

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

MOTION FOR RECONSIDERATION

1.

Qwest Corporation d/b/a CenturyLink QC ("CenturyLink QC"), by and through counsel undersigned, submits this *Motion for Reconsideration* to the Montana Public Service Commission ("Commission"). In this motion, filed pursuant to A.R.M. §§ 38.2.4806,¹ CenturyLink QC respectfully asks the Commission to reconsider its decision in Order No. 7388a ("Order") and grant CenturyLink QC's December 3, 2014 Motion for Protective Order.

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.

¹ CenturyLink notes that the rule provides that reconsideration "is not available in regard to the granting of a motion for protective order." In this case, the Commission has denied CenturyLink's motion for protective order and the Orders are therefore reviewable under the rule.

3.

CenturyLink QC respectfully requests that the Commission reconsider portions of its decision in the Order. CenturyLink QC asks that the Commission grant its motion seeking confidential protection for only Confidential Exhibit 5 to CenturyLink QC's response to PSC-001. CenturyLink QC does not request reconsideration for Exhibit 4. While Exhibit 4 contains information that would ordinarily be considered sensitive (information regarding broadband service speeds that CenturyLink QC offers at the census block level of detail), in this case some of that data has already been provided to the National Telecommunications and Information Administration ("NTIA") on a public basis. And the remaining data (for 2014) will soon be provided to NTIA. Therefore, CenturyLink QC seeks reconsideration only with respect to the information in Confidential Exhibit 5, which includes competitively sensitive capital investment data by project by exchange.

BACKGROUND

4.

On December 4, 2014, CenturyLink QC filed a Motion for Protective Order ("Motion"), seeking protection of information that that CenturyLink QC filed in response to Commission discovery request PSC-001. CenturyLink narrowly tailored the Motion, seeking protection for only the most sensitive information.

5.

The Commission noticed the Motion in the Regulatory Division Agenda. No intervenor or member of the public objected to or otherwise commented on the Motion. On January 28, 2015, the Commission entered Order No. 7388a, which denied the Motion.

ARGUMENT

6.

CenturyLink QC understands and acknowledges that the Commission is bound by Montana law in granting requests to treat information as confidential. There are six elements for establishing a *prima facie* case that protection is warranted:

- (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.

ARM § 38-2-5007(4)(b). The Commission denied CenturyLink QC's Motion relying on only one of these criteria, subsection (vi), stating that "CenturyLink QC's arguments that its broadband speeds and project level capital expenditures would bestow a competitive advantage to its competitors are specious." Order, at ¶ 24. The information CenturyLink QC has provided in Exhibit 5 meets the remaining criteria. CenturyLink QC believes the Commission was premature in denying CenturyLink QC's motion for failure to meet the criteria in subsection (vi) and respectfully asks it to reconsider.

I. The Record does not Support the Denial of CenturyLink QC's Motion

7.

There is not sufficient evidence in the record to conclude, with respect to each of the areas for which this highly sensitive information has been provided, that there are

no competitors present. The Commission noted that “areas in which CenturyLink QC is supposed to be making broadband investments using Universal Service Fund (USF) high cost support are expensive to serve with little or no competition.” *See* Order, at ¶ 24. While it may be true that some areas do not currently have a competitive service offering, it cannot be said based on the information provided by CenturyLink, or any other information in the record in this proceeding, which areas are subject to competition and which are not.

8.

The competition that CenturyLink QC faces throughout its service territory is robust and growing, as recognized by the Commission in granting CenturyLink QC’s recent petition for regulatory relief. *See* Docket No. D2013.11.78, Final Order (October 28, 2014) (“Waiver Order”). And in fact, as Commission Kavulla noted in his concurring opinion in that docket, “[u]nfortunately, there is not hard data in this docket identifying the number of customers...” that do not have a competitive alternative. Waiver Order, Concurring Opinion, at p. 2.

II. The Information Contains Data Regarding Areas that Are Served by Unsubsidized Competitors and Even in an Area that is Considered Substantially Unserved Under FCC Criteria, Competition Can Still Exist

9.

While the Commission has granted protection for information similarly provided on an exchange level basis,² it has also denied protection for similar information based on a finding that there was insufficient competition. In Order No. 7319a, the Commission denied Commnet’s motion to protect as confidential budget information,

² *See* Docket No. N2014.4.38, Order No. 7345 (May 20, 2014) and Docket No. D2014.11.91, Order No. 7345a (November 24, 2014), granting protection for service quality metric performance data by wire center. *See also*, Docket No. D2013.11.78, Order No. 7324 (January 22, 2014), granting protection for information that contained line and living unit data by wire center.

timeline and milestone information, and the number of new base stations Commnet intended to construct. *See* Docket No. D2013.11.80, Order (May 30, 2014) (“Commnet Order”). The Commission reasoned that the information Commnet sought to protect is specific to a geographic area that “potential competitors and the FCC have deemed cost-prohibitive to provide wireless broadband service without the assistance of federal funding.” Commnet Order, at ¶ 21. The Commission also concluded that, “Receipt of funds from the federal government to serve underserved areas is a strong indication that an ETC is not operating in a competitive market.” Commnet Order, at ¶ 21. That is not true for CenturyLink QC for a number of reasons.

