

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
)  
Petitions of Qwest Corporation for Forbearance ) WC Docket No. 07-97  
Pursuant to 47 U.S.C. § 160(c) in the Denver, )  
Minneapolis-St. Paul, Phoenix, and Seattle )  
Metropolitan Statistical Areas )

**MOTION TO OBJECT TO THE DISCLOSURE OF QWEST’S CONFIDENTIAL  
INFORMATION TO THE CHIEF EXECUTIVE OFFICER OF INTEGRA TELECOM**

Qwest Corporation (“Qwest”), pursuant to paragraph 3(b), of the *First Protective Order*<sup>1</sup> in the above-captioned proceeding, hereby objects to the disclosure of its confidential documents to Dudley Slater, Chief Executive Officer of Integra Telecom (“Integra”).

In support of its Motion, Qwest states as follows:

The executed acknowledgment of confidentiality (Attachment A to the *First Protective Order*) of Mr. Slater was filed via ECFS by counsel for Integra and served on Qwest on June 15, 2007. Qwest’s counsel received a copy on June 18, 2007. As required by paragraph 3(b) of the *First Protective Order*, Qwest is serving today via hand delivery a copy of its Motion on counsel for Integra, as indicated in the attached Certificate of Service.

Qwest has filed four petitions for forbearance, one in each of four metropolitan statistical areas where it competes head-to-head with Integra: Denver, Minneapolis-St. Paul, Phoenix and Seattle. In the confidential version of each petition, Qwest discloses confidential commercial information such as the number of business and residential customers Qwest serves, Qwest’s

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<sup>1</sup> *In the Matter of Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, *First Protective Order*, DA 07-2292 (rel. June 1, 2007).

market share, the number of competitive local exchange carriers (“CLECs”) with which Qwest competes, the number of CLECs to whom Qwest provides various wholesale services, and the percentage of Qwest’s customers served by central offices that Qwest believes are within the geographic region served by Qwest’s cable competitor.

The *First Protective Order* does not allow disclosure to CEO Slater. The *Order* allows disclosure to only a select group of people, of which CEO Slater is not a member. The group to whom disclosure is allowed consists of outside counsel, and their support staff, such as secretaries and paralegals, outside consultants or experts under supervision of counsel, in-house counsel and their support staff and in-house economists and regulatory analysts under supervision of counsel. Moreover, disclosure to those select persons is only allowed “if disclosure is reasonably necessary for such persons to render professional services in this proceeding.” Because CEO Slater is not in the select group of people to whom disclosure is allowed under the *First Protective Order*, and even if he were, disclosure would not be reasonably necessary for counsel to render professional services in this proceeding, the Commission should deny him access.

Disclosure to CEO Slater would be particularly harmful to Qwest because of the likelihood that CEO Slater would use the information on behalf of Integra in competitive decision-making (*i.e.*, decisions made in light of similar or corresponding information about a competitor). This could include any number of items including Integra’s decisions regarding investments and competition for customers. Many courts have restricted the access of high-level executives, such as CEOs, to competitively sensitive information. *See, e.g., Phillips Petroleum Co. v. Rexene Prods.*, 158 F.R.D. 43 (D. Del. 1994) (barring CEO from access to confidential

documents); *Safe Flight Instr. Corp. v. Sundstrand Data Control Inc.*, 682 F. Supp. 20 (D. Del. 1988) (barring president from access to confidential documents).

Harm to Qwest would occur without regard to whether CEO Slater's use of the information was inadvertent or deliberate. Many courts have acknowledged that once a person sees information there is a high risk of inadvertent use because a person cannot "perform a prefrontal lobotomy on" himself. See *Autotech Techs., Ltd. P'ship v. AutomationDirect.Com, Inc.*, 237 F.R.D. 405, 408 (N.D. Ill. 2006). To tell someone not to think about something is to "assure at least a fleeting mental image." *Id.* at 411.

Barring Integra's CEO from access to Qwest's confidential information will not deny Integra vigorous representation in this proceeding. Integra's Vice President of Government Affairs, inside counsel and outside counsel all have access to Qwest's confidential information. Moreover, attorneys with access to the confidential information are free to provide legal advice to, or consult with, CEO Slater regarding this proceeding, as long as they do not disclose any confidential information to him while providing that advice.

Accordingly, Qwest asks the Commission to grant its objection to disclosure of Qwest's confidential information to CEO Slater.

Respectfully submitted,

QWEST CORPORATION

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June 19, 2007

Its Attorneys

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **MOTION TO OBJECT TO THE DISCLOSURE OF QWEST'S CONFIDENTIAL INFORMATION TO THE CHIEF EXECUTIVE OFFICER OF INTEGRA TELECOM** to be 1) filed with the FCC via its Electronic Comment Filing System in WC Docket No. 07-97; and 2) hand served, via courier, on Patrick J. Donovan, counsel for Integra Telecom.

/s/Richard Grozier

June 19, 2007

***VIA HAND DELIVERY***

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