

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation into
U S WEST Communications, Inc.'s
Compliance with § 271 of the
Telecommunications Act of 1996

Docket No. UT-003022

In the Matter of U S WEST
Communications, Inc.'s Statement of
Generally Available Terms Pursuant to
Section 252(f) of the Telecommunications
Act of 1996

Docket No. UT-003040

QWEST'S OPPOSITION TO AT&T'S
MOTION FOR DETERMINATION OF
CONFIDENTIALITY REGARDING
SECTION 272

Qwest Corporation and Qwest Communications Corporation (collectively "Qwest") submit this response to the Motion for Determination of Confidentiality Regarding Section 272 brought by AT&T Communications of the Midwest, Inc. ("AT&T"). In that motion, AT&T seeks a determination that the confidential and proprietary information contained in the Affidavit of Cory W. Skluzak,¹ which was submitted by AT&T in the above-referenced docket, should be made public. This affidavit relied upon proprietary information provided to AT&T by Qwest, and AT&T asserts that the information should be made public because such information is necessary for an unaffiliated third party to "complain about a BOC's failure to comply with the FCC's accounting rules," and because such information is necessary to allow an unaffiliated

¹ See Affidavit of Cory W. Skluzak.

third party to make “informed purchasing decisions.”² As the moving party, AT&T has the burden of proof. AT&T has failed to carry that burden, however, and demonstrate that the specific information it seeks to make public, should be made public.

AT&T argues that the 272(b)(5) Internet posting requirement means that all information that relates to 272 must be made public. Qwest agrees that information that is posted on the Internet is not confidential. The information that Qwest seeks to protect (and AT&T seeks to have publicly disclosed), however, is not information that is or should be posted on the Internet. Because the information at issue is properly designated as confidential and is entitled to protection, and because AT&T has failed to demonstrate how *public* disclosure of this information is necessary to ensure BOC compliance with the FCC’s accounting rules or otherwise allow carriers to make informed purchasing decisions, the Commission should deny AT&T’s Motion.

ARGUMENT

The BOCs and their 272 affiliates are entitled to maintain the confidentiality of their confidential information. In the context of Section 272, the FCC has acknowledged that some information related to BOCs and their 272 affiliates will continue to be confidential. Indeed, the FCC explicitly recognized that the BOCs’ duty to disclose their transactions with their Section 272 affiliates does not mean that all related information is no longer confidential or proprietary.³ Furthermore, the FCC noted that “[w]hile section 272(b)(5) requires BOCs to reduce their transactions to writing and make them ‘available for public inspection,’ [it] will continue to protect the confidential information of BOCs, as well as other incumbent local exchange

² AT&T Motion at 4.

³ In the Matter of Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Report and Order, FCC 96-490 at ¶ 122 (rel. December 24, 1996)

carriers.”⁴ The FCC again acknowledged the need to protect confidential information related to Section 271 applications in its *Confidential Information* proceeding, where the FCC explicitly recognized that “proceedings under section 271 of the Communications Act regarding Bell Operating Company entry into interLATA services” would involve confidential information that is entitled to protection.⁵

Moreover, in SBC’s Section 271 application in Texas, the FCC specifically found that SBC was complying with section 272(b)(5) “because all transactions were properly posted on the Internet,” notwithstanding the fact that SBC “require[d] third parties to sign a nondisclosure agreement in order to review [SBC]’s detailed billing information.”⁶ Thus, this detailed billing information was kept confidential by SBC, and the FCC allowed it to remain so.⁷ Although the FCC “agree[d] with AT&T that restricting third party access to regulatory authorities is improper,” the FCC in no way impugned SBC for maintaining the confidentiality of its information.⁸ In fact, the FCC found that SBC’s non-disclosure agreement, which kept the detailed billing information confidential, did not bring SBC out of compliance with Section 272(b)(5).⁹

In short, despite the fact that Section 272 requires BOCs to disclose all transactions with their 272 affiliates, BOCs and their 272 affiliates may nonetheless maintain the confidentiality of their confidential information.

⁴ *Id.* (noting that the FCC is “currently examining the protection of confidential information in CC Docket No. 96-55.”).

⁵ *In the Matter of Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, CC Docket No. 96-55, *Report and Order*, FCC 98-184 at ¶ 58 (rel. Aug. 4, 1998).

⁶ *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, CC Docket No. 00-65, *Memorandum Opinion and Order*, FCC 00-238 at ¶ 407 & n. 1182 (rel. June 30, 2000) (“*SBC-Texas Order*”).

⁷ *Id.*

⁸ *Id.* at ¶ 407.

⁹ *Id.*

The specific confidential Qwest information that was incorporated into the Skluzak Affidavit is entitled to protection. First, the vast majority of the proprietary paragraphs of the Skluzak Affidavit contain detailed billing information.¹⁰ The FCC itself has specifically acknowledged that the BOCs may maintain this detailed billing information as confidential— notwithstanding the duty to disclose all transactions with their 272 affiliates.¹¹

Second, the Skluzak Affidavit incorporates confidential information regarding the projects that U S WEST Advanced Technologies, Inc. (“AT”) undertook for U S WEST Long Distance, Inc. (“LD”).¹² The nature of these projects reveals competitively sensitive information regarding the technology that was to be deployed by LD and the strategic direction of the company. Moreover, because these transactions were between a 272 affiliate and another non-BOC affiliate, there was no requirement that they be disclosed at all.¹³

Third, the Skluzak Affidavits incorporate confidential information regarding QCC’s Chart of Accounts.¹⁴ A Chart of Accounts reveals sensitive information regarding how a company maps revenues and expenses to particular products, and companies routinely maintain them as confidential. Moreover, how a 272 affiliate’s Chart of Accounts would assist in demonstrating a BOC’s compliance with the FCC’s accounting rules or otherwise assist unaffiliated carriers in making informed purchasing decisions¹⁵ is a mystery.

¹⁰ See Skluzak Affidavit at ¶¶ 52, 79-81, 88, 91-96, 99, 104, 106-107, 109, and 125.

¹¹ See *SBC-Texas Order* at ¶ 407 & n. 1182.

¹² See Skluzak Affidavit at ¶ 129.

¹³ See 47 U.S.C. § 272(b)(5) (requiring that transactions between BOCs and 272 affiliates be reduced to writing and available for public inspection).

¹⁴ See Skluzak Affidavit at ¶ 37.

¹⁵ See AT&T Motion at 4.

Finally, the Skluzak Affidavit incorporates confidential information regarding the payroll of QCC.¹⁶ Again, payroll information is clearly sensitive information that companies routinely maintain as confidential. Moreover, nothing in the Act requires that 272 affiliates publicly disclose such information; nor has AT&T demonstrated that such information would assist in demonstrating a BOC's compliance with the FCC's accounting rules or otherwise assist unaffiliated carriers in making informed purchasing decisions."¹⁷

CONCLUSION

Nothing in the Act or the orders of the FCC requires that the confidential information of Qwest that is incorporated into the Skluzak Affidavit be publicly disclosed. The FCC has specifically acknowledged that detailed billing information—which is the vast majority of the proprietary portions of the Skluzak Affidavit—may be kept confidential. Moreover, AT&T has failed to demonstrate how any of the remaining confidential and proprietary information is necessary to either ensure BOC compliance with the FCC's accounting rules, or allow carriers to make informed purchasing decisions—the two asserted justifications supporting AT&T's Motion. Accordingly, AT&T's Motion should be denied.

Respectfully submitted this 25th day of June, 2001.

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¹⁶ See Skluzak Affidavit at ¶ 47.

¹⁷ See AT&T Motion at 4.