

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION**

In the Matter of a Generic Investigation of
U S WEST Communications, Inc.'s Cost of
Providing Interconnection and Unbundled
Network Elements

**SUPPLEMENTAL ORDER DIRECTING
PRODUCTION OF VENDOR
PROPRIETARY INFORMATION**

This matter is before the Administrative Law Judge Steve M. Mihalchick on requests of three vendors for additional protections for their proprietary information.

Appearances, all by letter brief:

Patricia L. Graves, Baker & McKenzie, 4500 Trammell Crow Center, 2001 Ross Avenue, Dallas, TX 75201, on behalf of DSC Communications Corporation (DSC).

J. Paul DeJongh, Assistant General Counsel, Northern Telecom, 4001 E. Chapel Hill-Nelson Hwy, P.O. Box 13010, Research Triangle Park, NC 27709-3010, on behalf of Northern Telecom, Inc. (Nortel).

Donald R. Gutzmer, Manager, Legal Services, Telltabs Operations, Inc., 4951 Indiana Avenue, Lisle, IL 60532, on behalf of Telltabs Operations, Inc. (Telltabs).

John B. Van de North, Jr., Briggs and Morgan, 2200 First National Bank Building, St. Paul, MN 55101, and Rebecca B. DeCook, AT&T, Suite 1575, 1875 Lawrence Street, Denver, CO 80202, on behalf of AT&T Communications of the Midwest, Inc. (AT&T).

James A. Gallagher, Maun & Simon, 2000 Midwest Plaza Building West, 801 Nicollet Mall, Minneapolis, MN, 55402, and David G. Seykora, Senior Attorney, 200 South Fifth Street, Room 395, Minneapolis, MN 55402, on behalf of U S WEST Communications, Inc. (U S WEST).

Gregory P. Huwe, Assistant Attorney General 445 Minnesota Street, Suite 1200 St. Paul, MN 55101-2130, on behalf of the Department of Public Service (DPS).

Based upon the record herein, and for reasons stated in the following memorandum, the Administrative Law Judge make the following,

ORDER

IT IS HEREBY ORDERED that:

1. The Order Staying Paragraphs 2 and 3 of Order Directing Production of Vendor Proprietary Information of August 4, 1997, is hereby rescinded.

2. Parties providing vendor pricing data related to cost study inputs may redact vendor identity information from their responses, so long as a separate list identifying the vendors with the data is

provided, which list shall be provided and disclosed only to the receiving party's counsel and outside experts. The restriction to outside experts shall not apply to DPS or the Office of the Attorney General (OAG).

3. U S WEST shall provide copies of the requested vendor pricing information relevant to DSC to DPS; OAG, AT&T, and MCI according to the procedure in the Protective Agreement and Paragraph 2 of this Order. If it is not possible to redact vendor identity information, then the pricing information shall, in the case of AT&T and MCI, be provided and disclosed only to counsel and outside experts. The procedures of Paragraph 1(g) of the Protective Agreement shall not apply.

4. U S WEST shall provide copies of the Nortel and other vendor contracts responsive to DPS Requests No. 157 and 316(b) to DPS and OAG. It shall provide copies of those contracts, with provisions not affecting prices redacted, to AT&T and MCI. It shall make unredacted copies of the contracts available for inspection and review to AT&T's and MCI's outside counsel and outside experts in accordance with the procedures of Paragraph 1(g) of the Protective Agreement.

5. U S WEST shall provide copies of the requested vendor pricing information relevant to Telltabs to DPS; OAG, AT&T, and MCI according to the procedures in the Protective Agreement and Paragraph 2 of this Order. The procedures of Paragraph 1(g) of the Protective Agreement shall not apply.

Dated this 20th day of August, 1997.

STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

Vendor Identities

The parties to this matter signed a Protective Agreement, dated March 27, 1997, to govern the production and use of "Confidential Information" in this proceeding. As to "highly sensitive" information, the Protective Agreement affords even more restrictive treatment, set forth at Paragraph 1(g) as follows:

Availability of Documentation. As to highly sensitive documents and information, the parties shall have the right, at their option, to refuse to provide copies to counsel for the other party or to its experts as defined in paragraph 1(b). Should the parties refuse to provide copies, such documents shall be made available for inspection and review by counsel or experts at a place and time mutually agreed upon by the parties. Where copies are not provided, the counsel or expert reviewing the Confidential Information may make limited notes regarding the Confidential Information for reference purposes only. Such notes shall not constitute a verbatim or substantive transcript of the Confidential Information. For purposes hereof, notes made pertaining to or as the result of a review of Confidential Information shall be considered Confidential Information and subject to the terms of this Agreement.

Paragraph 1(b) defines experts as persons identified as such by counsel and does not necessarily exclude regular employees of the parties.

On July 30, 1997, the Administrative Law Judge issued an Order Directing Production of Vendor Proprietary Information which required U S WEST and AT&T to make vendor proprietary information pertinent to their cost studies available to requesting parties, required U S WEST and AT&T to send copies of the Protective Agreement (referred to as the Protective Order) to affected vendors, allowed U S WEST and AT&T to propose additional protections for vendors, and allowed vendors to seek additional protections.

On August 4, 1997, the Administrative Law Judge issued an Order Staying Paragraphs 2 and 3 of Order Directing Production of Vendor Proprietary Information. The stay was issued at the request of AT&T, which was seeking additional protections regarding the identities of vendors providing information for the Hatfield Model. A telephone conference was held August 6, 1997, to discuss the matter. During that conference, it was agreed as follows:

AT&T may provide to U S WEST the vendor information that affects inputs to the Hatfield Model with the names of the vendors redacted. A separate list identifying the vendors with the data will be provided to U S WEST counsel and its outside experts only.

U S WEST may provide to AT&T the vendor information regarding inputs to its cost studies under the same conditions.

The foregoing agreement does not waive either party's right to claim or to object to the other party's claim that certain data is "highly sensitive" and subject to Paragraph 1(g) of the Protective Agreement.

The foregoing restriction on revealing certain data to outside experts only does not apply to data provided to DPS or the Office of Attorney General (OAG).

DSC

On August 8, 1997, DSC filed its Objections to the Order Directing Production of Vendor Proprietary Information. DCS is a vendor to U S WEST. DSC did not object to the disclosure of its cost studies and pricing information to DPS or OAG; but did object to disclosure to any other party that requested the information, particularly other vendors of U S WEST and AT&T. In addition to its understandable desire to shield its pricing data from its competitors, DSC cited that fact that its General Purchasing Agreement with U S WEST requires the parties to it to keep confidential any proprietary information, including the actual terms of that agreement. DSC also cites its company policy of not releasing pricing information pertaining to one customer to another of its customers.

AT&T notes that switch prices and relevant discounts to U S WEST are key inputs to U S WEST's Switch Cost Model and a large component of network costs and argues that this information should be provided to AT&T so that it can address the reasonableness of U S WEST's cost estimates in this case. AT&T suggests that DSC might be able to argue that the information is highly sensitive and should only be disclosed to counsel and outside experts. U S WEST argues that the additional limitations requested by DSC are appropriate and should be allowed. U S WEST suggests that vendor cost information, but not vendor contracts, should be disclosed pursuant to the Protective Agreement with the vendor identities redacted. DPS did not comment on the DSC objection.

No third-party vendors are parties to this proceeding or have signed the Protective Agreement, so they should have no access to DSC's pricing information under the existing protections. Nonetheless, DSC, and other vendors, have a legitimate and legal interest in protecting their pricing information from being used to their competitive disadvantage. On the other hand, it is vital to this proceeding that the cost studies and their inputs be subjected to vigorous examination by both the state agencies and by those

parties doing analysis of those studies for testimony in this proceeding. To the knowledge of the Administrative Law Judge, and subject to correction, the only parties doing such analyses are DPS, OAG, U S WEST, AT&T, and MCI. Therefore, U S WEST will be required to provide the DSC pricing information relevant to any of its cost study inputs to DPS, OAG, AT&T, and MCI. To the extent feasible, U S WEST shall redact DSC's identity from the information. The identification information shall be provided separately to those parties, and in the case of AT&T and MCI, shall be disclosed only to counsel and outside cost study experts.

Nortel

On August 11, 1997, Nortel filed its objections. Nortel is also a vendor to U S WEST. Nortel objected to DPS Requests No. 157 and 316(b), which requested copies from U S WEST of all pending or existing contracts with vendors regarding acquisition of switches and copies of pending contracts with vendors regarding many loop elements. Nortel did not object to providing the contracts to DPS or OAG, but did object to disclosure to certain other parties without reasonable protections. Nortel stated that it had been informed by U S WEST of the further discussions and that it believed its interests would be protected if the disclosure to parties other than DPS and OAG included the following limitations:

1. The documents would be produced for inspection only at U S WEST's facility with U S WEST personnel present
2. Disclosure limited to outside attorneys and outside experts
3. Persons to whom disclosed could not make copies and could make only limited notes
4. Documents would be redacted to eliminate **all** vendor-identifying information.

AT&T argued that Nortel's proposal was unnecessarily restrictive. It again suggested that the redacted identity procedure be followed and that doing so would eliminate the need for a Minneapolis or Denver viewing location with no copying. AT&T stated that its experts are located throughout the United States and that allowing them to be provided with photocopies would not harm Nortel's interests. U S WEST argued that the additional limitations requested by Nortel are appropriate and should be allowed., U S WEST argued that unlike invoices, contracts often contain terms and conditions that have little to do with price, but that are very important to U S WEST and the vendors. The vendors, according to U S WEST, are very concerned that other customers such as AT&T and MCI would then be in a position to bargain for the same contract terms. As noted above, U S WEST suggested that vendor cost information, but not vendor contracts, should be disclosed pursuant to the Protective Agreement with the vendor identities redacted. DPS did not comment on the Nortel objection.

Ultimately, every contract term affects the price of items being purchased. However, there may be terms in the vendor contracts that are only very remotely related to price, but which are important to marketing, legal, customer relations, and other competitive issues for the vendors and very sensitive items for them. To balance these interests, U S WEST will allowed to provide redacted contracts to AT&T and MCI. To insure that only non-pricing information is redacted, U S WEST will be required to make the full contract available for inspection and review by AT&T's and MCI's outside counsel and outside experts. The outside counsel restriction has been added because the Administrative Law Judge assumes that normally inside counsel are used for drafting and reviewing vendor contracts. Copies of the full contracts will be provided to DPS and OAG.

Telltabs

On August 11, 1997, Telltabs filed its objection by fax. However, copies of the filing were not served on parties other than U S WEST. On August 14, 1997, U S WEST faxed copies of Telltabs' filing to all the other parties. DPS and AT&T then filed responses.

Telltabs stated that it will not object to U S WEST disclosing its confidential price information under the terms of the Protective Agreement. However, it requested that all line item price detail be redacted from invoices so that only the list of equipment and total invoice price are disclosed, and that it be given advanced notice of the identities of the individuals to whom the information will be disclosed. U S WEST supported Telltabs' request.

DPS objected to Telltabs' request to redact the line item price detail. DPS believes that such a procedure will substantially interfere with its review of the U S WEST cost studies because it intends to compare the prices U S WEST actually pays with the price information in the cost studies. AT&T concurs with DPS and additionally notes that discounts off scheduled prices are of critical importance in estimating costs and may be redacted if line item details are redacted. AT&T suggests that the standard vendor process is adequate to meet Telltabs' needs.

The Administrative Law Judge finds that the line item detail is necessary for adequate analysis by DPS, OAG, AT&T, and MCI and that the procedures established under the Protective Agreement, along with the vendor identity redaction process, are adequate to protect Telltabs' interests. Redaction of line item price detail will not be allowed. Prior notice of persons to receive the information is already required by Paragraphs 1(d) and (e) of the Protective Agreement.

S.M.M.