

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

In the Matter of)
)
Qwest Communications International, Inc.)
) EB File No. EB-03-IH-0500

ORDER

Adopted: November 3, 2003

Released: November 4, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Order we deny Qwest Communications International, Inc.’s (“Qwest’s”) request for confidential treatment of material that it submitted in response to a letter of inquiry (“LOI”) by the Enforcement Bureau.¹ As explained below, Qwest has failed to satisfy the Commission rules for nondisclosure. Specifically, Qwest has not provided a statement of the reasons for withholding the materials in question, as required by section 0.459 of the Commission’s rules.

II. BACKGROUND

2. On June 26, 2003, the Investigations and Hearings Division of the Enforcement Bureau sent Qwest an LOI, seeking certain documents pertaining to Qwest’s filing of interconnection agreements in Minnesota and Arizona.² Qwest submitted responses to the LOI on July 31, 2003.³ Qwest’s response included a Confidentiality Request, in which Qwest requested confidential treatment of certain materials that Qwest described as including: “declarations, charts, internal documents, correspondence, and nonpublic versions of pleadings.”⁴ Qwest claims that the “materials merit confidential treatment because they address strategically sensitive matters, including commercial, financial, and trade secret information,” and that their disclosure “could result in substantial competitive harm to Qwest.”⁵

¹ See Letter from Peter A. Rohrback and Ghita J. Harris-Newton, Hogan and Hartson, to Mika Savir, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated July 31, 2003 (“Confidentiality Request”).

² See Letter from William H. Davenport, Deputy Division Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Sharon J. Devine, Qwest Communications International, Inc., dated June 26, 2003.

³ See Letter from Sharon J. Devine, Qwest Communications International, Inc. to William H. Davenport, Deputy Division Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission dated July 31, 2003. In addition to this letter and the Confidentiality Request, the LOI response contained a memo, declarations, a privilege log listing numerous documents that were withheld based on attorney-client privilege, and three boxes of documents.

⁴ See Confidentiality Request at 1.

⁵ *Id.*

III. DISCUSSION

3. Section 0.459 of the Commission's rules establishes a procedure by which parties may request that information or materials that they have submitted to the Commission not be routinely available for public inspection.⁶ This rule requires that a party seeking confidentiality provide a statement of the reasons for withholding the materials in question from public inspection and set forth the specific categories of materials for which such treatment is appropriate.⁷

4. Qwest has failed to provide the statement of reasons for withholding the materials it claims should be treated as confidential, as required by section 0.459(b). For example, Qwest does not identify the specific information for which confidential treatment is sought, as required in section 0.459(b)(1). Instead, Qwest seeks confidential treatment for all materials labeled confidential, which include a broad array of documents such as those submitted in response to the LOI, the written response to the LOI, and Qwest's Confidentiality Request itself. Qwest also fails to explain the degree to which the information is commercial or financial or contains a trade secret or is privileged, as required by section 0.459(b)(3). Further, Qwest fails to explain how the disclosure would result in competitive harm, as required by section 0.459(b)(5). Instead, Qwest merely concludes that the disclosure of such materials could result in substantial competitive harm.⁸ In view of the foregoing, we find that this request fails to comply with the standards set forth in section 0.459(b), and therefore deny the request.

5. Quite apart from our conclusion that Qwest's Confidentiality Request fails to comply with section 0.459(b) of the Commission's rules, the overbreadth of that request provides an additional basis for denying it. For example, Qwest claims confidentiality for documents that clearly do not contain commercial, financial, or trade secret information, such as Qwest's response to the LOI, including the Confidentiality Request.⁹ In fact, most of the submitted information is public.¹⁰ In addition, documents marked "confidential" in the three boxes submitted by Qwest, such as the minutes of the Qwest Wholesale Agreement Review Committee and memos regarding filing interconnection agreements, contain no commercial, financial, or trade secret information.¹¹

6. We conclude that Qwest has failed to demonstrate by a preponderance of the evidence that its response to the LOI and other designated materials satisfy the requirements for nondisclosure set forth in

⁶ 47 C.F.R. § 0.459.

⁷ 47 C.F.R. § 0.459(b). Section 0.457 sets forth the categories of records that are not routinely available for public inspection, i.e., accorded confidential treatment, and Section 0.459 sets forth the procedures for submitting requests that material or information be withheld from public inspection. For instance, Section 0.459(b)(3) provides that a request for confidentiality shall, among other things, include an "explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged." 47 C.F.R. § 0.459(b)(3).

⁸ See *National Exchange Carrier Association, Inc.*, Memorandum Opinion and Order, 5 FCC Rcd 7184, 7184, ¶ 3 (1990) (quoting *National Parks and Conservation Association v. Kleppe*, 547 F.2d 673, 680 (D.C.Cir. 1976)).

⁹ Moreover, the Confidentiality Request itself does not even fit the description of the materials listed in the Confidentiality Request, i.e., "declarations, charts, internal documents, correspondence, and nonpublic versions of pleadings."

¹⁰ For example, the written response to the LOI includes several lists of interconnection agreements, which have been filed and are in the public record and a discussion of the Qwest Wholesale Agreement Review Committee's role, which has been discussed by Qwest in several public documents. See, e.g., Letter from Melissa E. Newman, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, filed August 20, 2002 in WC Dockets 02-148 and 02-189 at 2.

¹¹ See Documents Q-CONF-003506, 000909, 004082, 002147, 002148, 002149, 002124.

section 0.459 of the Commission's rules. We therefore deny Qwest's July 31, 2003 confidentiality request.

IV. ORDERING CLAUSES

7. According, IT IS ORDERED, pursuant to section 0.459(c) and 0.459(d)(2) of the Commission's rules, 47 C.F.R. §§ 0.459(c) and 0.459(d), that the Confidentiality Request filed on July 31, 2003 by Qwest Communications International, Inc. is hereby DENIED.

8. IT IS FURTHER ORDERED, pursuant to section 0.459(g) of the Commission's rules, 47 C.F.R. § 0.459(g), that Qwest Communications International, Inc. may file an application for review of this denial with the Commission within five (5) working days of this Order.

9. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Qwest, 607 14th Street NW, Suite 950, Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau