

Decision No. R04-0112-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03I-485T

REGARDING ADOPTION OF A BATCH HOT CUT PROCESS PURSUANT TO 49 C.F.R.
§ 51.319(d)(2)(ii).

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
GRANTING MOTION;
SETTING HEARING; AND
ESTABLISHING PROCEDURES**

Mailed Date: January 30, 2004

I. STATEMENT

1. The captioned proceeding was initiated on November 5, 2003, when the Colorado Public Utilities Commission issued its Order Opening Docket and Procedural Directives (Order). *See*, Decision No. C03-1250. The Order made Qwest Corporation (Qwest); WorldCom, Inc. (MCI); and AT&T Communications of the Mountain States, Inc., and TCG Colorado, Inc. (collectively, AT&T), parties to this matter.

2. Interventions have been filed by Eschelon Telecom of Colorado, Inc. (Eschelon); McLeodUSA Telecommunications Services, Inc. (McLeodUSA); DIECA Communications, Inc., doing business as Covad Communications Company; the Colorado Office of Consumer Counsel (OCC); and the Staff of the Commission (Staff). An intervention previously filed by iLOKA, Inc., doing business as Microtech-Tel, has been withdrawn.

3. On January 26, 2004, Qwest filed a Motion for One Day Extension of Time to File Testimony and Request to Waive Response Time (Motion for Extension). The Motion for

Extension requests a one-day extension of the January 23, 2004, deadline for the submission of Qwest's direct testimony and exhibits established by Decision No. R04-0066-I. In support of the Motion for Extension, Qwest states that the subject filing was delayed until January 26, 2004, due to a traffic incident involving the messenger who was attempting to deliver its testimony/exhibits to the Commission on January 23, 2004.

4. On January 27, 2004, Qwest, AT&T, MCI, and Allegiance Telecom of Colorado, Inc. (Allegiance), filed a Motion for Clarification Regarding Treatment of and Access to Highly Confidential Information and Request for Waiver of Response Time (Motion for Clarification).¹ The Motion for Clarification requests that the modifications made to the Commission's discovery, service, and disclosure of confidential information rules made by the Commission in Docket No. 03I-478T, be, with one further modification, applied in this proceeding. *See*, 4 *Code of Colorado Regulations* (CCR) 723-1-77 and 4 CCR 723-16 and Section I.A. Paragraphs 9-11 of Decision No. C03-1225 and Attachment C (Supplemental Protective Order) attached thereto. The modification requested to the Supplemental Protective Order would allow the parties to designate a reasonable number of in-house experts to review highly confidential information.² The Motion for Clarification indicates that no party objects to the relief requested therein.

5. A pre-hearing conference was held in this matter on January 29, 2004. *See*, Decision No. R04-0097-I. Appearances were entered by or on behalf of Qwest, MCI, AT&T, McLeodUSA, Eschelon, Staff, and the OCC. The Motion for Extension and the Motion for Clarification were discussed and were granted.

¹ The Motion for Clarification was also filed in Docket No. 03I-478T. Allegiance is a party in that docket but has not intervened in this proceeding.

² The Supplemental Protective Order originally approved by the Commission allowed the parties to designate two in-house experts for this purpose.

6. Regarding the Motion for Clarification, the parties request that the person(s) they have already designated to review highly confidential information in Docket No. 03I-478T (though the completion and filing of Exhibit “A” of the Supplemental Protective Order entered in that docket) be deemed the person(s) designated to review such information in this docket without the necessity of completing and resubmitting another original Exhibit “A: in this matter. All parties agreed to such a procedure and it was approved. However, for Commission record-keeping purposes, each party shall file copies of the designations submitted in Docket No. 03I-478T relative to the review of highly confidential information in this docket.

7. At the pre-hearing conference the parties’ joint proposal for scheduling the hearing of this matter was adopted and is set forth in the Order that follows. That proposal contemplates the use of some of the hearing dates already set in connection with Docket No. 03I-478T. The two-week hearing setting in that docket (April 19 through 23 and 26 through 30, 2004) was established at a point in time when it included the batch hot cut (BHC) issues (*i.e.*, prior to issuance of the Order opening this separate, BHC docket). As a result, the parties contemplate that hearing the issues now encompassed by Docket No. 03I-478T will be completed on or before April 27, 2004, thereby leaving April 28 through 30, 2004, the time estimated by the parties as necessary to try the BHC issues, available for hearing this matter. In the event hearings in Docket No. 03I-478T are not completed by April 27, 2004, the parties have proposed that May 3 through 5, 2004, be reserved as alternative hearing dates in this docket.

II. ORDER

A. It Is Ordered That:

1. The Motion for One Day Extension of Time to File Testimony and Request to Waive Response Time filed by Qwest Corporation on January 26, 2004, is granted.

2. The Motion for Clarification Regarding Treatment of and Access to Highly Confidential Information and Request for Waiver of Response Time filed by Qwest Cooperation, WorldCom, Inc., AT&T Communications of the Mountain States, Inc., TCG Colorado, Inc., and Allegiance Telecom of Colorado, Inc., on January 27, 2004, is granted.

3. The Rules Relating to the Claim of Confidentiality of Information Submitted to the Colorado Public Utilities Commission, 4 *Code of Colorado Regulations* 723-16, shall apply to this proceeding as modified by the Supplemental Protective Order (Attachment C) attached to Decision No. C03-1225 issued in Docket No. 03I-478T. The first line of page 2 of the Supplemental Protective Order is modified to read as follows: "...Highly Confidential Information; (2) a reasonable number of in-house experts; and (3) a reasonable number of...."

4. The person(s) previously designated by the parties to review highly confidential information in Docket No. 03I-478T shall be deemed the person(s) designated to review such information in this docket without the necessity of completing and resubmitting another original Exhibit "A" of the Supplemental Protective Order in this matter. Each party shall, however, file copies of the designations submitted in Docket No. 03I-478T relative to the review of highly confidential information in this docket.

5. The hearing of this matter is scheduled as follows:

DATES: April 28, 29, and 30, 2004, or, if necessary, May 3, 4, and 5, 2004

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
1580 Logan Street, OL2
Denver, Colorado

6. Unless otherwise requested by a party, service of all documents to other parties, including pleadings, discovery, and pre-filed testimony, shall be accomplished through electronic

means (*i.e.*, e-mail). Filings with the Commission shall be made in accordance with the Commission's Rule of Practice and Procedure (electronic filings are not permitted).

7. Objections to written discovery requests shall be made within three business days of service. Answers to discovery shall be provided within five business days of service. In all other respects, discovery shall be governed by Rules 77(a) and (b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations*, 723-1-77(a) and (b).

8. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge