

**Qwest**  
421 Southwest Oak Street  
Suite 810  
Portland, Oregon 97204  
Telephone: 503-242-5420  
Facsimile: 503-242-8589  
e-mail: carla.butler@qwest.com

**Carla M. Butler**  
Sr. Paralegal

August 17, 2005

Frances Nichols Anglin  
Oregon Public Utility Commission  
550 Capitol St., NE  
Suite 215  
Salem, OR 97301

Re: UX-29

Dear Ms. Nichols Anglin:

Enclosed for filing please find an original and (5) copies of Qwest Corporation's Response to Staff's Objections to Qwest's Request for Facilities-Based CLEC Access Line Information, along with a certificate of service.

If you have any question, please do not hesitate to give me a call.

Sincerely,



Carla M. Butler

CMB:

Enclosure

L:\Oregon\Executive\Duarte\UX 29 (Busn. Dereg)\PUC Transmittal Ltr 8-17-05.doc

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DOCKET UX 29

In the Matter of the Petition of Qwest  
Corporation to Exempt from Regulation  
Qwest's Business Basic Exchange Services

QWEST'S RESPONSE TO STAFF'S  
OBJECTIONS TO QWEST'S REQUEST  
FOR FACILITIES-BASED CLEC ACCESS  
LINE INFORMATION

Petitioner Qwest Corporation ("Qwest") hereby responds to the objections to Qwest's August 5, 2005 request for facilities-based CLEC access line information that Commission Staff ("Staff") filed on August 12, 2005 in this proceeding. For the reasons set forth below, Qwest respectfully submits that the Commission should deny Staff's objections, and thus disclose to Qwest the facilities-based CLEC access line information that Qwest has requested.<sup>1</sup>

ARGUMENT

I. The parties were well aware of Qwest's desire to possibly obtain certain CLEC data

Preliminarily, Qwest does not dispute that Staff and some CLECs expressed concerns about the sensitive nature of much of the information that would be sought in the CLEC Request for Production, or that Staff decided it would aggregate most of the information that the CLECs provided in order to mask CLEC-specific information, including not reporting total line data if there were less than four CLECs at a certain wire center or rate center. However, it was very clear to all parties involved that any party could request certain information if deemed necessary,

---

<sup>1</sup> Qwest notes that Staff styled its objections as a "response" to Qwest's request for the facilities-based CLEC access line information at issue. Qwest believes that the filing would be more properly construed as objections to Qwest's request, rather than as a response. Be that as it may, however, Qwest's counsel understands that Staff's counsel had indicated at the August 11, 2005 settlement conference that Qwest would be given an opportunity to respond to the filing that Staff indicated it would make as a result of Qwest's request. (Qwest's counsel was on vacation and thus was not at the conference, but such understanding is based on discussions with Qwest representatives in attendance at the conference.) Accordingly, whether Staff's filing is deemed an objection or a response, or whether Qwest's response is deemed a response or a reply, is largely irrelevant, as Qwest understands that Staff will agree that Qwest can respond to Staff's filing.

subject, of course, to certain protections (such as notice to the affected CLEC, opportunities for CLECs to object, and ultimately, a final determination by the Commission or the Administrative Law Judge). Indeed, this was the process that was set forth in the CLEC survey in the TRO proceedings (dockets UM 1100 and UM 1110) a couple of years ago, and this was also the basis for the parties' agreement to use the same process here.

Specifically, on March 2, 2005, Qwest sent an email to all parties stating as follows:

Attached is Qwest's draft of the Commission ruling for the bench requests for the CLEC survey that we propose to send to the ALJ when we submit the draft of the CLEC survey. This draft tracks closely to the Commission ruling for the bench requests in docket UM 1100 (9-month TRO proceeding) (attached below), with modifications for this proceeding, but it also takes into account [Staff's counsel's] request that CLECs have an opportunity to object to disclosure of their confidential or highly-confidential information. (In UM 1100, the ALJ advised the CLECs that the information would be disclosed to the parties. Here, this draft allows the CLECs to object to disclosure and to have the PUC or ALJ rule on the objection, and if there is a disclosure, it would only be subject to the modified protective order.) (Emphasis added.)

As you can see, the actual CLEC survey would be an attachment to the bench requests. The same holds true for the list of CLECs and the modified protective order (which we submitted to the ALJ today). This is how the ALJ handled the bench requests in UM 1100.

Please let us know if you have any objections to this draft. Thanks, and we look forward to hearing from you. (See Attachment A.)

In addition, the draft bench request (CLEC Request for Production) that was attached to the March 2, 2005 email (Attachment A) stated as follows:

If a carrier takes the position that certain information in Appendix A should not be released to the UX 29 parties under the Modified Protective Order, then the carrier must identify the information request, or part thereof, to which it objects. For each such objection, the carrier shall set forth all reasons supporting its objection. (Emphasis added.)<sup>2</sup>

Once designated, the carrier's confidential or highly-confidential information will not be released to the parties unless a party requests such information. In the event any party

---

<sup>2</sup> Since Qwest has not reviewed the responses at issue, Qwest does not know whether any of these CLECs set forth all reasons supporting its objections, or whether these CLECs merely objected, or merely designated their information confidential or highly confidential, without any explanation or reason.

requests any confidential or highly-confidential information of a CLEC responding to this bench request, the Commission or its Staff will promptly contact any affected CLEC and allow such CLEC to raise any objections to such disclosure within seven (7) days of such notice. Any determination of disclosure of confidential or highly-confidential CLEC information which is objected to by the CLEC providing such information will be made solely by the Commission or the Administrative Law Judge. If the Commission or the Administrative Law Judge determines to disclose any confidential or highly-confidential information to any party in the docket, any such disclosure would be subject to the protections afforded by the Modified Protective Order. (Emphasis added.)

Although the process was very clear based both on the bench request draft and the email that accompanied it, no party objected to this process. More importantly, all parties were well aware (or on notice) that Qwest desired some type of process to possibly obtain certain CLEC data (subject, of course, to all of the protections built into that process, including the notice and objection process used in the TRO proceedings).

Thereafter, on March 9, 2005, Qwest sent a draft of the bench request to Administrative Law Judge Allan Arlow, with a request that Judge Arlow adopt that draft, as follows:

As we discussed this afternoon, attached is the draft bench request that [Qwest's counsel] mentioned during the prehearing conference today (in Word format) and that [Qwest counsel] mentioned in and attached with [counsel's] March 7, 2005 letter (along with the proposed CLEC survey and the list of CLECs). As you can see, [Qwest] sent it to the parties a week ago on March 2, 2005, and no party objected, so hopefully you will find this draft to be appropriate. The only thing that is missing is the order number for the modified protective order (since Your Honor has not yet issued that order) and the number of survey attachments (since we still need to provide you with the final versions of the CLEC survey (with and without the VoIP question and attachment) as we discussed). (See Attachment B (emphasis added).)

The two paragraphs cited above were included in the draft bench request that Qwest attached to this March 9, 2005 email to Judge Arlow.

A week later, on March 16, 2005, Judge Arlow issued the bench request as a "CLEC Request for Production" to all of the CLECs listed in one of the attachments. Again, the two

paragraphs cited above were included in the bench request (CLEC Request for Production) that Judge Arlow issued.

Thus, while technically Staff is correct that “when the Commission issued the CLEC Request for Production, it prefaced the request with an order specifying the conditions under which disaggregated information the CLECs provided in response to the request would be disclosed” (Staff Objections, at pp. 1-2), Qwest does not agree with any implication that this preface was the first time that Staff or the intervenor parties were aware of these conditions. Rather, the record is very clear that all parties had a couple of opportunities (on March 2 and March 9) to review the language of the draft bench request and to object to it if they deemed it appropriate.

Nor does Qwest agree with Staff’s belief that it was the “general understanding of the parties that the only instance in which a party might request to see the disaggregated data would be to test the integrity of the aggregation.” (Staff Objections, at p. 1 (emphasis added).) The documentation discussed above belies that understanding.

Clearly, all parties were on aware (or on notice) that Qwest desired a process to possibly seek certain information, under certain circumstances, which was a process that the Commission, its Staff and, indeed, many of the intervenor CLECs, were comfortable with from the TRO proceedings a couple of years ago. Accordingly, Qwest respectfully submits the Commission should reject Staff’s objections to Qwest’s request for this facilities-based CLEC access line data.

II. The information Qwest requests would be useful to Qwest and not harm any CLEC

Staff’s second argument is that disclosure of this information “would be of little value to Qwest” and “would harm the CLECs.” (Staff Objections, p. 2.) This argument cannot be taken very seriously.

First, the fact that not all CLECs responded, while lamentable, does not mean that Qwest would not find the very narrowly-tailored information it seeks to be useful. Qwest can still find much use in the data requested because it is narrowly tailored to only facilities-based access line information, which is the only piece of access line data that Qwest is unable to obtain.

Second, in the one instance in which a CLEC who Qwest knows is a major facilities-based provider did not respond (CLEC K), Qwest has requested that the Commission subpoena that data from the CLEC. Yet, inexplicably, Staff opposes that request as well. Staff seems to be saying, on the one hand, that because not all CLECs responded, Qwest should not be able to obtain any of this limited information, but on the other hand, that Qwest also should not be allowed to obtain information from the one major facilities-based CLEC who did not respond. The Commission should reject this “heads I win, tails you lose” argument.

Nor is it appropriate for Staff to say that Qwest would not find the very narrowly-tailored information it seeks to be useful “because of the manner in which staff aggregated the data.” (Staff Objections, p. 2.) Staff seems to be saying that because it decided to mask the data (if there were fewer than four CLECs in a wire center or rate center), Qwest’s reviewing of the underlying facilities-based access line data would not be useful. That argument is nonsensical, and it implies that Qwest should be harmed or precluded from relevant and useful information simply because Staff determined to mask the information as it did.

Likewise, Staff’s argument that the information about the 10 facilities-based CLECs “would be incomplete as to be of limited value” is without merit. This is especially so because there were only 10 CLECs who reported any facilities-based access line information, and that is precisely the information that Qwest seeks (with the exception of one other major CLEC (CLEC K) who Qwest knows is a major facilities-based provider, and for which it requests the

Commission subpoena the information).<sup>3</sup> Notably, Qwest is not seeking information about the vast majority of the CLECs who may have reported other access line information (such as UNE loops, or QPP or resale lines), but not facilities-based access line information. Rather, Qwest has narrowed its request to only 10 (actually nine) CLECs who ultimately designated the information confidential or highly confidential (in addition to one CLEC (CLEC I) who did not designate the information confidential, and one (CLEC K) who did not respond at all).

Further, Staff also seems to be saying that it is “not fair” to the responding CLECs to disclose their information because other CLECs did not respond. (See Staff Objections, p. 3.) Nevertheless, although Qwest requested that the Commission issue a subpoena for one recalcitrant CLEC (CLEC K) who did not respond, Staff has objected to that request as well.

Further still, Staff’s argument about “CLEC harm” or “trade secret information,” and its reliance of the Citizens’ Utilities Board case, cannot be taken seriously.<sup>4</sup> This is especially so because there is not only a protective order in place here, but there is a modified protective order for confidential and highly confidential information that has superseded the standard protective order.

---

<sup>3</sup> Obviously, if there is a minor facilities-based CLEC who did not respond, that only hurts Qwest. However, Qwest is willing to not pursue such possible minor CLECs since it believes it is aware of all of the major facilities-based CLECs, and all but CLEC K have responded. Moreover, given that Qwest does not believe there are any other major facilities-based providers (other than CLEC K) who have not responded, it is difficult to accept Staff’s argument that obtaining this information “will not be probative of the state of competition in Oregon without an understanding of the total number of facilities-based providers and their locations.” (See Staff Objections, p. 3.) For that reason, there is also no merit to the argument about “the fact that so few CLECs responded” (since there is only one major facilities-based provider who has not responded, and Qwest seeks that information as well). Finally, contrary to Staff’s claims, obtaining the information on a wire center or rate center level would provide Qwest with the information about “locations.”

<sup>4</sup> Indeed, the court in Citizens’ Utilities Board was clear that “[t]he party seeking protection [from disclosure of confidential information] must show that the information is a trade secret or confidential commercial information.” 128 Ore. App. at 658, 877 P.2d at 121-122. Here, there has been no such showing, and, in fact, Staff cannot make such showing because it is not the party seeking protection of its information. Moreover, “the party [seeking protection; i.e., the CLEC] must also establish good cause for the protective order [barring disclosure] by demonstrating that disclose ‘will work a clearly defined and serious injury.’” *Id.*, p. 122. (Citation omitted.) “Broad allegations of harm unsubstantiated by specific examples or articulated reasoning do not satisfy the good cause requirement.” *Id.* Again, there have been no such showings, and Staff does not have the standing to raise it.

In fact, Qwest notes that at the July 18, 2005 workshop to discuss Staff's preliminary survey results, Staff initially advised Qwest that only three of the 10 CLECs who reported non-zero data for facilities-based access lines had designated their data as confidential or highly confidential. However, after one of the CLECs at the workshop expressed a concern that perhaps some of the responding CLECs had not really understood how to designate their data, Staff agreed to re-contact the CLECs and inquire again whether or not they really had intended to designate such data as confidential or highly confidential. The end result was that, while only three CLECs had originally designated their facilities-based access line data as confidential or highly confidential (despite the clear instructions in the March 16, 2005 Ruling), now nine of the 10 CLECs have designated their information as confidential or highly confidential.<sup>5</sup> Nevertheless, given the protections set forth in the CLEC Request for Production (notice to the CLECs, an opportunity to object, and ultimate determination by the Commission or ALJ), the fact that most of these 10 CLECs did not even designate the information as confidential or highly confidential when they initially responded, and the fact that there are very strict restrictions in the modified protective order, it is difficult to conclude that these CLECs would be "harmed" by disclosure of this data subject to the protective order.

Finally, Staff's suggestions that Qwest witnesses' or its counsel's review of such information could be used to Qwest's advantage "in negotiating contracts with the CLECs" and "also, in competing with the CLECs for retail customers" (Staff Objections, p. 4), are insulting

---

<sup>5</sup> Qwest does not contend that such Staff contacts to these CLECs were in any way inappropriate, or that the CLECs who switched their designations to confidential or highly confidential should not be allowed to do so. However, the fact that seven of the 10 did not originally designate their data as confidential and highly confidential, until prompted by Staff, is probative that, at a very minimum, the CLECs would not be harmed if the information is disclosed, after notice and opportunity to be heard pursuant to the protections set forth in the CLEC Request for Production, subject to the modified protective order.



and utterly without any basis or evidence. More importantly, these suggestions completely contradict the very reasons why the Commission issues protective orders in the first place. These protective orders, and especially the modified protective order that is now in effect, are not only common in Commission proceedings, but they are very clear that any confidential and highly confidential information can only be used for extremely limited purposes, and only by an extremely limited number of people who have limited responsibilities (such as witnesses or counsel). The Commission should completely disregard these arguments.

III. The CLEC Request for Production and modified protective order allow for disclosure

Staff also argues that “it is not clear that Qwest is entitled to disclosure of the data provided by CLECs in response to the CLEC Request for Production under the ALJ’s Ruling.” (Staff Objections, p. 4.) Staff does so on grounds that “the modified protective order does not provide for the disclosure of confidential or highly confidential information to any person for the disclosure other than the Commissioners, Administrative Law Judges, Commission staff counsel, Commission advisory staff members, Commission employees when disclosure is necessary and consultants employed by the Commission.” (Id., pp. 4-5.) Staff’s reasoning for this extraordinary (and incorrect) reading of Order No. 05-124 is apparently based on section 1.(c) of the order.

