

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. 7388h
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)

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 April 29, 2015, the Montana Consumer Counsel (MCC) sent CenturyLink Data Requests MCC-015 through MCC-033.

5. On May 13, 2015, CenturyLink filed a Motion for a Protective Order and Affidavit of Robert Brigham (“Motion”) in response to data requests MCC-018, MCC-024,

MCC-028, MCC-032, and PSC-014(c). The Motion seeks protection for the following responses to data requests:

- *MCC-018 Confidential Attachment A* includes the number of Full Time Equivalent ("FTE") network technicians employed by Century Link QC in Montana by wire center as of December 31, 2012, 2013 and 2014.
- *MCC-024 Confidential Attachment A* includes information regarding geographically specific Out of Service occurrences in Montana.
- *MCC-028 Confidential Attachments A through E* provide a "screenshot" of the Century Link Form 477 filings made electronically with the FCC.
- *MCC-028 Confidential Attachments F through J* provide detailed broadband subscribership data by census tract in Montana, as filed with the FCC as part of the Form 477 filing.
- *MCC Confidential Attachments K and L* provide detailed voice subscribership data by census tract in Montana as filed with the FCC as part of the Form 477 filing.
- *MCC-032 Confidential Attachment A* provides data related to specific cable pair bundles in Montana that have experienced multiple repairs.
- *PSC-014(c)* includes monthly trouble report data for the Wibaux wire center for December 2014 and year to date 2015.

Mot. for Protective Order pp. 2, 9 (May 13, 2015).

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

7. On May 21, 2015, the Commission noticed the Motion in the Regulatory Division Agenda.

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

DISCUSSION, ANALYSIS, FINDINGS & CONCLUSIONS

9. 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.

10. 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).

11. 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.*

12. 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).

13. CenturyLink provided two supporting affidavits with its Motion, as required by Admin. R. Mont. 38.2.5007(3)(c). Aff. Robert Brigham A (May 12, 2015) (regarding MCC data requests); Aff. Robert Brigham B (May 12, 2015) (regarding PSC data requests).

14. 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.

15. 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).

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

17. Century Link 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.*

18. 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.*

19. 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”).

20. *MCC-018 Confidential Attachment A* concerns the “[f]ull Time Equivalent (‘FTE’) network technicians employed by CenturyLink QC in Montana by wire center as of December 31, 2012, 2013, and 2014.” Mot. at p. 5. In this Docket, the Commission has previously found this type of information to have independent economic value or a competitive advantage from its secrecy:

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.

Or. 7388b ¶ 30 (Feb. 3, 2015). Thus, the Motion with regards to *MCC-018 Confidential Attachment A* is granted.

21. *MCC-024 Confidential Attachment A* includes “[i]nformation regarding geographically specific Out of Service occurrences in Montana.” Mot. at p. 5. Like past Commission granted protective orders, “the information sought here would provide competitive advantage to other providers by exposing CenturyLink’s geographic weaknesses and strengths.” Or. 7388e ¶ (Apr. 29, 2015). The Commission finds that information specific to each CenturyLink exchange in Montana is sufficiently local and granular to warrant protection. Aff. Brigham A at ¶ 6. CenturyLink’s Motion is granted for *MCC-024 Confidential Attachment A*.

22. *MCC-028 Confidential Attachment A through E* contains “[i]nformation from CenturyLink Form 477 filings protected as confidential by the FCC.” Mot. at p. 6. This attachment is statewide in nature, but “[Federal Communications Commission] grants confidentiality for all this data, for all carriers.” *Id.* By requesting protection of statewide information, *MCC-028 Confidential Attachments A through E* seem to fail to meet the Commission’s geographic specific and granular standard for granting protective orders in these contexts. Further, the Commission is held to a different confidentiality standard in *Great Falls Tribune* than what is required of the FCC which does not make the FCC’s determination on this matter dispositive for the Commission.

23. CenturyLink claims that disclosure of this information would allow “competitors to target marketing efforts to specific *types* of customers.” Mot. at p. 7. CenturyLink also argues that it “has no means to see if this exact same data that is filed with the FCC, using the same form, by its competitors.” *Id.* The Commission finds this an insufficient reason to deviate from its usual treatment of confidential information in protective orders. In other denials of statewide information, competitors have had access to specific types of customers like aggregate access line information where the number of residential and business customers are shown. *See* In the Matter of Qwest Corporation for a Protective Order Related to Portions of its 2007 Annual Report, Dkt. No. N2008.5.46, Or. 6912 ¶ 2.b (May 28, 2008) (“The only information of this type that is released without appropriate protection is aggregate information, such as statewide customer counts”). Therefore, the Motion with regards to *MCC-028 Confidential Attachment A through E* is denied.

24. *MCC-028 Confidential Attachments F through J* concern “[d]etailed broadband connections by speed tier for every census tract in Montana for different time periods.” Mot. at p. 7. Information listed at the census tract level is sufficiently local and granular to

warrant protection. CenturyLink's Motion is granted for *MCC-028 Confidential Attachments F through J*.

25. *MCC-028 Confidential Attachment K and L* concern "[d]etailed subscribership data by census tract in Montana as provided with the FCC Form 477." Mot. at p. 7. Information listed at the census tract level is sufficiently local and granular to warrant protection.

CenturyLink's Motion is granted for *MCC-028 Confidential Attachment K and L*.

26. *MCC-032 Confidential Attachment A* concerns "[d]ata related to specific cable pair bundles in Montana that have experienced multiple repairs." Mot. at p. 8. This information involves "specific cable and termination location data, including the terminal address, along with repair data for each cable." Mot. at p. 8. CenturyLink argues that "[i]n addition to being competitively sensitive, public disclosure on this information could present a potential security risk for Century QC and its customers." *Id.* The Commission agrees and CenturyLink's Motion is granted for *MCC-032 Confidential Attachment A*.

27. *PSC-014(c)* concerns "[m]onthly trouble report data for the Wibaux wire center for December 2014 and year to date 2015." Mot. at p. 9. The Commission has routinely protected trouble report data by wire center. Or. 7388d ¶ 23 (Apr. 1, 2105). The Commission agrees this information "would provide competitors, both existing and potential, with knowledge of CenturyLink's network, operations and service quality materials at a detailed geographic level." Aff. Brigham B at ¶ 5. CenturyLink's Motion is granted for *PSC-014(c)*.

28. CenturyLink has made a *prima facie* case demonstrating that *MCC-018 Confidential Attachment A*, *MCC-024 Confidential Attachment A*, *MCC-024 Confidential Attachments F through J*, *MCC-028 Confidential Attachments K and L*, *MCC-032 Confidential Attachment A*, and *PSC-014(c)* are in fact trade secret and subject to protection. CenturyLink has failed to make a *prima facie* case demonstrating that *MCC-028 Confidential Attachments A through E* are in fact trade secret and subject to protection.

ORDER

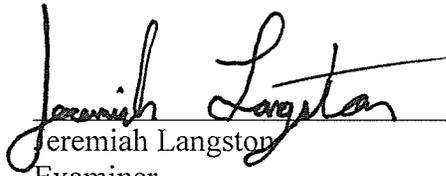
THEREFORE, based upon the foregoing, it is HEREBY ORDERED as follows:

29. CenturyLink's Motion for Protective Order is hereby GRANTED for *MCC-018 Confidential Attachment A*, *MCC-024 Confidential Attachment A*, *MCC-024 Confidential Attachments F through J*, *MCC-028 Confidential Attachments K and L*, *MCC-032 Confidential Attachment A*, and *PSC-014(c)*.

30. CenturyLink's Motion for Protective Order is hereby DENIED for *MCC-028 Confidential Attachments A through E*.

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 8th day of June, 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 Nos. D2014.11.91, Order No. 7388h

Order Action Date: June 8, 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