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EX PARTE

REDACTED – FOR PUBLIC INSPECTION

VIA COURIER

January 15, 2010

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers,*
WC Docket No. 05-25

Dear Ms. Dortch:

On October 28, 2009, Craig Brown, Robert McKenna, Carolyn Hammack and Melissa Newman, all of Qwest, and Jon Nuechterlein, representing Qwest, met with Paul De Sa, Nick Alexander, Deena Shetler, Albert Lewis, Donald Stockdale, Margaret Dailey, Richard Kwiatkowski and Steven Rosenberg to discuss the above-captioned proceeding.¹ The basis of the discussion was a series of slides entitled “Special Access.” During the meeting FCC representatives posed multiple follow-up questions to which Qwest is responding in this written *ex parte* presentation. The attached presentation includes six questions and Qwest’s responses.

Qwest seeks confidential treatment of its submission pursuant to the June 8, 2005 Order and Protective Order in WC Docket No. 05-25, 20 FCC Rcd 10160 (2005) (or Protective Order). Qwest also notes that notwithstanding the Protective Order, there is a separate statutory basis for not making this confidential information available for public inspection. 47 C.F.R. §§ 0.457(d), 0.459. Thus, Qwest also seeks confidential treatment of its submission in WC Docket No. 05-25 pursuant to 47 C.F.R. §§ 0.457(d) and 0.459, for which it provides justification in the attached appendix. Qwest considers the information in its *ex parte* to be confidential trade secret, commercial information that is “not routinely available for public inspection.” 47 C.F.R. § 0.457(d).

¹ See Qwest *ex parte*, filed herein on Oct. 28, 2009.

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It was not feasible to physically separate the confidential information (in the response to the first question posed by FCC representatives) from the non-confidential information, per 47 C.F.R. § 0.459(a), so Qwest is filing non-redacted and redacted versions. Qwest has marked each page of its submission (non-redacted version) as follows: **“CONFIDENTIAL INFORMATION (COPYING PROHIBITED) – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 05-25 before the Federal Communications Commission”**. Each page of the redacted version of its submission is marked **“REDACTED – FOR PUBLIC INSPECTION”**. This cover letter contains no confidential information and is included (with the same text except for the markings) with both the non-redacted and redacted versions of the submission.

Qwest considers information contained in its *ex parte* (in the response to the first question posed by FCC representatives) to be confidential, and proprietary as “trade secrets” and/or “commercial information” or is otherwise confidential under Section 0.457(d) and the June 8, 2005 Protective Order. This Protective Order defines “Confidential Information” (at paragraph 1 of Appendix A attached thereto) as “information contained in Stamped Confidential Documents or derived therefrom that is not otherwise available from publicly available sources[.]” Although Qwest has marked the information in question in its *ex parte* as confidential (the only option available to it pursuant to the terms of the June 8, 2005 Protective Order), Qwest actually considers this information to be highly confidential because it is relevant to Qwest’s ongoing business operations and includes specific financial information that relates to the company’s 2008 revenues from the provision of special access services. Not withholding from public inspection this type of highly confidential information would risk revealing company-sensitive proprietary commercial and financial information. Given the extreme sensitivity of this information, Qwest is designating it “Copying Prohibited” pursuant to paragraph 6 of the Protective Order.

For the non-redacted version of the submission, Qwest is submitting via courier one copy with the Office of the Secretary, along with an additional copy to be stamped and returned to the courier. As to the redacted version of the submission, wherein the confidential information has been omitted, Qwest is filing it via the FCC’s Electronic Comment Filing System. Also, pursuant to paragraphs 3 of the Order and 8.d. of the Protective Order, two copies of the non-redacted version (with confidential information) are to be delivered to Margaret Dailey (Room 5-A221) or Pamela Arluk (Room 5-A266), Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission at 445 12th Street, S.W., Washington, DC 20554. Qwest is serving a copy of the redacted version of its submission via e-mail on the FCC representatives noted below, but not the non-redacted version in light of paragraph 9.d. of the June 5, 2005 Protective Order in WC Docket No. 05-25.

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This *ex parte* is being filed pursuant to 47 C.F.R. § 1.1206(b). Please contact me at 202.429.3120 if you have any questions.