With all due respect, Staff is simply wrong. Although Staff is correct that the aforementioned Commission personnel and consultants are entitled to confidential and highly confidential information under section 1.(c) (actually sections 1.(c)(1) and (2)), Staff completely ignores section 3 (pp. 4-7), entitled “Highly Confidential Information.”

Section 3 provides that “[p]arties seeking disclosure of Highly Confidential Information must designate the person(s) to whom they would like the Highly Confidential Information disclosed in advance of disclosure by the providing party” (“through the submission of Appendix

‘B’”). (Emphasis added.) This protective order then sets forth that “[p]arties seeking disclosure of Highly Confidential Information should not designate more than: (1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Confidential Information, (2) five in-house experts; and (3) a reasonable number of outside counsel and outside experts to review materials marked as ‘Highly Confidential.’” (Emphasis added.) Further still, this protective order provides that “[a]ny party provisioning either confidential Information or Highly Confidential Information may object to the designation of any individual as a person who may review” such information within a certain time period, and if such an objection is made, the Commission shall determine whether such information may be disclosed to the challenged individual. Finally, there is even a separate paragraph for disclosure of Confidential and Highly Confidential Information to a “small company.” (See paragraph 4.)

Accordingly, there is simply no basis for any argument that only the Commission and Commission-related individuals are entitled to see confidential information under the modified protective order. Indeed, under Staff’s apparent reading of the modified protective order, there would be no need for a protective order at all because no party (and only the Commission-related individuals) could review confidential or highly confidential information. This would make the protective order completely meaningless, and ironically, more restrictive than if there were no protective order. This makes no sense. Regardless, this argument is belied by the very terms of Order No. 05-124 itself. The Commission should completely reject Staff’s argument.

IV. The Commission should issue a subpoena to CLEC K<sup>6</sup>

Staff opposes Qwest's request for a subpoena of the CLEC K facilities-based access line information. Staff's rationale seems to be that the Commission should deny the request because "it would not be possible for this CLEC to provide the information confidentially." (Staff Objections, p. 6.) Staff reasons that Qwest or any party could "back out" the new data from the previously-existing aggregation, and this would not be appropriate.

Qwest submits that this is not a reason to deny the request for a subpoena. Moreover, there is likely a middle ground that could allow for disclosure of the information that Qwest desires without violating any confidentiality that CLEC K might otherwise be entitled to.

First, CLEC K clearly had numerous opportunities (including Staff follow-up inquiries) to respond to the CLEC Request for Production. Instead, it apparently chose to ignore the Commission, the Administrative Law Judge and Commission Staff. It did so despite that this was a Commission bench request, with the full force of the very regulatory body that has certified its ability to operate its business in Oregon. CLEC K should not be rewarded for its stubborn recalcitrance. This is especially so because there is no legal requirement that requires that the data be deemed confidential or highly confidential in the first place. Rather, it was merely an accommodation by the Commission and its Staff to the responding CLECs.

---

<sup>6</sup> Qwest notes that it has identified the identify of this non-responding CLEC, just as it has for the other 10 CLECs who did provide facilities-based access line data. Qwest did so on an abundance of caution. However, Qwest does not necessarily believe that the fact that this CLEC did not respond to the CLEC Request for Production is a confidential matter, especially since the Commission posted on its website E-Dockets link for this docket the fact of each CLEC's filing of its response to the Request for Production. Moreover, as a practical matter, this CLEC's identity would become a public record if and when the Commission issues the subpoena that Qwest has requested. Nevertheless, on an abundance of caution, and since there is no need at this stage to identify the CLEC (as Qwest already did so in the confidential version of its August 5, 2005 request), Qwest refers to this non-responding CLEC simply as "CLEC K."

Second, the subpoena that Qwest requests is not the same thing as the CLEC Request for Production. The time for a response to the Request for Production has come and gone (a couple of times). Rather, this would be a subpoena, an entirely different procedural device, and one that would be required only because CLEC K ignored, or refused to respond to, the Request for Production, and thus forced the Commission to take other means to enforce its directive. There should be no concern about confidentiality of the data obtained through this subpoena process under these circumstances.

Finally, for the reasons set forth below, Qwest is willing to accept a compromise procedure that would obviate Staff's concerns. This procedure would provide Qwest with the total facilities-based CLEC access line information at every wire center or rate center, but without disclosing the individual CLEC's access line counts, or the number of facilities-based providers at each wire center or rate center.

Accordingly, Qwest respectfully requests that the Commission reject Staff's objections to the subpoena of CLEC K, and further, that it promptly issue a subpoena for CLEC K's facilities-based access line information at each wire center or rate center in Oregon.

V. Qwest would be willing to accept a compromise

Finally, as stated above, Qwest is willing to accept a compromise procedure that would provide it with the total facilities-based access line information at every wire center or rate center, but without disclosing any individual CLEC's access line counts, or the number of facilities-based providers at each wire center or rate center. That is, following the collection of CLEC K's facilities-based access line data, Qwest is willing to limit the information solely to the total number of facilities-based access lines in each wire center or rate center, but without disclosure of the access line count for each CLEC, or the number of such facilities-based CLECs at each such wire

center or rate center. This would give Qwest the data it needs, while obviating the concerns that Staff has expressed about confidentiality or about its “general understanding” about the disclosure of this data.

### CONCLUSION

Accordingly, for the reasons above, Qwest respectfully submits that the Commission should reject Staff’s objections to Qwest’s request for facilities-based CLEC access line data, and further, submits that the Commission should disclose such narrowly-tailored data to Qwest upon obtaining facilities-based access line counts from CLEC K.

DATED: August 17, 2005.

QWEST CORPORATION



---

Alex M. Duarte, OSB No. 02045  
Qwest  
421 SW Oak Street, Room 810  
Portland, OR 97204-1817  
(503) 242-5623  
(503) 242-8589 (facsimile)  
[Alex.Duarte@qwest.com](mailto:Alex.Duarte@qwest.com)

Attorney for Qwest Corporation

## CERTIFICATE OF SERVICE

UX-29

I hereby certify that on the 17<sup>th</sup> day of August, 2005, I served the foregoing **QWEST CORPORATION'S RESPONSE TO STAFF'S OBJECTIONS TO QWEST'S REQUEST FOR FACILITIES-BASED CLEC ACCESS LINE INFORMATION** in the above entitled docket on the following persons via U.S. Mail (or via e-mail if so indicated), by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

\*Mark P Trincherro  
Davis Wright Tremaine LLP  
1300 SW Fifth Ave., Ste. 2300  
Portland, OR 97201-5682

\*Stephanie S. Andrus  
Department of Justice  
1162 Court St., NE  
Salem, OR 97301-4096

\*Alex M Duarte  
Qwest Corporation  
421 SW Oak St., Ste. 810  
Portland Or 97204

Dennis Gabriel  
Oregon Telecom Inc  
PO Box 4333  
Salem, OR 97302-8333

\*Karen J Johnson  
Integra Telecom Of Oregon Inc  
1201 NE Lloyd Blvd.  
Suite 500  
Portland, OR 97232

Rex Knowles  
XO Oregon Inc  
111 E Broadway, Ste. 1000  
Salt Lake City, UT 84111

\*Lisa F Rackner (**Via e-mail only**)  
Ater Wynne LLP  
222 SW Columbia St.  
Suite 1800  
Portland, OR 97201-6618  
e-mail: [lfr@aterwynne.com](mailto:lfr@aterwynne.com)

\*Lawrence Reichman  
Perkins Coie LLP  
1120 NW Couch St.  
10th Floor  
Portland, OR 97209-4128

Brad Schaffer  
Rio Communications Inc  
2360 NE Stephens  
Roseburg, OR 97470

Greg Diamond  
Covad Communications Co  
7901 Lowry Blvd.  
Denver, CO 80230

**\*Sarah Wallace (Via e-mail only)**  
Ater Wynne LLP  
222 SW Columbia, Ste. 1800  
Portland, OR 97201-6618  
[sek@aterwynne.com](mailto:sek@aterwynne.com)

Brian Thomas  
Time Warner Telecom Of Oregon LLC  
223 Taylor Ave. N.  
Seattle, WA 98109-5017

**\*Richard Cabe (Via e-mail only)**  
TRACER  
[Richard@salidamillwork.com](mailto:Richard@salidamillwork.com)

DATED this 17<sup>th</sup> day of August, 2005.

**QWEST CORPORATION**



By: \_\_\_\_\_

ALEX M. DUARTE, OSB No. 02045  
421 SW Oak Street, Suite 810  
Portland, OR 97204  
Telephone: 503-242-5623  
Facsimile: 503-242-8589  
e-mail: alex.duarte@qwest.com  
Attorney for Qwest Corporation

**Duarte, Alex**

**From:** Duarte, Alex  
**Sent:** Wednesday, March 02, 2005 5:46 PM  
**To:** 'vic.allums@ge.com'; 'stephanie.andrus@state.or.us'; 'gdiamond@covad.com'; Duarte, Alex; 'dgabriel@oregontelecom.com'; 'karen.johnson@integratelecom.com'; 'rex.knowles@xo.com'; 'lfr@aterwynne.com'; 'lreichman@perkinscoie.com'; 'brad@rio.com'; 'brian.thomas@twtelecom.com'; 'marktrinchero@dwt.com'; 'sek@aterwynne.com'; CONWAY Bryan; 'CHRISS Steve'; Mason, Don; Teitzel, Dave; Harris, Sheila; Butler, Carla  
**Subject:** UX 29- Draft of bench request ruling

**Attachments:** UX 29 BR Ruling (draft).doc; RFP Ruling 1-8-04.doc; UM 1100 RFPs APX A 1-8-04.doc; UM 1100 APX B Carrier List.doc; UM 1100 APX C MPO 1-8-04.doc

Attached is Qwest's draft of the Commission ruling for the bench requests for the CLEC survey that we propose to send to the ALJ when we submit the draft of the CLEC survey. This draft tracks closely to the Commission ruling for the bench requests in docket UM 1100 (9-month TRO proceeding) (attached below), with modifications for this proceeding, but it also takes into account Stephanie's request that CLECs have an opportunity to object to disclosure of their confidential or highly-confidential information. (In UM 1100, the ALJ advised the CLECs that the information would be disclosed to the parties. Here, this draft allows the CLECs to object to disclosure and to have the PUC or ALJ rule on the objection, and if there is a disclosure, it would only be subject to the modified protective order.)

As you can see, the actual CLEC survey would be an attachment to the bench requests. The same holds true for the list of CLECs and the modified protective order (which we submitted to the ALJ today). This is how the ALJ handled the bench requests in UM 1100.

Please let us know if you have any objections to this draft. Thanks, and we look forward to hearing from you

Alex



UX 29 BR Ruling  
(draft).doc (6...

Alex M. Duarte  
Corporate Counsel  
Qwest  
421 SW Oak Street, Suite 810  
Portland, OR 97204  
503-242-5623  
503-242-8589 (facsimile)  
[Alex.Duarte@qwest.com](mailto:Alex.Duarte@qwest.com)



NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

-----Original Message-----

From: NICHOLS Frances [<mailto:frances.nichols@state.or.us>]

Sent: Friday, January 09, 2004 11:13 AM

To: 'ddahlers@eschelon.com'; 'vic.allums@ge.com'; 'maratty@qwest.net'; 'cbest@eli.net'; 'doreen.best@algx.com'; 'jbissonnette@igc.org'; 'jchicoi@czn.com'; 'wcourter@mcleodusa.com'; 'jdeason@chbh.com'; 'mdewey@oregoncable.com'; 'ddixon@davidixon.com'; Duarte, Alex; 'jason@oregoncub.org'; 'kframe@covad.com'; 'jonathan.frankel@wilmer.com'; 'brooks.harlow@millernash.com'; 'deborah.harwood@integratelecom.com'; 'tre.e.hendricks.iii@mail.sprint.com'; 'hong.huynh@millernash.com'; 'aisar@millerisar.com'; 'nancy.judy@mail.sprint.com'; 'jjoxley@eschelon.com'; 'lfr@aterwynne.com'; 'reichman@perkinscoie.com'; 'michel.singer\_nelson@mci.com'; 'esprague@pacwest.com'; 'jtarpey@hollandhart.com'; 'marktrinchero@dwt.com'; 'weigler@att.com'; WEIRICH Michael; 'renee.willer@verizon.com'

Subject: UM 1100 FCC "TRIENNIAL REVIEW" INVESTIGATION

For informational purposes I have been asked to email the following documents to you. You do not need to respond. However, it is possible that some of the individuals listed above were previously emailed the attached documents seeking responses. In that case, a response to that email is appropriate.

Please do not hesitate to contact PUC Administrative Hearings if you have questions via email or at 503-378-6678.

Thank you.

<<RFP Ruling 1-8-04.doc>> <<UM 1100 RFPs APX A 1-8-04.doc>> <<UM 1100 APX B Carrier List.doc>> <<UM 1100 APX C MPO 1-8-04.doc>>



RFP Ruling  
1-8-04.doc (25 KB...



JM 1100 RFPs APX  
A 1-8-04.do...



UM 1100 APX B  
Carrier List.do...



UM 1100 APX C  
MPO 1-8-04.doc...

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UX 29

In the Matter of the Petition of Qwest  
Corporation to Exempt from Regulation  
Qwest's Switched Business Services

RULING

COMMISSION REQUESTS FOR  
PRODUCTION OF INFORMATION

On June 21, 2004, Qwest Corporation ("Qwest") filed with the Public Utility Commission of Oregon ("Commission") a petition to exempt from regulation Qwest's switched business services pursuant to ORS 759.030(2) through (4) and OAR 860-032-0025. Qwest's petition seeks such exemption of regulation (or deregulation) for all terms, conditions and rates for certain of Qwest's switched business telecommunications services ("switched business services"), throughout Qwest's ILEC service territory in the state of Oregon.<sup>1</sup> Qwest alleges that its switched business services in Oregon are subject to competition from alternative providers, and that such alternative providers provide functionally equivalent or substitutable services at comparable rates, terms and conditions. In addition, Qwest alleges there are no economic or regulatory barriers, and that the public interest no longer requires full regulation of Qwest's switched business services.

The applicable law for a petition for exemption from regulation is ORS 759.030 and OAR 860-032-0025. Pursuant to ORS 759.030(3) and OAR 860-032-0025(1), the Commission shall,

---

<sup>1</sup> The switched business services for which Qwest requests exemption from regulation fall into three categories. The first category consists of those services that provide access to the network, such as flat-rated and measured lines, private branch exchange (PBX) trunks and Centrex services, including feature packages. The second category consists of discretionary business features which are software enhancements available as access line or trunk options. The third category consists of Frame Relay and Asynchronous Transfer Mode (ATM) services (packet-switched services in Qwest's Advanced Communications Services Tariff). Specifically, Qwest proposes to exempt its switched business telecommunications services, as described in its Exchange and Network Services Tariff, PUC Oregon No. 29, sections 5, 7, 9, 10, 14, 15, 105, 107, 109 and 115, Qwest's Exchange and Network Services Price list, sections 5 and 105, and Qwest's Advanced Communications Services Tariff, PUC Oregon No. 27, sections 5 and 107, on file with the Commission.

upon the petition of a telecommunications utility, exempt from regulation a telecommunications utility's services if price and service competition exists. Further, pursuant to ORS 759.030(2) and OAR 860-032-0025(2), upon a petition from any interested party or person, including a telecommunications utility, the Commission may exempt from regulation Qwest's services if one of the three following conditions are met: (1) price and service competition exist; (2) the service is subject to competition; or (3) the public interest no longer requires full regulation of the service.

Under either of the two approaches described above, ORS 759.030(4) and OAR 860-032-0025(3) set forth the factors the Commission must consider in deciding whether there exists price and/or service competition for a telecommunications utility's services, or whether such services are subject to competition, or whether the public interest no longer requires full regulation of such services. These factors are as follows:

1. the extent to which the services are available from alternative providers in the relevant market;
2. the extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions;
3. existing economic or regulatory barriers to entry; and
4. any other factors deemed relevant by the Commission.

Finally, ORS 759.030(7) provides that within 60 days of filing under subsections (2), (3) or (6) of ORS 759.030, the Commission shall either determine the appropriateness of the filing or determine that further investigation is necessary. If the Commission determines that further investigation is necessary, the Commission may suspend operation of the filing to allow it to investigate the filing. On August 20, 2004, the Commission suspended operation of Qwest's filing and opened a formal investigation proceeding, docketed as UX 29. Since then, a number of competitive carriers (CLECs) have intervened as parties to the docket.

Due to the appeals of the FCC's Triennial Review Order (TRO), including the D.C. Circuit's decision in the *USTA II* case and the FCC's recent Triennial Review Remand Order (TRRO), as well as various procedural motions in this docket, Qwest's petition had been delayed until very recently. However, now that the FCC has issued its TRRO, the Commission is moving forward with docket UX 29, and thus the Commission is issuing these information requests at this time.

In order for the Commission to conduct a thorough investigation of Qwest's filing, it is necessary to obtain information from competitive telecommunications carriers providing business service within Oregon. Appendix A to this Ruling is a list of information requests designed to satisfy the requirements in ORS 759.030 and OAR 860-032-0025. There are also \_\_\_\_ attachments in Excel spreadsheet format for your company to populate the responsive data. The information requests were proposed initially by the parties in this docket, including Commission Staff, and were negotiated by the parties in large part. The Commission then approved the final list of questions and attachments.

Oregon Administrative Rule 860-032-0007(11) requires carriers holding certificates of authority to provide telecommunications service in Oregon "to respond in a timely manner to Commission inquiries." All of the CLECs listed on Appendix B of this Ruling hold certificates of authority, and shall file the information requested in Appendix A, and the attachments, with the Commission no later than **April 15, 2005**.

Appendix C of this Ruling is a copy of the Modified Protective Order (Order No. 05-\_\_\_\_) by the Commission in this docket. The Modified Protective Order is designed to protect "confidential" and "highly confidential" information. Carriers may designate responses to information requests in Appendix A as "confidential" or "highly confidential" in accordance with the terms of the Modified Protective Order.

If a carrier takes the position that certain information in Appendix A should not be released to the UX 29 parties under the Modified Protective Order, then the carrier must identify the information request, or part thereof, to which it objects. For each such objection, the carrier shall set forth all reasons supporting its objection.

Once designated, the carrier's confidential or highly-confidential information will not be released to the parties unless a party requests such information. In the event any party requests any confidential or highly-confidential information of a CLEC responding to this bench request, the Commission or its Staff will promptly contact any affected CLEC and allow such CLEC to raise any objections to such disclosure within seven (7) days of such notice. Any determination of disclosure of confidential or highly-confidential CLEC information which is objected to by the CLEC providing such information will be made solely by the Commission or the Administrative Law Judge. If the Commission or the Administrative Law Judge determines to disclose any confidential or highly-confidential information to any party in the docket, any such disclosure would be subject to the protections afforded by the Modified Protective Order.

Although the PUC Staff was not the primary author of the survey questions, we recognize that carriers might have questions about them. Any questions regarding this Ruling or the information requests set forth in Appendix A may be directed to Mr. Steve Chriss of the PUC Staff at 503-378-3778.

Dated at Salem, Oregon this \_\_ day of March, 2005.

---

Allan J. Arlow  
Administrative Law Judge

**Duarte, Alex**

**From:** Duarte, Alex  
**Sent:** Wednesday, March 09, 2005 4:11 PM  
**To:** 'allan.arlow@state.or.us'  
**Cc:** 'stephanie.andrus@state.or.us'; 'gdiamond@covad.com'; 'dgabriel@oregontelecom.com'; 'karen.johnson@integratelecom.com'; 'rex.knowles@xo.com'; 'lfr@aterwynne.com'; 'reichman@perkinscoie.com'; 'brad@rio.com'; 'brian.thomas@twtelecom.com'; 'marktrincher@dw.com'; 'sek@aterwynne.com'; CONWAY Bryan; 'steve.chriss@state.or.us'; Mason, Don; Teitzel, Dave; Harris, Sheila; Butler, Carla; NICHOLS ANGLIN Frances  
**Subject:** FW: UX 29- Draft of bench request ruling

**Attachments:** UX 29 BR Ruling (draft).doc; RFP Ruling 1-8-04.doc; UM 1100 RFPs APX A 1-8-04.doc; UM 1100 APX B Carrier List.doc; UM 1100 APX C MPO 1-8-04.doc

Judge Arlow-

As we discussed this afternoon, attached is the draft bench request that I mentioned during the prehearing conference today (in Word format) and that I mentioned in and attached with my March 7, 2005 letter (along with the proposed CLEC survey and the list of CLECs). As you can see, I sent it to the parties a week ago on March 2, 2005, and no party objected, so hopefully you will find this draft to be appropriate. The only thing that is missing is the order number for the modified protective order (since Your Honor has not yet issued that order) and the number of survey attachments (since we still need to provide you with the final versions of the CLEC survey (with and without the VoIP question and attachment) as we discussed).

