

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

|   |   |                      |
|---|---|----------------------|
| In the Matter of                              | ) |                      |
|   | ) |                      |
| Petition of Qwest Corporation for Forbearance | ) | WC Docket No. 04-223 |
| Pursuant to 47 U.S.C. Section 160(c) in the   | ) |                      |
| Omaha Metropolitan Statistical Area           | ) |                      |

**PARTIAL OPPOSITION TO MOTION TO MODIFY PROTECTIVE ORDER**

Qwest Corporation (“Qwest”) hereby files this partial opposition to a Motion to Modify Protective Order (“Motion”), filed October 11, 2006 by a variety of competitive local exchange carriers (“CLECs”).<sup>1</sup>

The CLECs request that the Federal Communications Commission (“Commission”) modify the *Protective Order* that they signed in this docket to permit them to use the confidential material that they received in the Omaha proceeding in additional forbearance proceedings. In order to review these confidential materials at all, the CLEC representatives who were granted access had to agree that they would use the confidential information “only in the conduct of this proceeding” and not for “any other purpose,” including “other administrative or judicial proceedings.”<sup>2</sup> Following release of the *Omaha Order*,<sup>3</sup> CLEC representatives were permitted to see the unredacted copy of the *Omaha Order* only upon recertifying their commitments under the

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<sup>1</sup> Motion to Modify Protective Order, WC Docket No. 04-223, filed Oct. 11, 2006, erratum filed Oct. 13, 2006.

<sup>2</sup> See *In the Matter Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Protective Order, 19 FCC Rcd 11377, 11379 ¶ 7 (2004).

<sup>3</sup> *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) (“*Omaha Order*”), *pets. for review pending sub nom., Qwest Corp. v. FCC*, Nos. 05-1450, *et al.* (D.C. Cir. filed Dec. 12, 2005).

*Protective Order* and to further agree that they would not make photocopy or duplicate any portion of the unredacted *Omaha Order*.<sup>4</sup>

In direct contravention of these promises the CLECs ask that they be permitted to use the confidential information received under the *Protective Order* to oppose six new pending Verizon petitions for forbearance and a similar petition filed by ACS, plus any other case “related to the conduct of other forbearance proceedings, and any judicial proceedings arising there from.”<sup>5</sup> The CLECs reason that the promise that they made when they were given access to this confidential data should not bind them because they can only understand the pending (and potential future) forbearance petitions if they can use the confidential Omaha information to analyze those petitions, despite the fact that they had expressly agreed not to do so when they received the information in the first place. To make matters worse, the CLECs request that they be permitted to use this confidential information not only in specified proceedings currently before the Commission but in “any other Commission forbearance proceeding brought under Section 10. . .”<sup>6</sup>

The CLECs’ unwillingness to live with their express promises with regard to confidential information is troubling. After all, the CLECs that signed the *Protective Order* were presumably well aware that they had promised not to use the confidential information received thereunder in any other administrative proceeding, and clearly anticipated (or should have anticipated) that other forbearance proceedings might arise in the future. If the CLECs felt that the terms of the *Protective Order* were unreasonable, they should have challenged it prior to receiving Qwest’s

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<sup>4</sup> Fully Unredacted Order Recipient Acknowledgement, submitted in conjunction with authority to review unredacted *Omaha Order* in Omaha proceeding.

<sup>5</sup> Motion at 2.

<sup>6</sup> *Id.* n.4.

confidential information pursuant to its terms. As the CLECs undoubtedly are aware (having reviewed the confidential information), much of the Qwest information submitted under the *Protective Order* is very sensitive and confidential, and Qwest has no plans to make it public or to release any parties from their obligations under the *Protective Order*. Indeed, in briefing the appeal of the *Omaha Order*, all parties relying on confidential information are required to file unredacted versions of their appellate briefs under seal, and special arrangements are being worked out to permit confidential treatment of this information during oral argument as well. The CLECs' cavalier treatment of this confidential information stands in stark contrast to the manner in which the rest of the industry is viewing its obligations under the *Protective Order*.

Accordingly, the broad exceptions sought by the CLECs must be denied. The mere fact that they believe that the confidential information that they received under a promise of confidentiality might be useful to them if the promise were less restrictive is no reason to relieve them of this promise. A party submitting confidential information to the Commission must be able to rely on the fact that entities receiving access to that information subject to a protective order will indeed comply with the terms of such a protective order, and not seek to have it modified once they have had a chance to review the confidential information.

However, Qwest can see one minor exception to the foregoing. To the extent that the Commission actually relied on specific confidential data in reaching its decision, it makes sense that the unredacted *Omaha Order* be available to those analyzing the precedential impact of the *Omaha Order* itself. However, this exception must be very limited. Specifically, Qwest agrees that the unredacted version of the Commission's *Omaha Order* itself can be used, subject to the *Protective Order* and to the Recipient Acknowledgement, in the seven proceedings enumerated in the Motion, but the underlying data cannot be used for any purpose beyond that initially

envisioned. The terms of the *Protective Order* would need to be scrupulously adhered to, and use in any non-enumerated proceeding would continue to be prohibited. Any additional uses would need to be the subject of a separate petition. In other words, the unredacted version of the *Omaha Order* could be used, subject to the continuing requirements of the *Protective Order*, in the seven proceedings enumerated in the Motion. But no further authority or permission can be granted.

In this manner the specific information relied on by the Commission in Omaha and appearing in the *Omaha Order* itself could be used, subject to the *Protective Order*, in these limited proceedings, but this additional permission would be very limited and would not extend beyond either the information actually contained in the *Omaha Order* and the specific proceedings described in the Motion.

Subject to the foregoing exception, the Motion should be denied.

Respectfully submitted,

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October 23, 2006

## CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **PARTIAL OPPOSITION TO MOTION TO MODIFY PROTECTIVE ORDER** to be 1) filed with the FCC via its Electronic Comment Filing System in WC Docket No. 04-223, 2) served via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc., and 3) served via First Class United States mail, postage prepaid on the parties listed on the attached service list.

/s/Richard Grozier

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