

Service Date: April 30, 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) ORDER NO. 7388e
Admin. R. Mont. 38.5.337197)(b))

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

**ORDER GRANTING CENTURYLINK'S MOTION FOR
PROTECTIVE ORDER**

Background

1. On March 18, 2014, the Montana Public Service Commission ("Commission") staff sent a letter to Qwest Corporation doing business as CenturyLink QC ("CenturyLink") requesting certain service quality information.
2. After reviewing CenturyLink's service quality information, the Commission issued a Notice of Commission Action on August 26, 2014, ordering CenturyLink to file within 60 days of the Notice a plan to improve repair times.
3. On October 24, 2014, CenturyLink filed its *Response to Notice of Commission Action, Request for Continuance, and Petition for Waiver*. CenturyLink requested a continuance to comply with the Commission's Notice, and the Commission granted a continuance during a regularly scheduled work session on October 30, 2014.
4. On February 2, 2015, the Montana Consumer Counsel ("MCC") sent CenturyLink Data Requests MCC-001 through MCC-014.
5. On March 10, 2015, CenturyLink filed a *Motion for a Protective Order and Affidavit of Robert Brigham* ("Motion").

6. CenturyLink seeks to protect eight information groupings elicited through this batch of data requests: *MCC-001 Confidential Attachment B*; *MCC-002 Confidential Attachments A, B, C, and D*; *MCC-003 Confidential Attachment A*; *MCC-007 Confidential Attachment A*; *MCC-008 Confidential Attachment A*; *MCC-009 Confidential Exhibit 164*; *MCC-011 Confidential Attachment A and B*; and *MCC-014 Confidential Attachment A*. Mot. for Protective Order pp.1-2 (Mar. 10, 2015).

7. CenturyLink requests a standard protective order issued pursuant to Admin. R. Mont. 38.2.5014 (2014) to protect trade secrets contained in the information presented to the Commission and also to protect the information that the MCC has requested CenturyLink to file.

8. On March 26, 2015, the Commission noticed the Motion in the Regulatory Division Agenda.

9. No intervenor or member of the public commented on the Motion.

Discussion, Analysis, Findings, and Conclusions

10. The Montana Supreme Court has articulated the standard the Commission is held to in evaluating protective orders:

[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 filing a supporting affidavit making a *prima facie* showing that the materials constitute property rights which are protected under constitutional due process requirements. The claimant's showing must be more than conclusory. It must be specific enough for the PSC, any objecting parties, and reviewing authorities to clearly understand the nature and basis of the public utility's claims to the right of confidentiality.

Great Falls Tribune v. Mont. PSC, 2003 MT 359, ¶ 56, 319 Mont. 38, 89 P.3d 876 (emphasis added). The Commission may protect information that is deemed trade secret. *Id.* at ¶ 62.

11. Trade secret is defined as:

[I]nformation 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.

Mont. Code Ann. § 30-14-402 (2013).

12. The Commission has implemented these constitutional and statutory requirements through its own administrative rules concerning protective orders. *See* Admin. R. Mont.

38.2.5001 – 5030.

13. A party requesting a protective order based on trade secret must demonstrate:
- (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 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).

14. CenturyLink provided a supporting Affidavit with its Motion, as required by Admin. R. Mont. 38.2.5007(3)(c). *Aff. Robert Brigham (Mar. 6, 2015).*

15. In its Motion, CenturyLink states that it “understands and has fully considered the constitutional presumption in favor of public access to Information filed in MPSC proceedings.” *Mot. at p. 4.*

16. In its Motion, CenturyLink states that the material for which protection is sought is information because it is “comprised of knowledge, data and facts collected and recorded by, or at the direction of CenturyLink.” *Id.*; *see also* Admin. R. Mont. 38.2.5001(3) (defining information).

17. CenturyLink asserts that all of the information in question contains information that is in fact secret. “CenturyLink . . . does not share the information which protection is sought with other parties and maintains the information secretly.” *Mot. at p. 4.*

18. CenturyLink claims all the information in question is subject to reasonable efforts to maintain its secrecy. In its Motion, CenturyLink states that the information is protected with a security protocol, is maintained electronically on a secure network, is password protected, and only employees and managers “with a direct need to know are authorized to access the information.” *Id.*

19. CenturyLink asserts that its information is not readily ascertainable by proper means. “The information for which protection is sought is collected and tabulated by CenturyLink QC directly.” *Id.*

20. The final factor at issue in the trade secret analysis is whether the information that CenturyLink is seeking to protect derives independent economic value or a competitive

advantage from its secrecy. In the context of service quality dockets, the Commission has articulated a principle that only information at the granular geographic level, such as individual wire centers, will be protected; state-wide, aggregated information will be denied. *Compare* Or. 7345 ¶ 21 (protecting OOS ticket information by local exchange) *with* Or. 7388 ¶ 24 (“this Commission has not protected aggregate service quality information in the past”). CenturyLink states it is only seeking to protect “information provided at the *exchange, census block or address* level” in this Motion. Mot. at p. 5. The Commission agrees that the confidential information contained these eight different document groupings is limited to the local exchange, census block or address level and should thus be protected.

21. *MCC-001 Confidential Attachment B* “includes very detailed capital expenditure data broken down by wire center and ‘investment reason’ for all CenturyLink QC investment jobs for the years 2000-2014.” Mot. at p. 6. Like past Commission Protective Orders, the information sought here would provide competitive advantage to other providers by exposing CenturyLink’s geographic weaknesses and strengths. The Commission finds that capital expenditure data broken down by wire center is sufficiently local and granular to warrant protection. *Aff. Brigham* at ¶5. Thus, the Motion with regards to *MCC-001 Confidential Attachment B* is granted.

22. *MCC-002 Confidential Attachments A, B, C and D* “include the specific addresses in Montana where CenturyLink QC has deployed Fiber to the Node (“FTTN”), Central Office COIP, Pair Bonding and Fiber to the Home (“FTTH”) technologies as of 12-31-14.” Mot. at p. 6. “These attachments include granular, location-specific data showing exactly where CenturyLink QC has upgraded its facilities using specific technologies.” *Id.* at p. 7. “Knowledge of this address-specific data would allow existing or potential competitors to more effectively compete with CenturyLink; empowering the competitor with information that would allow it to target specific customer locations for marketing initiatives or the expansion or upgrade of facilities.” *Id.* The Commission finds specific addresses are sufficiently local and granular to warrant protection. *Aff. Brigham* at ¶5. Thus, the Motion with regards to *MCC-002 Confidential Attachments A, B, C and D* is granted.

23. *MCC-003 Confidential Attachment A* concerns information about where CenturyLink has “deployed fiber to a cellular tower to serve a wireless carrier.” Mot. at p. 7. “CenturyLink QC today competes with many other carriers such as cable companies to provide

these backhaul facilities to wireless providers.” *Id.* Investment regarding specific cellular towers is sufficiently local and granular to warrant protection. Additionally, significant competition between carriers to provide these backhaul facilities to wireless providers gives this information independent economic value or a competitive advantage from its secrecy. *Aff. Brigham* at ¶ 7. Therefore, the Motion is granted with regards to *MCC-003 Confidential Attachment A*.

24. *MCC-007 Confidential Attachment A* concerns the “Living Unit data for each CenturyLink QC wire center in Montana, including (1) total Living Units, (2) Living Units served by CenturyLink QC voice and (3) the percentage of Living Units served with CenturyLink QC voice services.” *Mot.* at p. 7. “This data shows the exact level of CenturyLink QC voice market penetration in each wire center.” *Id.* The Commission finds this information is sufficiently local and granular to warrant protection. Therefore, the Motion is granted in regards to *MCC-007 Confidential Attachment A*.

25. *MCC-008 Confidential Attachment A* “includes total switched access lines and the number of residential switched access lines by census block as of December 31, 2013, as contained in CenturyLink QC’s mapping database.” *Id.* at 8. CenturyLink reports it contains over 20,000 census blocks in its service area. This information is even more local in nature than other information granted protection in this Order. Therefore, the Motion is granted in regards to *MCC-008 Confidential Attachment A*.

26. *MCC-009 Confidential Exhibit 164* “contains detailed service quality data for specific outages and specific unfilled requests for services.” *Id.* CenturyLink argues this type of information has been previously granted protection in *Order 7345*. *Order 7345a* concerned information related to “OOS < 24 Hours reports for each month beginning March, 2014 through July, 2014, for each legacy Qwest wire center” and other information if the OOS trouble report was not cleared within 24 hours. *Or. 7345a* at ¶ 6. The information protected in *Order 7345a* is similar in nature to *MCC-009 Confidential Exhibit 164*. Therefore, the Motion is granted in regards to *MCC-009 Confidential Exhibit 164*.

27. *MCC-011 Confidential Attachments A and B* concerns “Leadership Scorecards for every CenturyLink QC Montana exchange for 2013 and 2014.” The Commission has previously stated “Leadership Scorecards provide a multitude of detailed and valuable pieces of information on local exchanges.” *Or. 7388d* (Apr. 1, 2015). Granting protection here is consistent with the

Commission's previous findings on Leadership Scorecards. Therefore, the Motion is granted in regards to *MCC-011 Confidential Attachments A and B*.

28. *MCC-014 Confidential Attachment A* concerns "[c]alculation by wire center of the estimated cost to replace all analog carrier systems in each of 37 wire centers." Mot. at p. 10. Information at the wire center level is local enough to warrant protection. The Commission agrees "allowing public disclosure of this information would confer a direct advantage to competitors." *Id.*

29. CenturyLink has made a *prima facie* case demonstrating that the information for which it seeks protection in its Motion for a Protective Order is in fact trade secret and subject to protection.

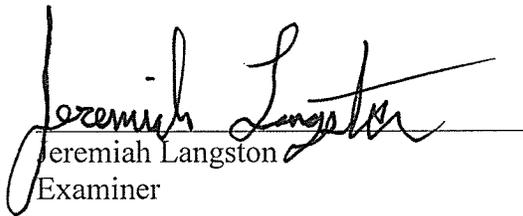
Order

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

30. CenturyLink's Motion for Protective Order is hereby GRANTED in its entirety.

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

DONE AND DATED the 29th day of April, 2015.


Jeremiah Langston
Examiner

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. 7388e

Order Action Date: April 29, 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