

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Applications for Consent to the
Transfer of Control of Licenses and
Section 214 Authorizations from
US WEST, Inc.,
Transferor,
To
Qwest Communications International Inc.,
Transferee.
CC Docket No. 99-272

ORDER ADOPTING PROTECTIVE ORDER

Adopted: February 10, 2000

Released: February 10, 2000

By the Deputy Chief, Common Carrier Bureau:

1. On August 19, 1999, Qwest Communications International Inc. (Qwest) and US WEST, Inc., (US WEST) filed joint applications, pursuant to sections 214 and 310 of the Communications Act and sections 34-39 of the Cable Landing License Act, asking the Federal Communications Commission (Commission) to approve the transfer of control of licenses and authorizations held by subsidiaries of the two companies in connection with the proposed merger of US WEST with and into Qwest. In response to Commission inquiries, Advanced Radio Telecom Corp. (ART), a Qwest affiliate, plans to submit information that may be relevant in reviewing the proposed transaction. The Commission anticipates that the information it requests from ART is of a proprietary and commercially sensitive nature.

2. The Bureau hereby grants a proposed protective order (attached as Exhibit A) to ensure that any confidential or proprietary documents submitted by ART are afforded adequate protection. We note that ART's proposed protective order is similar to the protective orders adopted in other mergers currently pending before the Commission.

1 See Applications for Transfer of Control, filed August 19, 1999 (CC Docket No. 99-272).

2 Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from GTE Corporation (Transferor) to Bell Atlantic Corporation (Transferee), CC Docket No. 98-184, Order Adopting Protective Order, DA 98-2348, 13 FCC Rcd 22751 (rel. Nov. 19, 1998); Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor to AT&T Corp., Transferee, CS Docket No. 99-251, Order Adopting Protective Order, DA 99-1568, (rel. Aug. 6, 1999).

3. A Party filing a confidential document must deliver in person one copy of the confidential document to Henry L. Thaggert at 445 12th Street, S.W., Washington, DC 20554. In addition, the Party must file with the Secretary's Office one copy of the entire confidential document and two copies of the confidential document in redacted form, each with an accompanying cover letter. The confidential document and accompanying cover letter should be stamped "CONFIDENTIAL – NOT FOR PUBLIC INSPECTION – SUBJECT TO PROTECTIVE ORDER IN CC Docket No. 99-272." The two copies of the redacted document and their accompanying cover letters should be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letters accompanying both sets of documents should state that the party is filing a confidential document and a redacted version of that document. Other than having different stamps, *i.e.*, "CONFIDENTIAL – NOT FOR PUBLIC INSPECTION – SUBJECT TO PROTECTIVE ORDER IN CC Docket No. 99-272" or "REDACTED – FOR PUBLIC INSPECTION," the cover letter should be the same for the confidential and the redacted copies. The documents to be filed with the Secretary's Office should be delivered in person at 445 12th Street, S.W., Room TW-B204, Washington, DC 20554 to: Magalie Roman Salas, Secretary; or, in her absence, William F. Caton, Deputy Secretary.

4. ART shall make available for review the documents subject to this protective order at the offices of ART's outside counsel, Wiley, Rein and Fielding, 1776 K Street, NW, Washington, D.C. 20006. Parties reviewing these documents will be provided the following alternatives: 1) parties will be provided adequate opportunity to inspect the documents on site; 2) parties may inspect the documents on site with the ability to request copies, at cost, of all or some of the documents, other than those marked as "Copying Prohibited;" or 3) parties may request a complete set of the documents at cost, allowing two days after the request is made for receipt of the copies. If a complete set of documents will be requested, parties are encouraged to make such requests at the time they submit the Acknowledgment of Confidentiality (see Appendix A to Protective Order). This will allow parties the opportunity to begin reviewing the documents at the end of the five-day period referenced in paragraph 5 of the protective order. All copies of documents that are removed from the Wiley, Rein and Fielding office will bear an original confidential stamp and must be returned in accordance with the terms of the protective order.

5. Any party seeking access to confidential documents subject to this Protective Order shall request access pursuant to paragraph 5 of the Protective Order.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. Atkinson
Deputy Chief, Common Carrier Bureau

Exhibit A**PROTECTIVE ORDER**

1. On August 19, 1999, Qwest Communications International Inc. (Qwest) and US WEST, Inc., (US WEST) filed joint applications, pursuant to sections 214 and 310 of the Communications Act and sections 34-39 of the Cable Landing License Act, asking the Federal Communications Commission (Commission) to approve the transfer of control of licenses and authorizations held by subsidiaries of the two companies in connection with the proposed merger of US WEST with and into Qwest. The Commission anticipates that it may seek documents in this proceeding from Advanced Radio Telecom, Inc., an affiliate of Qwest (the "Submitting Party") that contain proprietary or confidential information, and, therefore, should be made available pursuant to a protective order. Consequently, the Common Carrier Bureau enters this Protective Order to ensure that the documents considered by the Submitting Party to be confidential and proprietary are afforded protection. This Protective Order does not constitute a resolution of the merits concerning whether any confidential information would be released publicly by the Commission upon a proper request under the Freedom of Information Act (FOIA) or otherwise.

2. *Non-Disclosure of Stamped Confidential Documents.* Except with the prior written consent of the Submitting Party, or as hereinafter provided under this Protective Order, neither a Stamped Confidential Document nor the contents thereof may be disclosed by a reviewing party to any person. A "Stamped Confidential Document" shall mean any document that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL – NOT FOR PUBLIC INSPECTION – SUBJECT TO PROTECTIVE ORDER IN CC Docket No. 99-272" to signify that it contains information that the Submitting Party believes should be subject to protection under FOIA and the Commission's implementing rules unless the Commission determines, *sua sponte* or by petition, pursuant to Sections 0.459 or 0.461 of its rules that any such document is not entitled to confidential treatment. For purposes of this order, the term "document" means all written, recorded, electronically stored, or graphic material, whether produced or created by a party or another person.

3. *Permissible Disclosure.* Subject to the requirements of paragraph 5, Stamped Confidential Documents may be reviewed by outside counsel of record and in-house counsel who are actively engaged in the conduct of this proceeding, provided that those in-house counsel seeking access are not involved in competitive decision-making, *i.e.*, counsel's activities, association, and relationship with a client that are such as to involve counsel's advice and participation in any or all of the client's business decisions made in light of similar or corresponding information about a competitor. Subject to the requirements of paragraph 5 and subject to the obligation to secure the confidentiality of Stamped Confidential Documents in accordance with the terms of this order, such counsel may disclose Stamped Confidential Documents to: (i) the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in this proceeding; (ii) Commission officials involved in this proceeding; (iii) outside consultants or experts retained for the purpose of assisting counsel in these proceedings and who are not involved in the analysis underlying the business

decisions and who do not participate directly in the business decisions of any competitor of any Submitting Party; (iv) employees of such counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving data or designing programs for handling data connected with this proceeding; and (v) employees of third-party contractors performing one or more of these functions. The Submitting Party shall make available for review the Stamped Confidential Documents at the offices of ART's outside counsel, Wiley, Rein and Fielding, 1776 K Street NW, Washington, D.C. 20006.

4. *Access to Confidential Documents.* Persons described in paragraph 3 shall have the obligation to ensure that access to Stamped Confidential Documents is strictly limited as prescribed in this Protective Order. Such persons shall further have the obligation to ensure: (i) that Stamped Confidential Documents are used only as provided in this order; and (ii) that Stamped Confidential Documents are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 7.

5. *Procedures for Obtaining Access to Confidential Documents.* In all cases where access to Stamped Confidential Documents is permitted pursuant to paragraph 3, and before reviewing or having access to any Stamped Confidential Documents, each person seeking such access shall execute the Acknowledgment of Confidentiality (see Appendix A) to the Commission and to each Submitting Party so that it is received by each Submitting Party five business days prior to such person's reviewing or having access to any such Stamped Confidential Documents. Each Submitting Party shall have an opportunity to object to the disclosure of Stamped Confidential Documents to any such persons. Any objection must be filed at the Commission and served on counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment of Confidentiality. Until any such objection is resolved by the Commission and any court of competent jurisdiction prior to any disclosure, and unless that objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Stamped Confidential Documents.

6. *Requests for Additional Disclosure.* If any person requests disclosure of Stamped Confidential Documents outside the terms of this Protective Order, such requests will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

7. *Use of Confidential Information.* Persons described in paragraph 3 may, in any documents that they file in this proceeding, reference information found in Stamped Confidential Documents or derived therefrom (hereinafter, "Confidential Information"), but only if they comply with the following procedure:

- a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings;
- b. The portions of pleadings containing or disclosing Confidential Information must be covered by a separate letter to the Secretary of the Commission referencing this Protective Order;
- c. Each page of any party's filing that contains or discloses Confidential Information subject to this Order must be clearly marked: "Confidential Information included pursuant to Protective Order, CC Docket No. 99-272;" and

d. The confidential portion(s) of the pleading shall be served upon the Secretary of the Commission and each Submitting Party. Such confidential portions shall be served under seal, and shall not be placed in the Commission's Public File. A party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. Parties may provide courtesy copies under seal of pleadings containing Confidential Information to Commission staff.

8. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing parties, by viewing this material: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

9. *Subpoena by Courts or Other Agencies.* If a court or another administrative agency subpoenas or orders production of Stamped Confidential Documents or Confidential Information that a party has obtained under terms of this order, such party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court or administrative agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document or Confidential Information.

10. *Client Consultation.* Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Confidential Documents provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not disclose Stamped Confidential Documents or Confidential Information.

11. *Violations of Protective Order.* Persons obtaining access to Stamped Confidential Documents or Confidential Information under this order shall use the information solely for preparation and the conduct of this proceeding as delimited in paragraphs 4, 7, and 10, and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such information for any other purpose, including business, governmental, commercial, or other administrative, regulatory or judicial proceedings. Should a party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, that party shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order.

12. *Prohibited Copying.* If, in the judgment of the Submitting Party, a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited," and no copies of such document, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to counsel for the

Submitting Party.

13. *Termination of Proceeding.* The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding (which includes any administrative or judicial review), Stamped Confidential Documents and all copies of same shall be returned to the Submitting Party. No material whatsoever derived from Stamped Confidential Documents may be retained by any person having access thereto, except counsel to a party in this proceeding (as described in paragraph 3) may retain, under the continuing strictures of this Protective Order, two copies of pleadings containing confidential information prepared on behalf of that party. All counsel of record shall make certification of compliance herewith and shall deliver the same to counsel for the Submitting Party not more than three weeks after conclusion of this proceeding.

14. *Authority.* This Order is issued pursuant to Sections 4(i), 214(a), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214(a), and 310(d), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. Atkinson
Deputy Chief, Common Carrier Bureau

Appendix A

ACKNOWLEDGEMENT OF CONFIDENTIALITY

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding and I understand it. I agree that I am bound by this Order and that I shall not disclose or use documents or information designated as "CONFIDENTIAL INFORMATION" or any information gained therefrom except as allowed by the Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the order is due solely to my capacity as counsel or consultant to a party or other person described in paragraph 3 of the foregoing Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the order.

Executed at _____ this ___ day of _____, 2000.

Signature

Title