

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 N2014.3.38,)	DOCKET NO. D2014.11.91
Including Petition for Waiver of Admin. R.)	
Mont. 38.5.337197)(b))	
)	
IN THE MATTER OF the Request of Staff of)	
the Montana Public Service Commission for)	
CenturyLink Service Quality Information)	DOCKET NO. N2014.4.38

CENTURYLINK QC
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 data requested in Staff Data Requests PSC-008(a) and PSC 10(b).

2.

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 provided in response to discovery in the case, as outlined above and as described in paragraphs 4 through 6 of Attachment A ("Information"). The Information is competitively sensitive in that it contains granular, location specific information regarding CenturyLink QC's network, similar to other location specific information the Commission has traditionally maintained as confidential. The Information includes data that competitors could use to gain an unfair advantage in CenturyLink QC's Montana serving territory and that thieves, vandals and saboteurs could use to target facilities.

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 identify 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. ¶ 3. Moreover, the Commission has traditionally deemed similar information as confidential when CenturyLink QC has provided it.

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 paper copies and drafts of the Information are marked as confidential and destroyed when no longer needed. Brigham Aff. ¶ 3.

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 ¶ 3.

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. ¶¶ 4 through 6.

13.

Discussion. CenturyLink QC respectfully requests that the Commission treat the Information as confidential because it shows the specific location of CenturyLink QC facilities and could be used to target those facilities for theft, vandalism or sabotage. In addition, the information is competitively sensitive. The Commission has granted confidential treatment for similar location specific information. *See* Order No. 7345a, at ¶ 24 and Order No. 7388b, at ¶ 30. CenturyLink QC requests the same protection in this Motion and offers the following justification for granting confidential treatment for certain of its responses to the Staff data requests:

1. *PSC-008(b) Confidential Attachment B* – Location specific network information showing digital loop carrier systems and customers served

Confidential Attachment B to PSC-008(b) contains detailed shape (.shp) files for each of the digital carrier systems in the state. As explained in paragraph 5 of the Brigham Affidavit, the confidential attachment includes maps that contain highly sensitive information:

The shape files provide very precise location data regarding each carrier system. If disclosed, this detailed information could increase the risk of network disruption and service failures because other parties could use the precise location data to target specific equipment in the CenturyLink QC network for vandalism, theft or sabotage. This would increase the risk that Montana telephone service customers would experience a disruption of their service. In addition, the Information in *PSC-008(a) Confidential Attachment B* contains granular, location-specific data about CenturyLink QC's investment in digital carrier system 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 QC for customers. Historically, the Commission has recognized that this kind of data warrants confidential treatment. Significantly, because CenturyLink QC does not have any such detailed data about its competitors, conferring this advantage on a competitor does not promote fair competition. Historically, the Commission has recognized this kind of data as warranting confidential treatment.

CenturyLink QC therefore respectfully requests confidential treatment for this information.

2. *PSC-010(b) Confidential Attachment A* – Location specific network information showing open wire cable systems

Confidential Attachment A to PSC-010(b) contains detailed shape files showing the precise locations of open wire cable systems that CenturyLink QC uses to serve customers in the state. As explained in paragraph 6 of the Brigham Affidavit, the confidential attachment includes maps that contain highly sensitive information:

If disclosed, this detailed information could increase the risk of network disruption and service failures because other parties could use the precise location data to target specific equipment in the CenturyLink QC network for vandalism, theft or sabotage. This would increase the risk that Montana telephone service customers would experience a disruption of their service. In addition, the Information in PSC-010(b) Confidential Attachment A contains granular, location-specific data about CenturyLink QC's open wire investments 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 QC for customers. For example, they could target customers who are served by this older technology. Historically, the Commission has recognized that this kind of data warrants confidential treatment. Significantly, since CenturyLink does not have any such detailed data about its competitors, conferring this advantage on a competitor does not promote fair competition.

CenturyLink QC therefore respectfully requests confidential treatment for this information.

14.

Requested Relief. For the reasons discussed in this Motion and the accompanying Affidavit of Robert Brigham, CenturyLink QC respectfully asks the Commission to issue a Standard Protective Order pursuant to ARM § 38.2.5014 covering CenturyLink QC's responses to PSC-008(a), Confidential Attachment A and PSC 010(b), Confidential Attachment A, as described above and in Paragraphs 4 through 6 of Attachment A. *See Brigham Aff.*

15.

CenturyLink QC personnel are available to discuss the 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 6th day of April 2015.

