

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF CenturyLink QC's) REGULATORY DIVISION
Service Quality and Its Response to Notice)
of Commission Action in Docket) DOCKET NO. D2014.11.91
N2014.3.38, Including Petition for Waiver)
of Admin. R. Mont. 38.5.337197)(b)

* * * * *

CENTURYLINK
MOTION FOR A PROTECTIVE ORDER

1.

Qwest Corporation d/b/a CenturyLink QC ("CenturyLink QC"), by and through counsel undersigned, submits this *Motion for Protective Order* to the Montana Public Service Commission ("MPSC"). The motion is filed pursuant to A.R.M. §§ 38.2.5001 through 38.2.5030, for the protection of certain information CenturyLink QC plans to submit in response to data request PSC-001 propounded by the Public Service Commission's Staff in this docket. CenturyLink QC requests a Standard Protective Order issued pursuant to ARM § 38.2.5014 to protect trade secrets contained in those responses. The Motion is supported by the Affidavit of Robert Brigham, Regulatory Operations Director for CenturyLink ("Brigham Affidavit"), filed herewith as Attachment A.

2.

The person to be contacted regarding this motion is Mr. William E. Hendricks at Tre.Hendricks@CenturyLink.com or (541) 387-9439 or mobile (541) 400-8421.

3.

CenturyLink QC seeks protection for information in Confidential Exhibits 4 and 5 to its response to PSC-001 ("Information"). Exhibit 4 contains competitively sensitive information regarding broadband service speeds CenturyLink QC's offers at the census block level of detail. Confidential Exhibit 5 contains competitively sensitive capital investment data by project by exchange that competitors could use to gain an unfair advantage in the competitive market for broadband services.

4.

The following discussion establishes a complete and specific legal and factual basis for issuing the requested protective order. The discussion is supported by the Affidavit of Mr. Brigham who is qualified to provide testimony on the subject matter of this motion.

5.

The legal basis for CenturyLink QC's Motion for Protective Order is that the Information is trade secret. Montana adopted and employs the Uniform Trade Secret Act (hereafter the "Act"). See §§ 40-14-401, *et seq.*, MCA.

6.

The Administrative Rules enacted by the MPSC to implement the Act identifies six elements for establishing *prima facie* that Information may be protected as trade secret. ARM § 38-2-5007(4)(b).

(i) prior to requesting a protective order, the provider has considered that the commission is a public agency and that there is a constitutional presumption of access to documents and information in the commission's possession;

(ii) the claimed trade secret material is information;

(iii) the information is secret;

(iv) the secret information is subject to efforts reasonable under the circumstances to maintain its secrecy;

(v) the secret information is not readily ascertainable by proper means; and

(vi) the information derives independent economic value from its secrecy, or that competitive advantage is derived from its secrecy.

7.

CenturyLink QC understands and has fully considered the constitutional presumption in favor of public access to Information filed in MPSC proceedings.

8.

The material is Information. The material for which protection is sought is comprised of knowledge, data and facts collected and recorded by, or at the direction of CenturyLink QC, which will be provided in response to discovery. As such, the material is Information as that term is defined by law. ARM § 38-2-5001(3).

9.

The Information is secret. CenturyLink QC does not share the Information for which protection is sought with other parties and maintains the information secretly. Brigham Aff. ¶ 4. Moreover, the Commission has traditionally deemed similar information as confidential when CenturyLink QC has provided it. Id.

10.

Reasonable efforts are used to maintain secrecy. CenturyLink QC protects the secrecy of the Information with a security protocol that ensures the Information is not inadvertently disclosed or disseminated. The Information is maintained electronically on a secure network. Access to the Information is also password protected. Only employees and managers with a direct need to know are authorized to access the Information. In addition, all hard copies and drafts of the Information are marked as confidential and destroyed when no longer needed. Brigham Aff. ¶ 4.

11.

The data is not readily ascertainable by proper means. The Information for which protection is sought is collected and tabulated by CenturyLink QC directly. Brigham Aff. ¶ 4.

