

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

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

In the Matter of
Petition of Qwest Corporation for Forbearance
Pursuant to 47 U.S.C. § 160(c) in the Omaha
Metropolitan Statistical Area

WC Docket No. 04-223

In the Matter of
Petition of ACS of Anchorage, Inc. Pursuant to
Section 10 of the Communications Act of 1934,
as Amended, for Forbearance from Sections
251(c)(3) and 252(d)(1) in the Anchorage Study
Area

WC Docket No. 05-281

In the Matter of
Petition of ACS of Anchorage, Inc. Pursuant to
Section 10 of the Communications Act of 1934,
as Amended (47 U.S.C. § 160(c)), for
Forbearance from Certain Dominant Carrier
Regulation of Its Interstate Access Services, and
for Forbearance from Title II Regulation of Its
Broadband Services, in the Anchorage, Alaska,
Incumbent Local Exchange Carrier Study Area

WC Docket No. 06-109

In the Matter of
Petitions of the Verizon Telephone Companies
for Forbearance Pursuant to 47 U.S.C. § 160(c)
in the Boston, New York, Philadelphia,
Pittsburgh, Providence and Virginia Beach
Metropolitan Statistical Areas

WC Docket No. 06-172

EMERGENCY MOTION TO MODIFY PROTECTIVE ORDERS

Qwest Corporation (“Qwest”) hereby moves the Commission to modify the protective orders issued in WC Docket Nos. 04-223, 05-281, 06-109, and 06-172 to permit Qwest to access and use the confidential and highly confidential information included in the Commission’s unredacted orders in those dockets, for purposes of Qwest’s D.C. Circuit challenge to the *Qwest 4-MSA Forbearance Order*.¹ Specifically, Qwest requests permission: (i) for its outside appellate and in-house counsel to obtain and review copies of the complete, unredacted versions of the *Qwest Omaha Forbearance Order*², the *ACS Anchorage UNE Forbearance Order*³, and the *ACS Anchorage Dominance Forbearance Order*⁴; (ii) for its outside appellate counsel to obtain and review copies of the complete, unredacted version of the *Verizon 6-MSA Forbearance*

¹ Memorandum Opinion and Order, *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, FCC 08-174 (rel. July 25, 2008) (“*Qwest 4-MSA Forbearance Order*”), petition for review pending, No. 08-1257 (D.C. Cir. filed July 29, 2008).

² Memorandum Opinion and Order, *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-233, 20 FCC Rcd 19415 (2005) (“*Qwest Omaha Forbearance Order*”), petitions for review dismissed in part and denied in part, *Qwest Corp. v. FCC*, 482 F.3d 471 (D.C. Cir. 2007).

³ Memorandum Opinion and Order, *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, WC Docket No. 05-281, 22 FCC Rcd 1958 (2007) (“*ACS Anchorage UNE Forbearance Order*”), petitions for review dismissed, *Covad Communications Group, Inc. v. FCC*, Nos. 07-70898, 07-71076, 07-71222 (9th Cir. June 14, 2007).

⁴ Memorandum Opinion and Order, *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, 22 FCC Rcd 16304 (2007) (“*ACS Anchorage Dominance Forbearance Order*”), petitions for reconsideration pending.

*Order*⁵; (iii) to provide the D.C. Circuit with copies of those four unredacted orders; and (iv) to refer to, and quote from, those unredacted orders in Qwest's D.C. Circuit filings. On February 8, 2008⁶ and August 4, 2008,⁷ the Commission granted materially the same relief to Verizon for purposes of its appeal of the *Verizon 6-MSA Forbearance Order*. Because Qwest has sought expedited review by the D.C. Circuit, it respectfully requests that the Commission act on this motion by September 3, 2008.

1. On July 29, 2008, Qwest petitioned for review of the *Qwest 4-MSA Forbearance Order* in the United States Court of Appeals for the District of Columbia Circuit.⁸ In that appeal, Qwest plans to argue that the Commission's order is arbitrary, capricious, and contrary to law because it unjustifiably diverges from the Commission's prior forbearance orders, including the *Qwest Omaha Forbearance Order*, the *ACS Anchorage UNE Forbearance Order*, the *ACS Anchorage Dominance Forbearance Order*, and the *Verizon 6-MSA Forbearance Order*. In order to make this and other arguments effectively, Qwest will require access to unredacted versions of those four orders and will need to cite in its briefs the actual data and numerical thresholds on which the Commission relied in those orders. However, protective orders entered

⁵ Memorandum Opinion and Order, *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, 22 FCC Rcd 21293 (2007) ("*Verizon 6-MSA Forbearance Order*"), petition for review pending, No. 08-1012 (D.C. Cir. filed Jan. 14, 2008).

⁶ Memorandum Opinion and Modified Protective Orders, *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area, et al.*, 23 FCC Rcd 1716 (2008) ("*First Modification Order*").

⁷ Memorandum Opinion and Modified Protective Orders, *Petition 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, DA 08-1841 (rel. Aug. 4, 2008).

⁸ Petition for Review, filed by Qwest Corporation in D.C. Circuit Docket No. 08-1257 (July 29, 2008).

by the Commission in each of those proceedings preclude Qwest from accessing and using such information for purposes of its appeal. Thus, failure to grant the requested relief would unreasonably prejudice Qwest's ability to argue that the *Qwest 4-MSA Forbearance Order* represents an arbitrary and capricious departure from the Commission's prior orders. See, e.g., *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard at a meaningful time and *in a meaningful manner*.") (internal quotation marks omitted) (emphasis added).