We are working on the two versions of the CLEC survey and intend to email and file that tomorrow. I will also endeavor to get you our brief reply comments on the VoIP issues as soon as possible.

If you have any questions about this matter, please feel free to call me at your convenience. Thank you for your attention to this matter.

Alex M. Duarte  
Corporate Counsel  
Qwest  
421 SW Oak Street, Suite 810  
Portland, OR 97204  
503-242-5623  
503-242-8589 (facsimile)  
[Alex.Duarte@qwest.com](mailto:Alex.Duarte@qwest.com)

**NOTICE:** This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

---

**From:** Duarte, Alex

**Sent:** Wednesday, March 02, 2005 5:46 PM

**To:** 'vic.allums@ge.com'; 'stephanie.andrus@state.or.us'; 'gdiamond@covad.com'; Duarte, Alex; 'dgabriel@oregontelecom.com'; 'karen.johnson@integratetelecom.com'; 'rex.knowles@xo.com'; 'lfr@aterwynne.com'; 'reichman@perkinscoie.com'; 'brad@rio.com'; 'brian.thomas@twtelecom.com'; 'marktrinchero@dwt.com'; 'sek@aterwynne.com'; CONWAY Bryan; 'CHRISS Steve'; Mason, Don; Teitzel, Dave; Harris, Sheila; Butler, Carla

**Subject:** UX 29- Draft of bench request ruling

Attached is Qwest's draft of the Commission ruling for the bench requests for the CLEC survey that we propose to send to the ALJ when we submit the draft of the CLEC survey. This draft tracks closely to the Commission ruling for the bench requests in docket UM 1100 (9-month TRO proceeding) (attached below), with modifications for this proceeding, but it also takes into account Stephanie's request that CLECs have an opportunity to object to disclosure of their confidential or highly-confidential information. (In UM 1100, the ALJ advised the CLECs that the information would be disclosed to the parties. Here, this draft allows the CLECs to object to disclosure and to have the PUC or ALJ rule on the objection, and if there is a disclosure, it would only be subject to the modified protective order.)

As you can see, the actual CLEC survey would be an attachment to the bench requests. The same holds true for the list of CLECs and the modified protective order (which we submitted to the ALJ today). This is how the ALJ handled the bench requests in UM 1100.

Please let us know if you have any objections to this draft. Thanks, and we look forward to hearing from you

Alex



UX 29 BR Ruling  
(draft).doc (6...

Alex M. Duarte  
Corporate Counsel  
Qwest  
421 SW Oak Street, Suite 810  
Portland, OR 97204  
503-242-5623  
503-242-8589 (facsimile)  
[Alex.Duarte@qwest.com](mailto:Alex.Duarte@qwest.com)

**NOTICE:** This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

-----Original Message-----

From: NICHOLS Frances [<mailto:frances.nichols@state.or.us>]

Sent: Friday, January 09, 2004 11:13 AM

To: 'ddahlers@eschelon.com'; 'vic.allums@ge.com'; 'maratty@qwest.net'; 'cbest@eli.net';  
'doreen.best@algx.com'; 'jbissonnette@igc.org'; 'jchicoi@czn.com'; 'wcourter@mcleodusa.com';  
'jdeason@chbh.com'; 'mdewey@oregoncable.com'; 'ddixon@davidson.com'; Duarte, Alex;  
'jason@oregoncub.org'; 'kframe@covad.com'; 'jonathan.frankel@wilmer.com';  
'brooks.harlow@millernash.com'; 'deborah.harwood@integratelecom.com';  
'tre.e.hendricks.iii@mail.sprint.com'; 'hong.huynh@millernash.com'; 'aisar@millerisar.com';  
'nancy.judy@mail.sprint.com'; 'jjoxley@eschelon.com'; 'lfr@aterwynne.com'; 'reichman@perkinscoie.com';  
'michel.singer\_nelson@mci.com.'; 'esprague@pacwest.com'; 'jtarpey@hollandhart.com';  
'marktrinchero@dwt.com'; 'weigler@att.com'; WEIRICH Michael; 'renee.willer@verizon.com'  
Subject: UM 1100 FCC "TRIENNIAL REVIEW" INVESTIGATION

For informational purposes I have been asked to email the following documents to you. You do not need to respond. However, it is possible that some of the individuals listed above were previously emailed the attached documents seeking responses. In that case, a response to that email is appropriate.

Please do not hesitate to contact PUC Administrative Hearings if you have questions via email or at 503-378-6678.

Thank you.

<<RFP Ruling 1-8-04.doc>> <<UM 1100 RFPs APX A 1-8-04.doc>> <<UM 1100 APX B Carrier List.doc>> <<UM 1100 APX C MPO 1-8-04.doc>>



RFP Ruling 1-8-04.doc (25 KB... JM 1100 RFPs APX UM 1100 APX B UM 1100 APX C  
1-8-04.doc (25 KB... A 1-8-04.do... Carrier List.do... MPO 1-8-04.doc...