12.

The Information derives independent economic value or a competitive advantage is derived from its secrecy. If the Information is not protected, CenturyLink QC's business competitors could use it to prioritize their marketing efforts and efficiently target specific customers or groups of customers in specific areas. Brigham Aff. ¶ 3.

13.

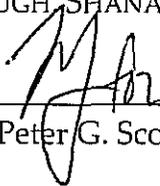
Requested Relief. For the reasons discussed in this Motion and the accompanying Affidavit of Robert Brigham, CenturyLink QC respectfully asks the MPSC to issue a Standard Protective Order pursuant to ARM § 38.2.5014 covering the Information described above in Paragraph No. 3. *See also*, Brigham Aff.

14.

CenturyLink QC personnel are available to discuss with MPSC Staff any specific materials referred to in this Motion if Staff has questions regarding the material or the basis for the assertion of trade secret status.

DATED this 4th day of December, 2014.

GOUGH, SHANAHAN, JOHNSON & WATERMAN, PLLP

By: 

Peter G. Scott, Attorneys for CenturyLink QC

Attachments:

Attachment A: Affidavit of Robert Brigham

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing were served on December 4, 2014, in the manner shown and addressed as follows:

Via E-Mail and mail:

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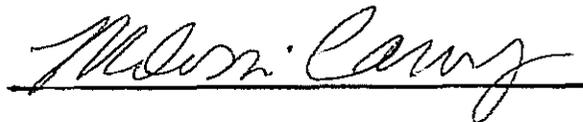
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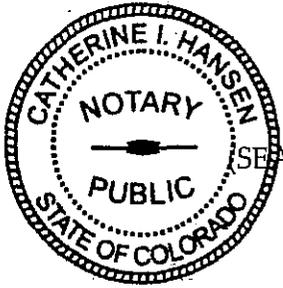


4. Information described in the accompanying *Motion for a Protective Order* consists of (1) competitively sensitive information regarding broadband service speeds CenturyLink QC offers at the census block level of detail (Confidential Exhibit 4) and (2) competitively sensitive capital investment data by project by exchange (Confidential Exhibit 5) that competitors could use to gain an unfair advantage in the competitive market for broadband services. The data are collected directly by CenturyLink QC and are protected with a security protocol that ensures the Information is not inadvertently disclosed or disseminated. The Information, which is secret and not readily ascertainable by proper means, is maintained electronically on a secure network. Access to the Information is password protected. Only those with a direct need to know are authorized to access the Information. Any hard copies of the Information are marked as confidential and destroyed after use.
5. To the best of my knowledge the Information for which protection is sought is routinely protected in other state and federal jurisdictions where CenturyLink has provided detailed broadband deployment information.
6. The Information contains granular, location-specific data about the speed of CenturyLink's broadband offerings in Montana to which competitors do not have access. Knowledge of this data would allow a potential competitor to more effectively compete with CenturyLink for broadband customers. The Information also contains granular, location-specific data about CenturyLink's investment in broadband capable infrastructure to which competitors do not have access. Knowledge of this data would allow a potential competitor to plan its own network infrastructure deployments to more effectively compete with CenturyLink for customers. Historically, the Commission has recognized this kind of data as warranting confidential treatment.
7. Prior to filing the information, CenturyLink considered the constitutional presumption in favor of disclosing materials provided to the MPSC. Based on my experience and having fully considered the factual and legal bases required for the protection of confidential information, I have, with the assistance of qualified legal counsel, formed a good faith belief that the Information described in the accompanying *Motion for a Protective Order* is trade secrets that may be protected from public disclosure under the law.

Dated: December 3, 2014

Robert Brigham
Robert Brigham

SUBSCRIBED AND SWORN TO, before me, this 3rd day of December, 2014.



Catherine Hansen
Notary Public for the State of Colorado
Print Name: Catherine I. Hansen
(SEAL) Residing at: Denver, CO
My Commission Expires: 7/25/2014