

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>QWEST CORPORATION – 47 U.S.C. § 272(b), (c), (d), AND (e) BIENNIAL AUDIT</p>	<p>DOCKET NOS. M-272 WRU-05-21-272</p>
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**ORDER ESTABLISHING BLANKET GRANT OF CONFIDENTIALITY AND
GRANTING A WAIVER OF 199 IAC 1.9(6)**

(Issued May 10, 2005)

On April 6, 2005, Qwest Corporation, on behalf of itself and Qwest Communications International Inc., Qwest LD Corp., and Qwest Communications Corporation (collectively "Qwest"), filed a motion with the Utilities Board (Board) requesting a comprehensive order regarding non-release of confidential information provided for the duration of the biennial audit being conducted pursuant to 47 U.S.C. § 272(b), (c), (d), and (e).

The Federal Communications Commission (FCC), together with the State Biennial Oversight Team,¹ is engaged in overseeing, monitoring, reviewing, and evaluating the audit work, results, and working papers of the independent accounting

¹ Pursuant to 47 U.S.C. § 272(d), a company required to operate a separate affiliate under section 272 shall obtain and pay for a joint Federal/State audit every two years conducted by an independent auditor to determine compliance with regulations promulgated by the FCC and with the requirements of subsection (b) of 47 U.S.C. § 272. The Board is a member of the State Biennial Oversight Team for the biennial audit of Qwest. The team consists of state commissions in the following states: Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

firm hired to perform the biennial audit of Qwest. Qwest is required to provide access to the financial accounts and records of each company and its affiliates as necessary to conduct the audit and has agreed to provide information to members of the State Biennial Oversight Team.² However, 47 U.S.C. § 272(d)(3)(c) provides that each state commission involved in the audit must implement appropriate procedures to protect any proprietary information submitted to it.

According to Qwest's motion, certain of the information that will be provided in connection with the audit includes confidential records and trade secrets as defined by Iowa Code §§ 22.7(3) and (6) (2005) and the Uniform Trade Secrets Act, Iowa Code § 550.2(4). During the pendency of the audit, Qwest will be providing additional information that contains trade secrets as described in Iowa Code § 22.7(3) or is information furnished to the Board as a governmental agency which, if released, would give advantage to competitors and serve no public purpose, and is therefore exempt from public release pursuant to § 22.7(6). It is anticipated that Qwest will provide such confidential information on numerous occasions during the biennial audit.

In addition to confidential information, it is anticipated that Qwest will provide members of the State Biennial Oversight Team with access to information designated by Qwest as "Restricted Confidential Information" or "Highly Confidential Information." According to Qwest's motion, information so designated will be only that kind or class of confidential information which, in the good faith judgment of

² 47 U.S.C. § 272(d)(3).

Qwest, requires protection greater than is provided to its regular confidential information. Qwest requests that such designated information not be copied, circulated, distributed in any way, or removed from Qwest's premises.

In its motion, Qwest has requested that the Board include in its order a requirement that all documents provided by Qwest containing confidential information and any copies made of such information be returned to Qwest within 120 days of the conclusion of the audit or release of any audit report, whichever is later, provided, however, that all documents shall be returned within 270 days after conclusion of the audit. Qwest commits to the retention of the documents for five years for future review by members of the State Biennial Oversight Team and to provide access to the documents upon reasonable notification to Qwest.

Rather than seek individual orders each time confidential information is provided to the Board or its staff, Qwest requests that the Board issue a comprehensive confidentiality order for the duration of this biennial audit. Qwest asserts that issuance of a blanket confidentiality order will provide an efficient procedure for the filing and sharing of confidential information and that no party will be harmed by the procedure. According to the affidavit of Max A. Phillips, attached to the Qwest motion, the material can be generally described as follows:

- a. The confidential material is unpublished data not known outside of Qwest, developed and compiled by Qwest and is known only to it.
- b. This information has been restricted to Qwest employees who have a need to know. The total number of employees is not substantial.

c. Such employees are under an obligation to Qwest not to disclose confidential and proprietary information, including any work papers and back up papers. Unauthorized use or disclosure of this information is a punishable offense, up to and including dismissal.

d. Qwest designed and developed this information. The information would be nearly impossible to duplicate without obtaining Qwest's confidential information. All competitors treat such information as confidential business information. Such "trade secret" information is not generally provided to the public or to competitors.

Iowa Code § 22.7(6) provides confidential treatment for public records which are reports to government agencies and which, if released, would give advantage to competitors and would serve no public purpose. Iowa Code § 22.7(3) provides confidential treatment for trade secrets as recognized and protected by law. Based upon the affidavit submitted by Qwest, the Board finds that the information sought to be granted blanket confidential treatment is either company-specific market information or company-specific customer information which is either a trade secret or is provided to the Board as a report to a government agency, the release of which would provide advantage to competitors without tangible public benefit.

To grant the motion for a blanket grant of confidential treatment, the Board must find that there is clear and convincing evidence that the provisions of 199 IAC 1.9(6) should be waived for the 47 U.S.C. § 272 Biennial Audit. Rule 199 IAC 1.3 establishes the standards for waiver of a Board rule. The Board finds that the facts alleged in the affidavit supporting the motion meet the standards set out in 199 IAC 1.3 for waiving 199 IAC 1.9(6) and granting a blanket order of confidential treatment.

The Board has found that the information claimed to be confidential meets the statutory requirements for confidential treatment. In fact, the Board is required, by federal statute, to ensure the protection of the information. The complexity of the federal/state biennial audit therefore supports granting of the waiver. The biennial audit of Qwest involves 14 states, in addition to the FCC staff. The amount of information that is to be provided is voluminous and to require a separate request for confidential treatment each time information is exchanged would be counterproductive and a waste of resources. The Board finds that no party will be prejudiced by the grant of this waiver and there is no statutory mandate for applying the rule in this instance.

The Board in granting the blanket order for confidential treatment is specifically waiving the provisions of 199 IAC 1.9(6) that require the filing of a separate request and an affidavit for each filing of confidential information. The Board finds that the provisions of the rule that require the confidential information to be physically separated and each page to be clearly marked as confidential are still applicable. Further, the Board expects that only that information which meets the statutory standards will be designated as confidential and that the information will be clearly marked. This does not allow Qwest to automatically designate all documents provided in connection with the biennial audit as confidential. A failure on Qwest's part to exercise discretion in the designation of documents as confidential may result in the Board withdrawing this blanket order of confidential treatment and requiring Qwest to file a separate request and affidavit for each filing of confidential information

describing how the information complies with the requirements of Iowa Code §§ 22.7(3) and (6) or the Uniform Trade Secrets Act, Iowa Code § 550.2(4).

The Board in granting a blanket order of confidential treatment is not waiving the provisions of 199 IAC 1.9(8)"b"(3) that set out the procedures for requesting the release of the confidential information which are trade secrets or reports to a government agency. Any party may request the release of information designated as confidential pursuant to the blanket order and the Board will allow the party claiming confidentiality (Qwest, in this matter) an opportunity to seek a court order to prevent the disclosure.

The Board finds that the request that all documents provided by Qwest containing confidential information and any copies of such information be returned to Qwest following the conclusion of the audit and release of the audit report is unnecessary. Instead, the Board will provide notice to Qwest when the copies or documents provided to the Board or its staff members have been destroyed. The Board directs Qwest to keep a complete copy of all documents provided during the biennial audit for future review as necessary, for a period of at least five years, as Qwest committed to do with the individual copies of each state member of the State Biennial Oversight Team.

IT IS THEREFORE ORDERED:

1. The request for confidential treatment filed by Qwest Corporation on April 6, 2005, is granted as discussed in the body of this order.

2. The provisions of 199 IAC 1.9(6) requiring the filing of a separate attached request for confidential treatment and the affidavit of a corporate officer with the confidential information are waived for purposes of the 47 U.S.C. § 272 Biennial Audit.

3. The information filed pursuant to the waiver granted in this order shall be held confidential by the Board subject to the provisions of 199 IAC 1.9(8)"b"(3).

4. All information filed or exchanged during the 47 U.S.C. § 272 Biennial Audit which has been physically separated and clearly marked as confidential as defined in this order is subject to the blanket grant of confidential treatment and the waiver granted in this order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 10th day of May, 2005.