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Carla M. Butler
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September 19, 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 CLECs' Non-filing of Statement Regarding Harm due to Disclosure of Disaggregated Facilities-Based Access Line Data Pursuant To Modified Protective Order, 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
cc: Service List

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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 CLECs' NON-FILING OF STATEMENT REGARDING HARM DUE TO DISCLOSURE OF DISAGGREGATED FACILITIES-BASED ACCESS LINE DATA PURSUANT TO MODIFIED PROTECTIVE ORDER

Pursuant to Administrative Law Judge (ALJ) Allan Arlow's September 9, 2005 Ruling, Qwest Corporation ("Qwest") hereby submits this brief Response to the CLECs' Non-Filing of Statement regarding Alleged Harm due to Disclosure of Disaggregated Facilities-Based Access Line Data pursuant to the Modified Protective Order. Qwest will attempt not to repeat its August 17, 2005 response to Staff's objections to its request for the confidential facilities-based access line data from the CLEC survey, and will limit its response only to the issue of alleged "CLEC harm."

ARGUMENT

I. The data that Qwest seeks would not harm any CLEC

As Qwest previously mentioned, Staff's arguments about alleged "CLEC harm" are without foundation or support. This is especially so because there is not only a protective order in place here, but a *modified protective order for confidential and highly confidential information* that has superseded the standard protective order.¹

It is, Qwest believes, telling 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 either

¹ For the reasons set forth in Qwest's August 17th filing, there is no merit to Staff's reliance on the *Citizens' Utilities Board* decision. Qwest will not repeat those arguments here, but incorporates them from its August 17th filing.

confidential or highly confidential.² Thereafter, Staff *re-contacted* these CLECs to ask whether they really had intended not to designate such data as confidential or highly confidential.

Thereafter, *nine* of the 10 CLECs subsequently designated their information as either confidential or highly confidential.

Accordingly, given the protections set forth in the CLEC Request for Production (notice to the CLECs, an opportunity to object, any potential disclosure being subject to the modified protective order, and ultimate determination about disclosure by the Commission or ALJ), and the fact that a substantial majority of these 10 CLECs did not even originally designate their facilities-based access line data as either confidential or highly confidential, it is difficult to conclude that any of these nine CLECs would be “harmed” by disclosure of this data subject to the protective order.³ This is especially so because there are very strict restrictions in the modified protective order.

II. The CLECs failed to meet their burden of proof regarding alleged harm

Preliminarily, Staff, which is not a CLEC and therefore does not have any personal knowledge or commercial experience in the competitive marketplace about alleged potential CLEC harm, can only *speculate* whether any CLEC would be harmed by such disclosure.⁴ The only

² This was so despite that there were clear instructions in the March 16, 2005 Ruling attaching the CLEC Request for Production (CLEC Survey) about designating data that was submitted as either confidential or highly confidential, and about possible disclosure of such information to parties in the case.

³ Qwest also notes that Staff had previously indicated in an August 12, 2005 letter to ALJ Arlow that it had notified the nine affected CLECs that Qwest had asked to see these CLECs’ facilities-based access line data (presumably pursuant to the seven-day notice provision in the Commission’s Request for Production). However, to date, Qwest is not aware that any affected CLEC formally objected to Qwest’s request, or that any CLEC otherwise took any steps in response to Staff’s notifications letters as outlined in the Commission’s Request for Production.

⁴ This is especially so given that there is a very strict modified protective order in place, that all CLECs were made aware about possible disclosure, and that initially only three of 10 of the affected CLECs designated the data as confidential or highly-confidential. Further, for the reasons set forth in Qwest’s August 17th filing, Staff’s previous 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 completely without any basis or evidence. Such suggestions completely contradict the

parties that do have such personal knowledge or commercial experience with these issues are the carriers that compete against each other themselves. However, while a number of CLECs simply stated at the September 7, 2005 prehearing conference that they “agreed” with Staff’s position about CLEC harm, not one CLEC articulated any specific facts or arguments (or even general ones, for that matter) to support such positions, as they all simply said they “agreed” with Staff.⁵

More importantly, the ALJ then established a process to allow CLECs to file written statements that explained, with specificity, the harm they believed they would suffer if the subject facilities-based access line data were disclosed subject to the modified protective order. The ALJ set a September 14, 2005 deadline for such filings, with Qwest’s response due on September 19, 2005. Notably, however, *not one CLEC* was troubled enough to state, with any specificity (or at all), in writing, how it would be allegedly harmed by such disclosure.⁶ These CLECs failed to meet their burden of proof regarding alleged harm, if any.

Finally, Qwest believes that these CLECs did not file any written statements about alleged harm because the reality is that there would not be any harm resulting from disclosure of such very limited data under the strict parameters of the modified protective order, and further, because, in the commercial marketplace, CLECs generally have a good sense about what their competitors’ competitive inroads have been, based in large part on their competitive research and intelligence. Indeed, while these affected CLECs may not know precisely Qwest’s and their other competitors’ competitive positions in any given wire center or exchange, they have a

very reasons why the Commission issues protective orders (and especially modified protective orders) in the first place, and they wrongfully assume (without any basis) that Qwest would engage in such unacceptable behavior.

⁵ Qwest also notes that some of the CLECs who echoed Staff’s objections to the disclosure of such data were not CLECs whose data would be disclosed in any event, and thus they would not be affected by such disclosure.

⁶ Of course, the narrowly-drawn data that Qwest seeks is limited to only access line data of 10 facilities-based CLECs. Thus, Qwest is at a loss as to how some of the unaffected CLECs that participated in the prehearing conference would be in a position to object to disclosure of data that does not even belong to them.

general sense of their competitors' status based on a variety of factors. More importantly, given the tight lid on the information involved, disclosed only to very few *non-sales* individuals with a regulatory need to know (i.e., witnesses, counsel and their support staff), and subject to the strict restrictions in the modified protective order and this Commission's policies and procedures not to disclose such data to the outside world, the real world effect is that there simply would be no harm to the very limited disclosure of this limited data regarding only nine CLECs.

CONCLUSION

Accordingly, for the reasons above, and in Qwest's August 17, 2005 filing, including the fact that all CLECs were specifically made aware of the possible limited disclosure of certain data subject to the modified protective order, that the substantial majority of the affected CLECs did not initially designate their facilities-based access line data as confidential or highly confidential, and that no affected CLEC provided any specificity (either orally or in writing) of any alleged harm to it (despite being given the opportunity to do so), Qwest respectfully submits that the Commission should reject any objections to Qwest's request for the facilities-based access line data of the nine affected CLECs. Thus, Qwest further submits that the Commission should disclose such narrowly-tailored data to Qwest subject to the modified protective order.

DATED: September 19, 2005.

QWEST CORPORATION



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CERTIFICATE OF SERVICE

UX-29

I hereby certify that on the 19th day of August, 2005, I served the foregoing **QWEST CORPORATION'S RESPONSE TO CLECs' NON-FILING OF STATEMENT REGARDING HARM DUE TO DISCLOSURE OF DISAGGREGATED FACILITIES-BASED ACCESS LINE DATA PURSUANT TO MODIFIED PROTECTIVE ORDER** 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.

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DATED this 19th day of August, 2005.

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By: _____

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