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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

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In the Matter of the Petition of Metro One)
Telecommunications, Inc., for Enforcement of)
an Interconnection Agreement with Qwest)
Corporation, formerly U S WEST)
Communications, Inc.)
ORDER

DISPOSITION: APPLICATION FOR REHEARING OR
RECONSIDERATION DENIED

On May 13, 2002, Qwest Corporation (Qwest) filed an Application for Rehearing or Reconsideration of Commission Order No. 02-289. Qwest contends that the order contains an error of fact and that good cause exists for further examination of the matter. On May 28, 2002, Metro One Telecommunications, Inc. (Metro One) filed a response. On June 3, 2002, Qwest filed a reply to Metro One's response.

Discussion

Qwest challenges our decision that only Qwest's outside experts may review the third party agreement.¹ Qwest contends that the decision should be reconsidered to allow Qwest employee, William Easton, to review and testify about the agreement. Qwest explains that it does not intend to hire an outside witness in this case. Thus, Qwest contends that:

As a practical matter, the Order restricts review of the third party agreement solely to Qwest's outside counsel. As lawyers, however, Qwest's outside counsel cannot provide testimony about the agreement. Thus, under the Commission's decision, no one will be able to offer testimony about the terms and conditions of the agreement on behalf of Qwest. The Commission has effectively

¹ Qwest does not challenge our decision to also limit the review of the agreement to Qwest's outside counsel.

prevented Qwest from affirmatively providing any information about the third party agreement.²

Qwest explains that allowing Mr. Easton to review the third party agreement will not harm Metro One or the third party, because his job duties do not include negotiating agreements or setting prices for directory assistance listings (DALs). Qwest adds that it is willing to take the extraordinary step of notifying Metro One, the Commission and the third party provider if Mr. Easton takes a job that involves such responsibilities within the next three years.

Qwest also contends that the Commission erred when it decided that Metro One is entitled to additional protection for the third party agreement because of the risks associated with disclosing the information to Qwest employees. Qwest challenges our statement that Metro One and the third party provider “would” lose a competitive advantage if the third party information were disclosed to a Qwest employee. Qwest contends that there is no basis for such a decision.

Due to these reasons, Qwest contends that there is no basis for the extraordinary protection requested by Metro One. Qwest concludes that the Commission should allow Mr. Easton to review the third party agreement, subject to the terms of the standard protective order.

Commission Resolution

We are not persuaded by Qwest’s arguments for rehearing or reconsideration. First, we agree with Metro One that the heart of Qwest’s motion to reconsider is that Qwest has made a litigation decision that it would rather not hire an unaffiliated expert in this matter to review and testify on the third party agreement. Thus, it is Qwest’s own decision—not the Commission order—that may prevent “Qwest from affirmatively providing any information about the third party agreement.”

Second, we acknowledge the nature of Mr. Easton’s job responsibilities and Qwest’s offer to notify the Commission and parties if Mr. Easton is reassigned to a position that requires him to negotiate agreements or price DALs. Qwest’s offer, however, suggests that such a reassignment is possible. Thus, Qwest’s commitment does little to satisfy our concerns that information obtained from the third party agreement could be used to the disadvantage of Metro One and the third party. Our concerns do not reflect on the integrity of any Qwest employee; rather, they are based on the fact that it is impossible for any employee to disregard all personal knowledge of facts in subsequent engagements where those facts may be relevant.

² Qwest’s Application for Rehearing or Reconsideration, p 2.

Third, the statement that Qwest challenges contains a typographical error. That sentence should read:

Directory assistance is an important cost component of those services, and Metro One and the third-party provider *could* lose a competitive advantage they now have if that information was disclosed to Qwest.

We did not intend to make any affirmative determination on that matter, but rather to acknowledge the potential risk to Metro One and the third-party provider.

Finally, we clarify that, contrary to Qwest’s apparent conclusion, Mr. Easton would not be allowed to review the third party agreement under the terms of a standard protective order without Metro One’s permission. The Commission’s standard protective permits only “qualified persons” to review confidential material. While unaffiliated party experts are designated as qualified persons, affiliated party experts, such as Mr. Easton, are not.³ To disclose confidential information to an affiliated expert under a standard protective order, a party must request permission from the party desiring confidentiality and provide certain information, including the identity of the person and the specific reasons why disclosure is necessary. If the party desiring confidentiality refuses to grant the request, the party seeking disclosure may file a motion to qualify the person by Commission order.⁴

ORDER

IT IS ORDERED that Qwest’s application for rehearing or reconsideration of Order No. 02-289 is denied.

Made, entered, and effective _____.

Roy Hemingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

A party may appeal this order to a court pursuant to ORS 756.580.

³ See Standard Protective Order, Paragraph 3.

⁴ *Id.*, at Paragraph 9.