

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

In the Matter of the Review of:)	DOCKET NO. UT-023003
Unbundled Loop and Switching)	
Rates; the Deaveraged Zone)	
Rate Structure; and Unbundled)	NINETEENTH SUPPLEMENTAL
Network Elements, Transport,)	ORDER
and Termination (Recurring)	
Costs))	
)	DENYING MOTION TO AMEND
)	PROTECTIVE ORDER
)	
.....)	

1 **Proceedings.** Docket No. UT-023003 – also referred to as the “new generic cost case” – is a generic proceeding initiated by the Commission to review Qwest’s and Verizon’s recurring and nonrecurring costs for unbundled network element (“UNE”) loop and switch rates, including the deaveraged loop zone rate structure, previously established by the Commission in other proceedings. On August 5, 2003, in the Twelfth Supplemental Order in this case, the Commission bifurcated the recurring from the nonrecurring cost portions of Docket No. UT-023003. The Commission will consider nonrecurring costs in Docket No. UT-033034. On November 25, 2003, the Commission entered an order removing Qwest cost issues from both proceedings. Only Verizon’s costs are now at issue in the cost dockets.

2 **Appearances.** Qwest Corporation (“Qwest”), by Lisa Anderl, attorney, Seattle, Washington; Verizon Northwest Inc. (“Verizon”), by Catherine Ronis, attorney, Washington, D.C.; Covad Communications Company (“Covad”), by Brooks Harlow, attorney, Denver, Colorado; AT&T of the Pacific Northwest, Inc. (“AT&T”), Pac-West, Inc. (“Pac-West”), and XO Washington, Inc. (“XO”), by

Mary Steele, attorney, Seattle, Washington; MCI/WorldCom (“WorldCom”) by Michel Singer-Nelson, attorney, Denver, Colorado; WeBTEC, by Arthur Butler, attorney, Seattle, Washington; Eschelon Telecom, Inc. (“Eschelon”), by Dennis Ahlers, Minneapolis, Minnesota; and Commission Staff, by Shannon Smith, Senior Assistant Attorney General.

3 **Motion.** On December 3, 2003, AT&T filed a motion to amend the protective order in this proceeding. AT&T requests that the protective order be amended to incorporate “highly confidential” protections contained in the protective order in the Triennial Review proceeding.¹ On December 5, 2003, MCI joined AT&T in its motion.

4 AT&T and MCI contend that they need the additional protection requested because discovery responses they are required to submit to Verizon on or before December 12, 2003, include third-party vendor-proprietary data and AT&T proprietary network information that the Commission has protected in other dockets, such as the Triennial Review proceeding, as highly confidential. AT&T and MCI argue that Verizon has conditioned parties’ access to comparable Verizon data in this proceeding on parties’ execution of a separate nondisclosure agreement that imposes greater protection than the current protective order.²

5 Verizon objects to the amendment of the protective order currently in place in this proceeding. Verizon argues that the Protective Order and the Protective Agreement for Third-Party Confidential Information³ govern the parties’ exchange of information in this proceeding and offer ample protection for any confidential or commercially-sensitive data produced by AT&T and MCI in response to Verizon’s discovery requests. The protective order guards against

¹ AT&T and MCI cite the *Triennial Review Order Proceedings*, Docket No. UT033044, Order No. 2, Protective Order, October 21, 2003, ¶¶ 10-15 and 17-21.

² *First Supplemental Order (Protective Order)*, March 25, 2002.

³ Protective Agreement for Third Party Confidential Information (Third Party Protective Agreement), attached to Verizon’s Opposition as Attachment A.

disclosure of any material designated as “Confidential Information” by any party to the case. Verizon argues that the Third Party Protective Agreement, agreed to by AT&T and MCI, supplements the protective order and ensures that the same types of protections are accorded “third-party” confidential information exchanged among the parties. Verizon asserts that the Third Party Protective Agreement applies to all parties who provide commercially sensitive third-party information.

6 Verizon contends that AT&T and MCI offer no reason why the order and agreement currently in place do not provide sufficient protection for data. Verizon asserts that it has already produced significant amounts of data regarding its own network and costs pursuant to the existing order and agreement.

7 **Discussion.** The protection of commercially sensitive information in Commission proceedings is governed by RCW 80.04.095⁴ and WAC 480-09-015⁵. The purpose of these provisions is to encourage the disclosure of sensitive information so that the Commission has the information needed to address matters that come before it.

8 In this case, the current protective order adequately serves the purpose of encouraging the type of disclosure that is helpful in building an adequate record of proceedings. AT&T and MCI offer insufficient justification for the additional protection they seek. AT&T and MCI have already responded to substantial discovery, much of it similar in nature to the responses they are required to

⁴ RCW 80.04.09 is the statutory provision governing the protection of records, filed with the Commission, pertaining to “valuable commercial information, including trade secrets or confidential marketing, cost or financial information, or customer-specific usage and network configuration and design information”.

⁵ WAC 480-09-015 is the Commission’s procedural rule governing the submission of “confidential” information.

submit on December 12, 2003, under the protections currently in place.⁶ Moreover, it is not clear that the type of protective order entered in the Triennial Review proceedings is appropriate in this case. Finally, the fact that the Third Party Protective Agreement affords reciprocal protection makes for even-handed treatment of all parties with respect to submission of similar sensitive information⁷.

ORDER

9 IT IS ORDERED That AT&T's and MCI's motion for an amendment of the protective order in this proceeding is denied.

DATED at Olympia, Washington, and effective this 18th day of December, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE
Administrative Law Judge

⁶ See *Thirteenth Supplemental Order Granting, in Part, Motion to Compel, September 8, 2003*.

⁷ The Commission cautions that the Third Party Protective Agreement is a private agreement among the parties and is not enforceable by the Commission as the Commission's protective order would be.