GOUGH, SHANAHAN, JOHNSON & WATERMAN, PLLP

By: Burt Ward, Sr.
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 April 6, 2015, in the manner shown and addressed as follows:

Hand delivered:

Kate Whitney, Administrator
Utility Division
Montana Public Service Commission
1701 Prospect Avenue, P.O. Box 202601
Helena, MT 59620-2601
kwhitney@mt.gov

Via e-mail:

Monica Tranel, Esq.
Montana Consumer Counsel
PO Box 201703
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Mary J. Custer
Mary J. Custer, Legal Assistant

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AFFIDAVIT OF ROBERT BRIGHAM

STATE OF COLORADO)
: ss.
County of Denver)

Robert Brigham, being first sworn upon oath, deposes and says:

1. I am employed by Qwest Corporation d/b/a CenturyLink QC (hereafter "CenturyLink QC"), with day-to-day responsibility for regulatory policy for the State of Montana. In that role I am personally knowledgeable about procedures for collection and protection of confidential information related to service quality metrics and network operations data.
2. CenturyLink QC is a telecommunications provider in Montana regulated by the Montana Public Service Commission (hereafter "MPSC"). CenturyLink QC competes directly with numerous other telecommunications providers for customers in Montana.
3. Information described in the accompanying *Motion for a Protective Order* consists of data collected directly by CenturyLink QC that is 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.

4. The Information described in the accompanying *Motion for a Protective Order* consists of data requested in Staff Data Requests PSC-008(a) and PSC 10(b). The Information requested in these data requests are trade secrets about CenturyLink QC's operations to which the general public and CenturyLink QC's current *and potential* competitors do not have access.
5. PSC-008(a) reads as follows:

Please provide the location of each digital loop carrier system in an ESRI Shape file or other GSI format, and the number of customers served by each system. Please also provide a map showing the location of each digital carrier system.

In response to this data request, CenturyLink QC provided *PSC-008(a) Attachment A*, which is a map of the entire state of Montana showing the *approximate* location of each CenturyLink QC analog carrier system in Montana. CenturyLink did not seek protection for this information because the location data is not precise. However, CenturyLink QC is seeking protection from disclosure of *PSC-008(a) Confidential Attachment B* because this attachment contains the detailed shape (.shp) files for each of the digital carrier systems in the state. The shape files provide very precise location data regarding each carrier system. If disclosed, this detailed information could increase the risk of network disruption and service failures because other parties could use the precise location data to target specific equipment in the CenturyLink QC network for vandalism, theft or sabotage. This would increase the risk that Montana telephone service customers would experience a disruption of their service. In addition, the Information in *PSC-008(a) Confidential Attachment B* contains granular, location-specific data about CenturyLink QC's investment in digital carrier system 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 QC for customers. Historically, the Commission has recognized that this kind of data warrants confidential treatment. Significantly, because CenturyLink QC does not have any such detailed data about its competitors, conferring this advantage on a competitor does not promote fair competition.

6. PSC-010 (b) reads as follows:

Please provided the exact geographic locations of the 50.1 miles of open wire referenced in the response to DR PS-002 in ESRI Shapefile format.

CenturyLink QC is seeking protection from disclosure of *PSC-010(b) Confidential Attachment A* because this attachment contains the detailed location of the open wire facilities referenced in response to PSC-002. If disclosed, this detailed information could increase the risk of network disruption and service failures because other parties could use the precise location data to target specific equipment in the CenturyLink QC network for vandalism, theft or sabotage. This would increase the risk that Montana telephone service customers would experience a disruption of their service. In addition, the Information in *PSC-010(b) Confidential Attachment A* contains granular, location-specific data about CenturyLink QC's open wire investments 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 QC for customers. For example, they could target customers who are served by this older technology. Historically, the Commission has recognized that this kind of data warrants confidential treatment. Significantly, since CenturyLink does not have any such detailed data about its competitors, conferring this advantage on a competitor does not promote fair competition.

6. To the best of my knowledge the Information for which protection is sought is routinely protected in other state and federal jurisdictions where CenturyLink QC has provided detailed data as described herein.
7. Prior to filing the information, CenturyLink QC 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 consists of trade secrets that may be protected from public disclosure under the law.

Dated: April 2, 2015


Robert Brigham

SUBSCRIBED AND SWORN TO, before me, this 2nd day of April, 2015.


Notary Public for the State of Colorado
Print Name: Catherine I. Hansen
Residing at: Denver, CO
My Commission Expires: 7/25/2016

(SEAL)