

Before the
Federal Communications Commission
Washington, DC

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

PARTIAL OPPOSITION OF COX COMMUNICATIONS, INC.

Cox Communications, Inc., on behalf of its affiliate Cox Arizona Telecom LLC (collectively, “Cox”), hereby submits this Partial Opposition to Qwest Corporation’s (“Qwest”) Petition to Modify Protective Order, filed June 29, 2007, in the above-captioned proceeding (the “Petition”).¹

Qwest asks the Commission to eliminate the *Second Protective Order*, which covers highly confidential material.² Qwest claims that the *First Protective Order* provides sufficient protection for highly confidential information by permitting parties to prohibit copying of that information.³ Qwest’s rationale for the requested change is that the *Second Protective Order*’s restrictions on the viewing of highly confidential information by in-house attorneys and

¹ Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c), WC Docket No. 07-97, filed April 27, 2007 (the “Phoenix Petition”). See also Pleading Cycle Established for Comments on Qwest’s Petitions for Forbearance in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas, *Public Notice*, WC Docket No. 07-97, DA 07-2291 (released June 1, 2007).

² See 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, *Second Protective Order*, DA 07-2293 (released June 1, 2007) (the “*Second Protective Order*”).

³ See Petition at 1 (citing 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, *First Protective Order*, WC Docket No. 07-97, DA 07-2292 (released June 1, 2007) (the “*First Protective Order*”).

consultants will require Qwest to hire outside counsel and consultants, which it did not otherwise plan to do for this proceeding.⁴

Cox does not object to permitting in-house counsel to examine highly confidential material. If parties elect to use in-house attorneys exclusively in this proceeding, they should not be required to obtain outside counsel merely for the purposes of reviewing highly confidential material. Parties should not be constrained in their decisions about who should represent them by concerns that their chosen attorneys may not be able to fully participate in the proceeding. No reason exists for the Commission to discourage the use of in-house counsel in this way.

Moreover, permitting disclosure of highly confidential information to such counsel is unlikely to prejudice any party. As Qwest notes, in-house attorneys have ethical obligations and professional responsibilities that transcend their positions as corporate employees.⁵ Because of these heightened responsibilities, parties can be confident that misconduct by in-house attorneys would be subject to professional discipline by the Commission and state bar organizations. Cox is satisfied that the good faith of in-house counsel coupled with their professional responsibilities as attorneys and the threat of sanction for any misconduct will be sufficient to preserve the integrity of highly confidential material disclosed in this proceeding.

On the other hand, Cox strongly objects to disclosing highly confidential information to in-house consultants. Unlike in-house attorneys, consultants have no professional duty to observe standards that might be at odds with the interests of their corporate employers. Qwest claims that the Commission could impose a restriction on disclosure to consultants “in a position to misuse such information.” As a practical matter, however, neither the Commission nor Cox nor any other party would have any way to evaluate which in-house consultants would be in a position to misuse information.⁶ Moreover, in-house consultants are highly mobile both within

⁴ See Petition at 1-2.

⁵ See *id.* at 2.

⁶ *Id.* at 3.

their companies and between companies. A consultant who lack the opportunity to misuse highly confidential information at the time the information is disclosed may have such an opportunity in the future, and the aggrieved party would have no way of tracking or protecting against that risk. While Cox has no doubt that Qwest is pledging in good faith to insulate highly confidential information from inappropriate disclosure or use, the potential dangers of misuse of such information by in-house consultants is too great to risk. Also, smaller companies likely do not employ as many in-house consultants as Qwest, and may therefore lack the internal safeguards necessary to protect highly confidential information from misuse. In the final analysis, the risk of improper use and disclosure of highly confidential information by in-house consultants outweighs the hardship that Qwest will suffer from maintaining the restriction on such disclosure currently included in the *Second Protective Order*.

For these reasons, Cox supports an amendment to the *Second Protective Order* permitting disclosure of highly confidential information to in-house counsel. Cox cannot, however, support elimination of the *Second Protective Order* or any amendment to either of the protective orders that would permit disclosure of highly confidential information to in-house consultants.

Respectfully submitted,

COX COMMUNICATIONS, INC.



J.G. Harrington
Jason E. Rademacher

Its Attorneys

Dow Lohnes PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036
(202) 776-2000

July 31, 2007

CERTIFICATE OF SERVICE

I, Jason E. Rademacher of Dow Lohnes PLLC, do hereby certify that on this 31st day of July, 2007, copies of the foregoing Partial Opposition of Cox Communications, Inc. were served via first-class mail postage prepaid or by email (denoted by *), to the following:

*Jeremy Miller
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

*Best Copy and Printing, Inc.
Portals II
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554

*Tim Stelzig
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

*Janice Myles
Competition Policy Division,
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Brad Mutschelknaus
Genevive Morelli
Kelley Drye & Warren LLP
Washington Harbour
Suite 400
3050 K Street, N.W.
Washington, D.C. 20007

Craig J. Brown
Daphne E. Butler
Suite 950
607 14th St., N.W.
Washington, DC 20005



Jason E. Rademacher