highly confidential information sought by Staff. Therefore, the Joint Respondents hereby move the Commission for an order that affords CLECs heightened protection

⁵ See generally, definitions sections; specifically see RCWA 19.108.010(4).

⁶ *Ed Nowogroski Ins., Inc. v. Rucker*, 971 P.2d 936, 942 (Wash. 1999)(discussing the purpose of the Uniform Trade Secrets Act).

⁷ *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 94 S.Ct. 1879, (1974); *Boeing Co. v. Sierracin Corp.*, 738 P.2d 665, 676 (Wash. 1987).

⁸ *Kewanee Oil*, 416 U.S. 470, 94 S.Ct. at 1883.

⁹ See e.g., *Ed Nowogroski*, 971 P.2d at 943 (soliciting customers on confidential list violates trade secret); *Boeing Co.*, 738 P.2d at 674 (Wash. 1987)(fact of marketing product did not make drawings and specifications non-trade secrets); *Henry Hope X-Ray Prods, Inc. v. Marron Carrel, Inc.*, 674 F.2d 1336, (9th Cir. 1982)(business process is a trade secret); *Dekar Indus., Inc. v. Bissett-Berman Corp.*, 434 F.2d 1304, 1305 (9th Cir. 1970)(research and development is a trade secret); *Forro Precision, Inc. v. IBM Corp.*, 673 F.2d 1045, 1057 (9th Cir. 1982)(future plans for product parts are trade secrets); *Revere Transducers, Inc. v. Deere & Co.*, 595 N.W. 751, 776 (Iowa 1999); *Envirotech Corp. v. Callahan*, 872 P.2d 487, 495 (Utah Ct. App. 1994); see also, Restatement 3d of Unfair Competition § 39, comment d (listing various types of common trade secrets); *U S WEST Communications, Inc. v. Office of Consumer Advocate*, 498 N.W. 2d 711, 714 (Iowa 1993)(“[t]here is virtually no category of information that cannot, as long as the information is protected from disclosure to the public, constitute a trade secret.”).

against loss of trade secret status to any and all material produced to Staff based upon its requests discussed herein.¹⁰

11. The undersigned is authorized to file this response on behalf of MCI WorldCom Communications, Inc.

Respectfully submitted this 17th day of June 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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¹⁰ See **Exhibit A**. The Joint Respondents are willing to employ the current Protective Order as a starting point for negotiation of a different protective agreement.