

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of a Proceeding to Address )  
Actions Necessary to Respond to the )  
Federal Communications Commission )  
Triennial Review Order Released August )  
21, 2003 )  
)

DOCKET NO. 03-999-04  
ORDER ON MOTION TO ORDER  
DISCLOSURE OF  
CLEC-SPECIFIC INFORMATION

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ISSUED: January 8, 2004

By The Commission:

On December 19, 2003, Qwest Corporation (Qwest) filed a motion requesting the Commission issue an order whose terms would permit Qwest to provide CLEC specific information in response to discovery requests and in testimony. Qwest requests the order because disclosure or use of the such information could be subject to various statutory provisions restricting the release of such information. Qwest requests that the order require any disclosure of such information to comply with the provisions of the November 4, 2003, Protective Order issued in this docket. On December 26, 2003, Eschelon Telecom of Utah, Integra Telecom of Utah, McLeodUSA Telecommunications Services, and XO Utah (Joint CLECs) filed a response to Qwest's motion. The Joint CLECs apparently recognize the possible relevance of the information sought to be disclosed by Qwest, to the issues that must be addressed by the Commission in this docket. They request that any order issued by the Commission impose various conditions upon Qwest's release or use of the information. These include Qwest's prior notification to a CLEC of impending disclosure of CLEC-specific information in responses to discovery and preclusion of Qwest's use of CLEC-specific information in Qwest's testimony. On January 5, 2004, Qwest replied to the Joint CLECs' response, opposing the conditions.

After consideration of the pleadings filed herein, we conclude that we will issue the order requested by Qwest, without the conditions requested by the CLECs. We believe that the provisions of our Protective Order adequately balance the privacy interests of CLECs and all other persons whose information may be disclosed in discovery and testimony and the needs of the regulatory process undertaken by the Commission to resolve the issues raised in this docket and the attendant determinations that will have to be made. The Joint CLECs characterize their request to restrict Qwest from using the information in its testimony as an appropriate restriction to avoid "further[ing] Qwest's goals in this proceeding." We disagree with the Joint CLECs' characterization: it fails to recognize the relevance of the information to the Commission's goals in this proceeding. Presentation of such information in testimony is an appropriate means to provide necessary information to the Commission on the factual questions and issues which must be addressed by the Commission to make the findings and resolutions on the matters raised by the Federal Communications Commission's August 21, 2003, Triennial Review Order. The Commission's and parties' access to and use of such information is necessary to prepare for, participate in and conduct the hearings of this docket. Treating such information as "Highly Confidential" information under our Protective Order, whether in testimony or in response to discovery, is an appropriate method of dealing with this needed information.

Nor do we believe it necessary to require Qwest to give notification prior to disclosing such information in response to discovery. Our October 21, 2003, Procedural Order required parties to disseminate their documents, including discovery requests, on a list serve available to all parties participating in this docket. To the extent that a party has propounded questions which may require a response that could contain CLEC specific information, that circumstance was known to all parties upon the appearance of the original question's/request's on the list serve. An affected party has "notice" of the potential disclosure of the information on the first instance and can take appropriate action to request additional protection, if needed, beyond the provisions of the Protective Order applicable to "Highly Confidential" material. We have some difficulty understanding why the process envisioned by the Procedural Order and the provisions of the Protective Order do not adequately address the points raised by the Joint CLECs. The existing limitations on the access

and use of CLEC specific information, given under the "Highly Confidential" treatment required by the Protective Order, balances the privacy interests for such information and the need for such information to address the matters needing to be resolved in this docket.

Wherefore the Commission issues this ORDER, directing Qwest to disclose (a) information that might specifically identify a CLEC or carrier's purchases or orders and (b) data that might through small volumes reveal CLEC/carrier identifying information under the "Highly Confidential" provisions of the Protective Order.

This Order does not affect the right of Qwest or any party to raise objections to discovery or information requests.

DATED at Salt Lake City, Utah, this 8<sup>th</sup> day of January, 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

GW#36495