10.

First, the capital investment data, provided by project by exchange, for which CenturyLink QC seeks protection includes not just geographic areas the FCC deems unserved by an unsubsidized competitor. It also includes *all* locations in Montana where CenturyLink QC had construction projects in exchanges that are at least 60% unserved by an unsubsidized competitor.³ CenturyLink QC derives independent economic value and competitive advantage from the secrecy of Centurylink QC’s project details for

³ PSC-001 appears to assume that Price Cap carriers have certain obligations regarding the use of Frozen High Cost Support (FHCS), which the FCC originally outlined in paragraphs 133 and 150 of the FCC’s November 18, 2011 USF/FCC Transformation Order. However the FCC substantially modified the permissible uses of FHCS in DA 13-2101, an Order Adopted and Released October 30, 2013 by the Chief, Wireline Competition Bureau. In pertinent part, at ¶10, DA 13-1201 provides: “[C]arriers may use their frozen high-cost support either to recover the costs of past network upgrades to extend broadband-capable networks in areas substantially unserved by an unsubsidized competitor, or to maintain and operate existing networks in such areas, or a combination of the two. Price cap carriers are not required to use one-third of their frozen support for new capital investment occurring in 2013. The Commission recognized that there are significant ongoing costs for carriers maintaining a dual-use network, and therefore there is significant value in permitting carriers to use frozen high-cost support to cover the operating expenditures necessary to maintain such networks that have been constructed prior to the adoption of the *USF/IICC Transformation Order*, rather than just utilizing frozen high-cost support solely to cover the operating expenditures necessary to maintain networks that are newly built.”

investment in voice and broadband capable networks in exchanges that are at least 60% unserved by an unsubsidized competitor for several reasons.⁴

- Current and potential competitors serving such areas could use this information to determine where and where not to deploy their own facilities used to compete with CenturyLink services. Brigham Affidavit at ¶¶ 7-10.
- Potential competitors could use this information to determine whether and where to deploy their own facilities and enter the market to compete with CenturyLink services. Brigham Affidavit at ¶¶ 5, 7-10.
- Current and Potential Competitors could use this information to help them decide where and how to market their services in competition with CenturyLink services. Brigham Affidavit at ¶ 10.
- Making this information available to current competitors would give them a competitive advantage over CenturyLink because it does not have this same information about its current competitors Brigham Affidavit at ¶ 10.
- Making this information available to potential competitors would give them a competitive advantage over CenturyLink because it does not have this same information about its potential competitors. Brigham Affidavit at ¶ 10.

11.

Second, even in the areas the FCC has deemed unserved by an unsubsidized competitor — where CAF 1 funding has been provided — there is no basis to conclude that there is not competition. In areas where there is no unsubsidized competition according to FCC standards, there still may be providers competing with CenturyLink that do not meet these standards. The FCC's criteria require that:

⁴ By definition, there are competitors serving portions of these areas. And it is reasonable to assume that these providers are interested in increasing coverage of these areas. Brigham Affidavit ¶8.

- The provider must be unsubsidized. DA 13-2115, Released October 31, 2013 ¶¶ 39-41.
- The provider must offer fixed broadband with speeds of at least 4 Mbps/1 Mbps.⁵ DA 13-1113, ¶6.
- The provider’s broadband service must satisfy latency and capacity requirements. DA 13-1113, ¶5.⁶
- The provider must provide voice service.⁷ DA 13-1113, ¶10. Some competing providers do not, including many wireless internet service providers.
- The provider must offer voice and broadband at “reasonably comparable” prices. DA 13-2115, ¶¶43-47.

See DA 13-1113, Released May 16, 2013, ¶5. Thus, the “unserved” designation does not mean that no competing provider is present; it only means that based on information available to the FCC, no provider qualifies under the FCC criteria to be an unsubsidized competitor. The FCC recognized this in DA 13-1113, stating:

⁵ “Under the [Federal Communications] Commission’s rules, an unsubsidized competitor must offer fixed broadband with speeds of at least 4 Mbps/1 Mbps”. DA 13-1113, ¶6. “We conclude that the proxy for 4 Mbps/1 Mbps broadband should be set at 3 Mbps/768 kbps, as data on 3 Mbps/768 kbps deployment are available on the National Broadband Map.” DA 13-2115, Released October 31, 2013, ¶42.