2. The Commission already has granted materially the same relief to Verizon for purposes of its appeal of the *Verizon 6-MSA Forbearance Order*.⁹ In doing so, the Commission recognized that "[t]he *Verizon 6 MSA Forbearance Order* relies in part on Commission precedent, including the *Qwest Omaha Forbearance Order* and both *ACS Forbearance Orders*. All three of these orders are based, in part, on factual findings the Commission made in reliance on confidential information parties had submitted pursuant to the applicable protective order in each proceeding."¹⁰ The same is true of the *Qwest 4-MSA Forbearance Order*, which in addition relies on the *Verizon 6-MSA Forbearance Order*. For the same reasons the Commission cited in

⁹ The Commission modified the protective orders in the *Qwest Omaha Forbearance* proceeding and both *ACS Anchorage Forbearance* proceedings (WC Docket Nos. 04-223, 05-281, and 06-109) to permit Verizon to access and use in its appeal confidential information from the orders issued in those proceedings. In addition, the Commission modified the two protective orders in the *Qwest 4-MSA Forbearance* proceeding (WC Docket No. 07-97) to allow Verizon to use in its appeal confidential and highly confidential information from the *Qwest 4-MSA Forbearance Order*. Of course, the protective orders in the *Verizon 6-MSA Forbearance* proceeding (WC Docket No. 06-172) did not require modification because they already permitted Verizon to use non-public information from that docket in its appeal. Here, the protective orders in the *Qwest 4-MSA Forbearance* proceeding permit Qwest to use information from *that* docket in its appeal, but Qwest cannot use confidential or highly confidential information from the *Verizon 6-MSA Forbearance Order* without a modification of the two protective orders in that proceeding.

¹⁰ *First Modification Order*, 23 FCC Rcd at 1717 ¶ 3.

granting Verizon's motions, it is in the public interest to modify the protective orders for purposes of Qwest's appeal.

3. Qwest agrees to the same conditions set out in the Commission's orders granting Verizon's motions. Specifically, Qwest's outside and in-house counsel will sign the relevant protective orders, as modified to permit the use of non-public information for the limited purpose of Qwest's D.C. Circuit appeal.¹¹ Qwest also will file under seal the Commission's orders and any briefs or other submissions containing confidential or highly confidential information, and Qwest will not serve the unredacted version of such documents on any party that has not signed the relevant protective orders as modified by the Commission. Finally, Qwest seeks this relief solely to gain access to and make use of information used in the Commission's orders as to which modification of the protective orders is requested.

4. To facilitate the Commission's review of this motion, counsel for Qwest have sought consent from those parties whose confidential or highly confidential information appears in the four orders discussed above. Specifically, Qwest has sought consent from counsel for: (i) Cox Communications, Inc. with respect to the *Qwest Omaha Forbearance Order*; (ii) ACS of Anchorage, Inc., General Communications, Inc., and AT&T with respect to the *ACS Anchorage UNE Forbearance Order* and the *ACS Anchorage Dominance Forbearance Order*; and (iii) Verizon, Time Warner Cable, Inc., RCN Telecom Services, Inc., Cox Communications, Inc., Charter Communications, Inc., and Comcast Cable Communications, LLC with respect to the *Verizon 6-MSA Forbearance Order*. Thus far, counsel for Cox Communications, Inc., General Communications, Inc., AT&T, Verizon, and Time Warner Cable, Inc. have consented to Qwest's

¹¹ Counsel for any other party that wishes to access or use the confidential information from the Commission's orders should also be required to sign onto and abide by the terms of the protective orders as modified by the Commission.

proposed modification of the relevant protective orders, and no party has indicated that it will refuse to grant such consent. Qwest will continue to work with the above-named parties to seek consent for this motion, and Qwest will inform the Commission of any further information it receives from those parties' counsel. Nonetheless, even if one of these parties were to withhold its consent, this would not serve as justification for the Commission to deny Qwest's motion. Rather, Qwest has a due process right to challenge the *Qwest 4-MSA Forbearance Order*, and Qwest must have access to the information on which that order is based to exercise its right. Moreover, it would be unjust and unreasonable to deny Qwest the same relief this Commission recently granted to Verizon in essentially indistinguishable circumstances.

4. Although this motion seeks modification only of protective orders in the four proceedings discussed above, Qwest also is filing this motion in the docket for the *Qwest 4-MSA Forbearance* proceeding (WC Docket No. 07-97) in order to give any party that might participate in the D.C. Circuit appeal notice of Qwest's intent to seek modification of the protective orders.

5. Qwest has filed a motion in the D.C. Circuit to expedite that court's review of the *Qwest 4-MSA Forbearance Order*. If the court grants Qwest's motion (and such an order could issue at any time), Qwest will have only fourteen days to draft and file its opening brief. Moreover, under the approach taken by the Commission's prior orders, Qwest will be required to offer other parties five days' advance notice before disclosing confidential or highly confidential information in the D.C. Circuit proceeding. Accordingly, Qwest files this motion to modify the protective orders on an emergency basis, and seeks expedited relief from the Commission. Qwest respectfully requests that the Commission issue a ruling on this motion on or before

September 3, 2008. If the Commission does not grant the motion by that date, Qwest will deem it denied and seek comparable relief from the D.C. Circuit.

Respectfully submitted,

A handwritten signature in cursive script that reads "Heather Zachary". The signature is written in black ink and is positioned above a solid horizontal line.

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August 27, 2008

CERTIFICATE OF SERVICE

I, Heather M. Zachary, do hereby certify that on this 27th day of August, 2008, I caused true and correct copies of the foregoing Emergency Motion to Modify Protective Orders to be delivered by first-class postage paid mail to the following:

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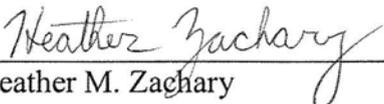
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