



Qwest
1801 California Street, Suite 4900
Denver, Colorado 80202
Phone 303 672-2799
Facsimile 303 295-6973

Craig J. Brown
Senior Attorney

December 31, 2001

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, SW
Washington, DC 20554

Re: Qwest Corporation Petition for Pricing Flexibility and Request for Confidential Treatment of Information Filed in Support Thereof

Dear Ms. Salas:

Pursuant to the Commission's policies regarding the treatment of confidential information,¹ and its rules related to the Freedom of Information Act, 47 C.F.R. §§ 0.457 and 0.459, Qwest Corporation ("Qwest") requests confidential treatment of certain data filed in conjunction with Qwest's petition ("Petition") filed this date requesting pricing flexibility for certain Metropolitan Statistical Areas ("MSAs") served by Qwest.²

Qwest filed the Petition pursuant to 47 C.F.R. § 1.774. Rule 1.774(b) specifically contemplates that petitioners may file requests for confidential treatment of information contained in a pricing flexibility petition. In fact, several petitioners have sought confidential treatment for the type of information for which Qwest is seeking such treatment, and the Commission has adopted protective orders to allow parties signing an appropriate nondisclosure agreement to inspect at least some of this information subject to the terms of that agreement.³

As required by section 0.459 of the Commission's rules,⁴ Qwest provides the following information regarding its request for confidential treatment.

¹ *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd. 24816 (1998) (*Confidential Information Order*).

² On October 10, 2001, Qwest filed a Petition for Pricing Flexibility for Special Access and Dedicated Transport Services, which it subsequently withdrew. *See Qwest Withdraws Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD File No. 01-18, Public Notice, DA 01-2837 (rel. Dec. 6, 2001). The relief sought in the Petition filed today is substantially similar to the relief requested in the petition that was withdrawn.

³ *See, e.g., Frontier Telephone of Rochester, Inc. and Frontier Communications of Seneca-Gorham, Inc.'s Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD File No. 01-08, Protective Order, 16 FCC Rcd. 6935 (2001).

⁴ 47 C.F.R. § 0.459.

(1) Information for which confidential treatment is sought

Qwest requests that the pages marked "Confidential" in the attachments to Qwest's Petition be treated on a confidential basis under Exemption 4 of the Freedom of Information Act.

The pages for which confidential treatment is requested contain information regarding the identity of collocators in specific Qwest wire centers. They also contain information regarding Qwest's revenue for the services that are the subject of Qwest's Petition.

(2) Commission proceeding in which the information was submitted

Qwest Petition for Pricing Flexibility for Special Access and Dedicated Transport Services, filed December 31, 2001.

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

As noted, the subject information identifies the entities collocating in specific Qwest wire centers. Qwest believes that this information constitutes confidential carrier information that is known to Qwest by virtue of Qwest's provision of collocation services and which is subject to the limitations on use and disclosure under section 222(b) of the Communications Act, as amended.⁵ The subject information also includes Qwest's access service revenues disaggregated at the MSA level, which Qwest considers to be confidential business information the disclosure of which would cause competitive harm to Qwest.

(4) Degree to which the information concerns a service that is subject to competition; and

(5) Manner in which disclosure of the information could result in substantial competitive harm

If competitors of the collocators were provided the information identifying the specific wire centers in which the collocators were collocating, it could aid the competitors in targeting their own competitive efforts. The information regarding Qwest's revenues pertains to special access services, which the Commission has recognized are subject to increasing competition. Disclosure of this revenue information would enable competitors to identify Qwest's most lucrative markets within a state and allow the competitors to target their efforts accordingly.

⁵ 47 U.S.C. § 222(b).

- (6) Measures taken by Qwest to prevent unauthorized disclosure;
and**
- (7) Availability of the information to the public and extent of any previous disclosure of
the information to third parties**

Qwest has treated the information in question as confidential and has protected it from disclosure to parties outside the company.

- (8) Justification of the period during which Qwest asserts that the material should not
be available for public disclosure**

The collocator and Qwest revenue information should be withheld from public disclosure as long as it would provide a basis for competitors to gain insight into the collocators' business decisions and the relative attractiveness of Qwest's markets, respectively. Qwest cannot determine at this time any date on which this information would become stale for these purposes.

- (9) 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 must be withheld from public disclosure. Exemption 4 of the Freedom of Information Act shields information which is: (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential.⁶ The information in question clearly satisfies this test.

The Commission has specifically held that disclosure of data gathered by the Commission under its audit authority would likely impair the government's future ability to obtain such data, notwithstanding the statutory authority to compel production.⁷ In addition, the Commission has recognized that competitive harm can result from disclosure of confidential business information that gives competitors insight into a company's costs, pricing plans, market strategies and customer identities.⁸

⁶ See *Washington Post Co. v. U.S. Department of Health and Human Services*, 690 F.2d 252 (D.C. Cir. 1982).

⁷ *Martha H. Platt on Request for Inspection of Records*, FOIA Control No. 90-63, Memorandum Opinion and Order, 5 FCC Rcd. 5742 (1990).

⁸ *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection through Virtual Collocation for Special Access and Switched Transport; Southwestern Bell Telephone Company, Tariff F.C.C. No. 73*, Application for Review, CC Docket No. 94-97, 13 FCC Rcd. 13615, 13617 ¶ 5 (1998). Further the Commission has ruled that not only should such data be protected but also that information through which the competitively sensitive information can be determined must also be protected. *Allnet Communications Services Inc. Freedom of Information Act Request*, FOIA Control No. 92-149, Memorandum Opinion and Order, 8 FCC Rcd. 5629, 5630 (1993), *aff'd*, *Allnet Communications Services, Inc. v. FCC*, Case No. 92-5351, 1994 U.S. App. Lexis 40831 (D.C. Cir. May 27, 1994).

Ms. Magalie Roman Salas
Federal Communications Commission
December 31, 2001
Page 4

Protective Order Requested

Qwest requests that the Common Carrier Bureau employ the standard protective order detailed in the *Confidential Information Order* and previously used for pricing flexibility petitions filed by other carriers. Qwest does not object to the disclosure of the confidential information, including Qwest's revenue data at the MSA level, to any party participating in the proceeding who signs an appropriate nondisclosure agreement. Any person seeking such information subject to the protective order should contact me at the address or phone number above. With its Petition and the confidential version of certain attachments, Qwest is also submitting a redacted "public" version of these attachments.

If you have any questions about this matter, please do not hesitate to contact me.

Very truly yours,

/s/ Craig J. Brown