

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 DIRECTOR – INTERCONNECTION OF NEW EDGE  
NETWORKS AN EARTHLINK COMPANY**

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 Robert Y. McMillin, Director – Interconnection of New Edge Networks an EarthLink Company (“EarthLink”).

In support of its Motion, Qwest states as follows:

The executed acknowledgment of confidentiality (Attachment A to the *First Protective Order*) of Mr. McMillin was filed via ECFS by EarthLink and served on Qwest on July 2, 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 EarthLink, 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 EarthLink: Denver, Minneapolis-St. Paul, Phoenix

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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).

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 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 Mr. McMillin. The *Order* allows disclosure to only a select group of people, of which Mr. McMillin 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 Mr. McMillin 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 Mr. McMillin would be particularly harmful to Qwest because of the likelihood that Mr. McMillin would use the information on behalf of EarthLink in negotiations with Qwest, potentially disadvantaging Qwest as a supplier on interconnection. Harm to Qwest would occur without regard to whether Mr. McMillin'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 Mr. McMillin’s from access to Qwest’s confidential information will not deny EarthLink vigorous representation in this proceeding. EarthLink’s Vice President of External Affairs and four members or employees of its outside law firm 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, Mr. McMillin 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 Mr. McMillin.

Respectfully submitted,

QWEST CORPORATION

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July 6, 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 DIRECTOR – INTERCONNECTION OF NEW EDGE NETWORKS AN EARTHLINK COMPANY** 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 John Nakahata, counsel for EarthLink, Inc.

/s/Richard Grozier

July 6, 2007

***VIA HAND DELIVERY***

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