

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 Network Upgrade 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 MPSC Staff data request PSC-015.

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. The Motion seeks protection for the following attachments to the data request:

- a. PSC-015 Confidential Attachment B for 2012, 2013 and 2014 includes “project description” and “description” columns that contain the specific addresses, geographic locations and work descriptions for specific CAF 1 related upgrades.
- b. PSC-015 Confidential Attachment C includes a “cross-connect (project)” column that contains the specific addresses of cross-connect locations for CAF 1 upgrades.

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, broadband investment, speeds and exact geographic locations of CenturyLink QC HSI facilities and customer locations, which is 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.

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. A, ¶¶ 4 through 6.

13.

Discussion. CenturyLink QC respectfully requests that the Commission treat the Information as confidential because it contains information that competitors could use to gain an unfair competitive advantage. The Commission has granted protection of similar information. In Order No. 7388g in this docket, the Commission stated that

“exchange information provided for exchange investments funded by the CenturyLink QC CAF Phase I Incremental Support Company Copay must have the geographic location information redacted.” In addition, the Commission protected percent of living units served by wire center in Order Nos. 7324 and 7388b, which is similar to the information provided in response to PSC-015. Likewise, the Commission has protected wire center specific information. See Order No. 7345a. The information contained in response to PSC-015 is provided at the wire center or more granular census block level as described in Attachment A, ¶4. CenturyLink QC therefore urges the Commission to grant confidential protection.

14.

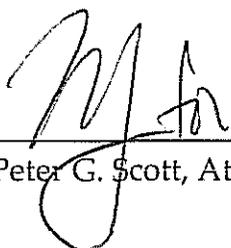
Requested Relief. For the reasons discussed in this Motion and the accompanying Affidavit of Robert Brigham, CenturyLink QC respectfully asks the Commission to issue a Standard Protective Order pursuant to ARM § 38.2.5014 covering CenturyLink QC’s responses to Staff data request PSC-015.

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 20th day of May 2015.

GOUGH, SHANAHAN, JOHNSON & WATERMAN, PLLP

By: 
Peter G. Scott, Attorneys for CenturyLink QC

Attachment A: Affidavit of Robert Brigham

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing were served on May 20, 2015, electronically and by us mail, addressed as follows:

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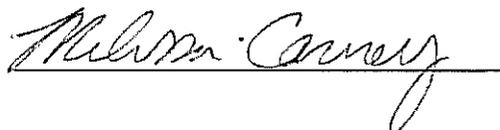
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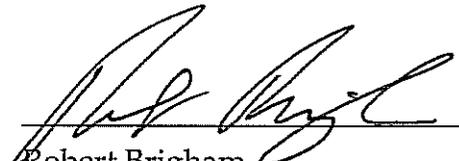


disseminated. The Information, which is secret and not readily ascertainable by proper means, is maintained electronically on a secure network. Access to the Information is password protected. Only those with a direct need to know are authorized to access the Information. Any paper copies of the Information are marked as confidential and destroyed after use.

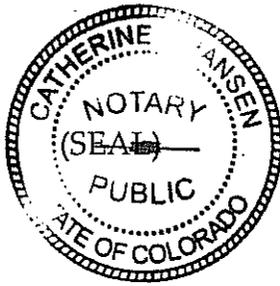
4. Information described in the accompanying *Motion for Protective Order* consists of data provided in response to data request PSC-015 served by the Public Service Commission Staff. The confidential data is included in the following attachments and exhibits:
 - a. *MCC-015 Confidential Attachment B for 2012, 2013 and 2014* includes "project description" and "description" columns that contain the specific addresses, geographic locations and work descriptions for specific CAF 1 related upgrades..
 - b. *MCC-015 Confidential Attachment C* includes a "cross-connect (project)" column that contains the specific addresses of cross-connect locations for CAF 1 upgrades.
5. The Information in these attachments contains granular, location-specific data showing where CenturyLink has upgraded its High Speed Internet ("HSI") capability. Knowledge of this data would allow a potential competitor to more effectively compete with CenturyLink for broadband customers, and to target specific areas for expansion or upgrade of facilities. The Information in these attachments 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.
6. The data in these attachments shows the exact geographic location of CenturyLink HSI facilities. Allowing this data to be made available to the public could result in theft, vandalism, and sabotage of the equipment.
7. In Order 7388g, the Commission ruled that this same type of location-specific data for CAF 1 upgrades is to be protected as confidential. The Commission stated: "All Exhibit 5 exchange information provided for exchange investments funded by the CenturyLink QC CAF Phase I Incremental Support Company Copay must have the geographic location information redacted."

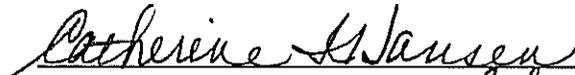
8. To the best of my knowledge the Information for which protection is sought is routinely protected in other state and federal jurisdictions where CenturyLink QC has provided detailed data as described herein.
9. Prior to filing the information, CenturyLink considered the constitutional presumption 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: May 19, 2015


Robert Brigham

SUBSCRIBED AND SWORN TO, before me, this 19th day of May, 2015.




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