

Service Date: February 24, 2015

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. ) ORDER NO. 7388b  
Mont. 38.5.337197)(b) )

IN THE MATTER OF the Request of Staff ) DOCKET NO. N2014.4.38  
of the Montana Public Service Commission )  
for CenturyLink Service Quality Information )

**ORDER GRANTING CENTURYLINK QC's MOTION FOR PROTECTIVE ORDER  
SEEKING RECONSIDERATION OF ORDER NO. 7388**

**Background**

1. On October 23, 2014, Qwest Corporation doing business as CenturyLink QC (CenturyLink QC) filed a Motion for Protective Order (Original Motion) with the Montana Public Service Commission (Commission).
2. CenturyLink QC's Motion was accompanied by the supporting affidavit of Robert Brigham (Affidavit).
3. CenturyLink QC's Motion was filed pursuant to Admin. R. Mont. 38.2.5001 through 38.2.5030 (2014), for the protection of information contained in CenturyLink QC's presentation to the Commission on October 17, 2014 pertaining to detailed service quality and personnel deployment information.
4. CenturyLink QC seeks a standard protective order pursuant to Admin. R. Mont. 38.2.5014 to protect trade secret information.
5. The Commission noticed the Motion in the Regulatory Division Agenda.
6. No intervenor or member of the public commented on the Motion.

7. On November 13, 2014, a regularly scheduled work session was held to discuss and act on the Original Motion.

8. The Commission denied CenturyLink QC's Original Motion. See Or. 7388 (December 30, 2014)

9. On January 9, 2015, CenturyLink QC filed a Motion for Reconsideration (Motion), asking the Commission to reconsider Order No. 7388.

10. On February 3, 2015, this matter came before the Commission at a work session, whereby the Commission granted reconsideration of Order No. 7388.

### **Discussion, Analysis, Findings, and Conclusions**

11. A corporation seeking a protective order for materials filed with a regulating governmental agency must support its claim of confidentiality by filing a supporting affidavit making a *prima facie* showing that the materials constitute property rights which are protected under constitutional due process requirements. *Great Falls Tribune v. Montana Pub. Serv. Comm'n*, 2003 MT 359, ¶ 56, 319 Mont. 38, 82 P.3d 876. The claimant's showing must be more than conclusory. It must be specific enough for the Commission, any objecting parties, and reviewing authorities to clearly understand the nature and basis of the claims to the right of confidentiality. *Id.*

12. The Montana Supreme Court has ruled: "A non-human entity seeking protective orders or other protective measures for materials filed with a regulating governmental agency, such as the PSC, must support its claim of confidentiality by making a *prima facie* showing that the materials constitute property rights which are protected under constitutional due process requirements." *Great Falls Tribune* at ¶ 56.

13. The Commission has implemented the Court's ruling through amendment or repeal of administrative rules concerning protective orders. See Admin. R. Mont. 38.2.5001 – 5030.

14. If information is determined by a governmental agency or reviewing authority to qualify as a property right in the form of a trade secret which warrants due process protection, secrecy can be preserved by the agency through reasonable means, including a protective order. *Great Falls Tribune* at ¶ 62.

15. "Trade secret" is defined by Mont. Code Ann. § 30-14-402 (2014), as

“information or computer software, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

16. A party requesting a protective order based on trade secret must demonstrate that “(i) prior to requesting a protective order, the [party] 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 in fact 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.” Admin. R. Mont. 38.2.5007(4)(b).

17. There is no reconsideration of the granting of a protective order. There is a procedure to challenge the provider's claim of confidentiality. Admin. R. Mont. 38.2.5008.

18. Any interested party may request the Commission to reconsider the denial of a protective order. A motion for reconsideration must be filed within ten (10) days. Admin. R. Mont. 38.2.4806.

19. CenturyLink QC provided a supporting Affidavit with its Motion, as required by Admin. R. Mont. 38.2.5007(3)(c). See Aff. Robert Brigham (January 9, 2015).

20. CenturyLink QC in its Motion clarified that it seeks to protect only information which is wire center-specific (and garage-specific). CenturyLink QC further clarifies that it seeks to protect, "(1) Out of Service Cleared within 24 Hours ("005 24) service quality metric data by wire center; (2) Data showing the percent of Living Units served by CenturyLink QC by wire center; (3) Data showing the number of installation technicians in each CenturyLink QC garage and the number of additional technicians needed to meet the 00524 metric in each wire center." Aff. at p. 2.

21. CenturyLink QC in its Motion acknowledged that it “understands and has fully considered the constitutional presumption in favor of public access to information filed in [Commission] proceedings,” as required by Admin. R. Mont. 38.2.5007(4)(b). Aff. at p. 2.

22. “‘Information’ includes knowledge, observations, opinions, data, facts, and the like, whether recorded or communicated in writing, orally, electronically, or otherwise, and whether provided through pleadings, reports, exhibits, testimony, work papers, or similar items are attachments to such items, or in response to discovery, subpoena, order, audit, investigation, or other request.” Admin. R. Mont. 38.2.5001(3). The materials that CenturyLink QC are seeking to protect is clearly information.

23. CenturyLink QC asserts that the subject information is in fact secret, and states that “information described in the accompanying Motion for Reconsideration 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.” Aff. at p. 1.

24. CenturyLink QC states that reasonable efforts are used to maintain the secrecy of the information, explaining that the information is not “disclosed or disseminated” and that the information “is maintained electronically on a secure network” and is “password protected.” Aff. at p. 1.

25. CenturyLink QC asserts that the data in question is not readily ascertainable by proper means, because “the Information for which protection is sought is routinely protected in other state and federal jurisdictions”. Aff. at p. 2.

26. The final factor at issue in the trade secret analysis is whether the information that CenturyLink QC seeks to protect derives independent economic value or a competitive advantage from its secrecy.

27. CenturyLink QC asserts that if the information is not protected, “possession of this data would provide competitors with knowledge of CenturyLink's operations that would provide a distinct competitive advantage, allowing competitors to target marketing efforts to identified persons or groups of persons in identified geographic areas of the state.” Aff. at p.2.

28. Regarding the protection of wire center OOS<24 Hours performance, this Commission protected this information previously in this docket in both Order No. 7245 and 7245a. This Commission ruled in both orders that competitors could obtain a competitive advantage by having access to this information. No arguments have been presented to rebut the Commission’s decision regarding the confidentiality of this information.

29. Regarding the protection of the percent of Living Units served by CenturyLink QC by wire center, this Commission protected this exact same information in Order No. 7324 in

the Docket D2013.11.78. This Commission ruled that competitors could obtain a competitive advantage by having access to such information. No arguments have been presented to rebut the Commission's decision regarding the confidentiality of this information.

30. Finally, regarding the information concerning the deployment of CenturyLink personnel in each garage in Montana, this Commission has consistently protected competitively sensitive information at a granular geographic level such as wire center information. The disbursement of technicians by geographic location could impart information to a competitor about the quality of service in certain wire centers, particularly those wire centers where no technicians are stationed and where it is obvious that geographically long dispatches are required to fix service issues. Information regarding the location of technicians could also raise security issues.

### **Order**

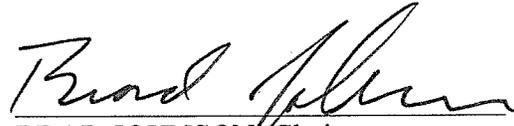
THEREFORE, based upon the foregoing, it is HEREBY ORDERED as follows:

31. CenturyLink QC's Motion for Reconsideration and Motion for Protective Order is hereby GRANTED.

32. CenturyLink QC must produce the information consistent with this Order within 14 calendar days of the service date of this Order.

DONE AND DATED this 3<sup>rd</sup> day of February, 2015, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

  
BRAD JOHNSON, Chairman

  
TRAVIS KAZULLA, Vice Chairman

  
KIRK BUSHMAN, Commissioner

  
ROGER KOOPMAN, Commissioner

  
BOB LAKE, Commissioner

ATTEST:

  
Aleisha Solem  
Commission Secretary

(SEAL)



Protective Orders and Protection of Confidential Information

**Nondisclosure Agreement**

(7-26-00)

ARM 38.2.5012

Docket No. D2014.11.91, Order No. 7388b

Order Action Date: February 3, 2015

I understand that in my capacity as counsel or expert witness for a party to this proceeding before the commission, or as a person otherwise lawfully so entitled, I may be called upon to access, review, and analyze information which is protected as confidential information. I have reviewed ARM 38.2.5001 through 38.2.5030 (commission rules applicable to protection of confidential information) and protective orders governing the protected information that I am entitled to receive. I fully understand, and agree to comply with and be bound by, the terms and conditions thereof. I will neither use nor disclose confidential information except for lawful purposes in accordance with the governing protective order and ARM 38.2.5001 through 38.2.5030 so long as such information remains protected.

I understand that this nondisclosure agreement may be copied and distributed to any person having an interest in it and that it may be retained at the offices of the provider, commission, consumer counsel, any party and may be further and freely distributed.

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date of Signature

Business Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Party Represented