/s/ Melissa E. Newman

Melissa E. Newman
Vice President-Federal Relations

Attachments

Two copies of the non-redacted version to be delivered to:
Margaret Dailey or Pamela Arluk

Copy (redacted version) via email to:
Paul De Sa ([paul.de sa@fcc.gov](mailto:paul.de_sa@fcc.gov))
Nick Alexander (nicholas.alexander@fcc.gov)
Deena Shetler (deena.shetler@fcc.gov)
Al Lewis (albert.lewis@fcc.gov)
Don Stockdale (donald.stockdale@fcc.gov)
Margaret Dailey (margaret.dailey@fcc.gov)
Richard Kwiatkowski (richard.kwiatkowski@fcc.gov)
Steven Rosenberg (steven.rosenberg@fcc.gov)

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APPENDIX

Confidentiality Request and Justification

Qwest requests confidential treatment of information included with one of the responses associated with its January 15, 2010 *ex parte*, pursuant to the Order and Protective Order (or Protective Order) in WC Docket No. 05-25, released on June 8, 2005, as well as pursuant to 47 C.F.R. §§ 0.457(d), 0.459.

47 C.F.R. § 0.457(d)

Qwest considers the information contained in its *ex parte* (in the response to the first question posed by FCC representatives) to be confidential, and proprietary as “trade secrets” and/or “commercial information” or is otherwise confidential under Section 0.457(d) and the Protective Order. This Protective Order defines “Confidential Information” (at paragraph 1 of Appendix A attached thereto) as “information contained in Stamped Confidential Documents or derived therefrom that is not otherwise available from publicly available sources[.]” Although Qwest has marked the information in question in its *ex parte* as confidential (the only option available to it pursuant to the terms of the Protective Order), Qwest actually considers this information to be highly confidential because it is relevant to Qwest’s ongoing business operations and includes specific financial information that relates to the company’s 2008 revenues from the provision of special access services. Not withholding from public inspection this type of highly confidential information would risk revealing company-sensitive proprietary commercial and financial information. Given the extreme sensitivity of this information, Qwest is designating it “Copying Prohibited” pursuant to paragraph 6 of the Protective Order.

Qwest also seeks non-disclosure to the public of the information it has designated confidential but considers highly confidential under Section 0.457(d). This information is described in the preceding paragraph and involves Qwest’s ongoing business operations, including specific financial information that relates to the company’s 2008 revenues from the provision of special access services. Disclosure of this information to the public that Qwest considers highly confidential would risk revealing company-sensitive proprietary commercial and financial information. Therefore, in the normal course of Commission practice this information should be considered “Records not routinely available for public inspection.”

47 C.F.R. § 0.459

Specific information included with Qwest’s *ex parte* is also subject to protection under 47 C.F.R. § 0.459, as demonstrated below.

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Information for which confidential treatment is sought

Qwest requests that its *ex parte* containing confidential information be withheld from public disclosure under Exemption 4 of the Freedom of Information Act. The submission contains sensitive trade secrets, commercial/financial or other information which Qwest maintains as proprietary and/or confidential and is not normally made available to the public. Release of the information could have a substantial negative competitive impact on Qwest. Each page of the non-redacted version of its *ex parte* is marked with the following legend: **“CONFIDENTIAL INFORMATION (COPYING PROHIBITED) – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 05-25 before the Federal Communications Commission”**.

Commission proceeding in which the information was submitted

The filing is being submitted in *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25.

Degree to which the information in question is commercial or financial, or contains a trade secret or is privileged

The information designated as confidential, and which Qwest considers highly confidential, contains sensitive trade secrets, commercial/financial or other information which Qwest maintains as proprietary and withholds from public inspection. Release of the information could have a substantial negative competitive impact on Qwest.

Degree to which the information concerns a service that is subject to competition; and manner in which disclosure of the information could result in substantial competitive harm

The type of trade secrets or commercial/financial information characterized as confidential, and which Qwest actually considers highly confidential, is relevant to Qwest’s ongoing business operations and includes specific financial information that relates to the company’s 2008 revenues from the provision of special access services. This sensitive or proprietary internal Qwest confidential commercial/financial information contained in the *ex parte* would generally not be subject to routine public inspection under the Commission’s rules (47 C.F.R. § 0.457(d)), which demonstrates that the Commission already anticipates that the release of this kind of information likely would produce competitive harm. Qwest confirms that release of this information would cause it competitive harm by allowing competitors to become aware of sensitive trade secrets, commercial/financial or other confidential information regarding the operation of Qwest’s business as it relates to the provision of special access services.

