

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of QWEST)
CORPORATION, fka U.S. West)
Communications, Inc., for Approval of)
Compliance with 47 U.S.C. § 271(d)(2)(B))

DOCKET NO. 00-049-08

ORDER

ISSUED: April 26, 2002

By The Commission:

This Order addresses two outstanding issues in this Docket. The first regards our grant of reconsideration of our May 25, 2001 Order. The issue involved compensation for CLEC interconnection facilities. After examining the record and applicable law the Commission finds that our original decision was correct. Therefore, no changes to existing SGAT language are required with respect to that issue. The second issue relates to our Order of September 18, 2001, that provided direction to the parties in resolving outstanding issues under Checklist item three, disputed issue number three (access to right-of-way or landowner agreements).

Despite the direction provided in our earlier Orders the parties (Qwest and AT&T) have failed to reach agreement regarding access to the right-of-way (landowner) agreements. As a result, the Commission is issuing additional directions in this Order to bring closure to this Checklist item. We note that the protective agreement language the parties have presented appears to be acceptable to both parties. Therefore, we will accept it without further review. There appears to still be four remaining areas of dispute.

First, should the process contemplated in the September 18th Order be the sole process for resolving access to confidential landowner agreements (AT&T's preference), or simply one of many options (Qwest's preference)? The Commission will not limit the ability of parties to agree to other options not specified in the Commission's Orders as a part of their individual interconnection agreements. Consequently, we will not require that the information reporting process our September 18th Order contemplates be the sole option available. We do wish to make it clear however, that a CLEC has the right to specify in advance (as part of their interconnection agreement, or at any other time) that the information exchange process is the default method by which they wish to receive the information in the case where an agreement is found to give confidentiality rights to a landowner. Further, as part of that process the SGAT must delineate the time period that Qwest has to respond to an information request. Most likely, the time it takes Qwest to determine if the Agreement in question is a confidential agreement should concurrently be the same time period that Qwest compiles and returns the requested information to the CLEC; or alternatively, if the agreement is not confidential the period in which Qwest would return the actual agreement. The SGAT may not include any language which obligates a CLEC to try other methods first before availing themselves of this option, nor may Qwest require a separate election of method for each request.

Second, with respect to any other confidentiality rights Qwest may have in the agreement, Qwest has agreed to accept AT&T's proposed changes in language regarding this issue. Qwest stated in its reply to AT&T's motion: "Qwest is willing to incorporate AT&T's suggested approach in Sections 10.8.2.27.2 and 10.8.2.27.3 on this limited issue." Qwest also agreed in its reply comments to adopt the suggested language in paragraph 12 of the Access Agreement, Attachment 4 to Exhibit D of the SGAT. Therefore the Commission adopts the suggested language.

Third, the parties dispute whether information or the agreement itself is sufficient in cases where the agreement grants confidentiality to the landowner rather than to Qwest. Our earlier Order is clear on this point. We directed the parties to draw up an explicit list of the information required that would be provided instead of the confidential agreement. In the materials submitted to the Commission we did not see such a list. We clarify that provision of information is sufficient, and direct the parties to specify the type of information to be provided. As noted above, the parties must also agree on a

time limit for the provision of this information from the date of the initial (not a follow-up) request.

A related point that AT&T raises is verification that the agreement actually grants confidentiality to the landowner. For cases where Qwest asserts that the agreement is confidential, we direct Qwest to provide a photocopy of the specific provision that grants the landowner confidentiality rights. This photocopy should be returned to the requesting CLEC when Qwest informs the CLEC that the agreement is confidential. Qwest should also provide the alternative information in lieu of the agreement at that same time. The photocopy of the agreement provision must be signed by a Qwest employee verifying that the employee knows it be a true and correct copy of the relevant provision of the Agreement in question. Fourth, we address AT&T's suggested text for section 10.8.4. These changes propose providing the actual confidential agreement to the CLEC, something our September Order does not require. Hence, the Commission rejects these changes.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The parties submit the information and required language detailed above.
2. Pursuant to Section 63-46b-13, Utah Code Ann. (2000), any person aggrieved by this Order may petition the Commission in writing for reconsideration within 20 days of the date of this Order. Pursuant to Section 54-7-15, Utah Code Ann. (2000), failure to file such a request will result in the forfeiture of the right to appeal to the Utah Supreme Court. If the Commission fails to issue an order within 20 days after the filing of such a request, the request shall be considered denied.

DATED at Salt Lake City, Utah, this 26th day of April, 2002.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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