Measures taken by Qwest to prevent unauthorized disclosure; and availability of the information to the public and extent of any previous disclosure of the information to third parties

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Qwest has treated and treats the information disclosed in this submission as confidential and has protected it from public disclosure to parties outside of the company.

Justification of the period during which Qwest asserts that the material should not be available for public disclosure

Qwest cannot determine at this time any date on which this information should not be considered confidential (or highly confidential), or would become stale for purposes of the current action, except that the information would be handled in conformity with general Qwest records retention policies, absent any continuing legal hold on the data.

Other information that Qwest believes may be useful in assessing whether its request for confidentiality should be granted

Under applicable Commission and court rulings, the information in question should be withheld from public disclosure. Exemption 4 of the Freedom of Information Act shields information that is (1) trade secrets or commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The information in question satisfies this test.

**QWEST'S ADDITIONAL RESPONSE FROM 10/28/09 FCC/QWEST
SPECIAL ACCESS RATES FOR PRICE CAP LEC, WC 05-25 PRESENTATION**

- 1. What is the amount of revenue that Qwest receives when it provides special access services to its affiliate Qwest Communications Company (QCC)?**

In 2008, Qwest received **BEGIN CONFIDENTIAL***[REDACTED]***END CONFIDENTIAL** in revenue from QCC for special access services.

- 2. Is it true that rural cable companies have sparse networks without much excess capacity?**

Cable companies generally do not report telephone and internet customer subscribership data separate from their integrated cable TV, telecommunications and internet service offerings; therefore, it is difficult to gauge the breadth and robustness of their telecommunications network. Qwest does know that it has lost both small and large business customers from state and local governments and school districts at a significant rate to the cable networks in both Colorado and Wyoming.

Following are two examples of cable companies in Qwest's 14-state region that have broad service territories with large numbers of customers:

- Black Hills Fiber was purchased by PrairieWave Communications in July 2005, who was then, in turn purchased by Knology in January 2007. The merger announcement with Knology stated that the combined company will be among the 20 largest cable companies in the nation. PrairieWave had more than 56,000 residential and 7,100 business customers in the Sioux Falls and Rapid City areas.
- Article by Metaswitch -- May 2008 -- Bresnan is the nation's thirteenth largest Multi System Operator (MSO) serving over 320,000 customers in Colorado, Montana, Wyoming and Utah, including nearly 7,000 data and telephone business customers.
- Bresnan uses Net2Phone Inc.'s hosted telephone platform and Cedar Point Communications SAFARI C3 media-switching system to deliver their VoIP service.

- 3. Explain Qwest's statement that Qwest FCC No. 1 tariff contains a single pricing structure through out Qwest's service territory.**

What Qwest meant by a single pricing structure is that Qwest does not differentiate its special access rates by state in FCC No. 1 in Section 7 (Price Cap) and Section 17 (Price Flex). Other companies that have merged may have multiple price lists for each of their

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pre-merger territories. Qwest's tariffed rates are applicable to the entire Qwest service territory and do not differ by state.

4. Clarify how Qwest's contract tariff discounts work and their application to all MSA's.

Qwest applies the tariffed rates and any applicable discounts on a per circuit basis. For example, a circuit may originate in a price flex wire center, traverse a price cap wire center and terminate in a wire center that has neither a price cap nor a price flex designation. Each leg of the circuit would be billed at the appropriate tariffed rates and the tariff discounts would be applied to those rates.

5. What additional discounts are offered on a Regional Commitment Plan (RCP) from the tariffed discount?

Qwest's RCP offers carriers additional flexibility. Under the RCP, it is possible for a carrier customer to participate in two discount plans. As an example, a carrier customer can retain a portion of their circuits in an RCP plan, while they transition a portion of their circuits to an Ethernet term plan allowing them to upgrade to the next generation technology without any penalties.

6. Are wireless companies expected to pay any special construction costs when they purchase Ethernet backhaul from Qwest?

Under the Fiber-to-the-Cell offering, to the extent that fiber must be constructed, Qwest provides customers the option of either paying the special construction costs up front, or including those costs as a part of the monthly recurring cost and, in that case, the costs are recovered over the term of the contract.