⁶ DA 13-1113, Released May 16, 2013, ¶5.

⁷ “Under the [Federal Communications] Commission’s rules, an entity must provide ‘residential terrestrial fixed voice *and* broadband service’ in order to be deemed an unsubsidized competitor. “We conclude that the ability of the consumer to obtain voice service from a third party is not sufficient for that broadband provider to be deemed an unsubsidized competitor for purposes of Phase II implementation because that broadband provider would not be offering a voice service. Such an interpretation would effectively read the requirement that the unsubsidized competitor be a ‘provider’ of ‘voice’ out of the Commission’s adopted definition, as all broadband connections offer the capability to receive an ‘over the top’ voice over Internet protocol (VoIP) service from a third party.”³⁰ Therefore, we interpret the Commission’s definition as requiring the provider itself to provide voice service, in addition to broadband, in order to be designated an unsubsidized competitor.”³¹ DA 13-1113, Released May 16, 2013, ¶10. Footnotes omitted.

We conclude, based on our FCC Form 477 data, that it would be unreasonable to presume that all broadband providers shown on the National Broadband Map are also providing voice service.²²

Footnote 22: Our FCC Form 477 data indicate that not all broadband providers provide voice. This is particularly true for WISPs: fewer than 30 percent of locations in the footprint of WISPs that report broadband availability according to June 2012 SBI data are in the footprint of WISPs who also report having voice subscribers in the latest round of FCC Form 477 data. The comparable figure for cable is over 90 percent (i.e., most but not all cable providers report having voice subscribers).

DA 13-1113, Released May 16, 2013, ¶9 and footnote 22. So there may be providers offering services that compete with CenturyLink QC in these areas, including lower bandwidth broadband or voice service. Those competitors are no less of a threat to CenturyLink QC in these areas than competitors that offer service that qualifies under the FCC criteria.

I. Even if Competition does not Exist now in a particular area, competitors may be considering entering the area, and the Commission Should Protect CenturyLink QC's Confidential Information

12.

Furthermore, even if the record did support a conclusion that no competition exists today in a particular area, it is entirely possible that next year, or next month, or even tomorrow, a wireless or satellite competitor (or even a wireline competitor) could begin offering services that compete with CenturyLink QC service. While this fact may not have been relevant in the Commission's decision in the Waiver Order, it is highly relevant in the case of CenturyLink QC's confidential information in Exhibit 5 in this instance. Brigham Affidavit, ¶ 8.

13.

The Commission's grant of protection for similarly granular information in prior orders acknowledges that the type of information for which CenturyLink QC seeks

protection in this case would indeed very useful to competitors. It should not, and does not, matter whether those competitors currently offer competing service, are planning to offer competing service, or might one day offer such service. The threat of harm to CenturyLink QC is the same, particular in such a quickly changing technological and competitive environment as the telecommunications market. As a result, a failure to grant confidential protection for this information will result in immediate harm to CenturyLink QC in areas where competitors currently provide service and could result in imminent harm in areas where competitors are assessing whether to enter the market.

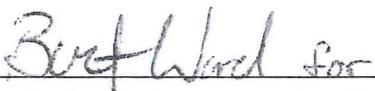
REQUEST FOR RELIEF

14.

CenturyLink therefore respectfully requests that the Commission reconsider portions of its decision in the Order and grant CenturyLink's request for a protective order for the information contained as revised and redacted in Exhibit 5.

DATED this 9th day of February, 2015.

GOUGH, SHANAHAN, JOHNSON & WATERMAN, PLLP

By: 
Peter G. Scott, Attorneys for CenturyLink QC

Attachment A – Affidavit of Robert H. Brigham
Attachment B – Exhibit 5

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing were served on February 9, 2015, in the manner shown and addressed as follows:

Via E-filing and hand delivery:

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Utility Division
Montana Public Service Commission
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Helena, MT 59620-2601

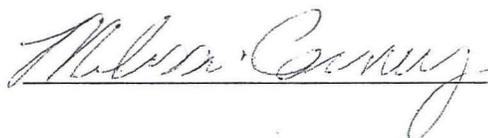
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Melissa Conway

sought protection. Exhibit 3 and Exhibit 5 provide data on capital expenditures for projects that meet the following criteria:

- Capital Expenditures associated with broadband capable network in areas where 90% - 100% of the exchange is substantially unserved by an unsubsidized competitor.
- Capital Expenditures associated with broadband capable network in areas where 60% - 89% of the exchange is substantially unserved by an unsubsidized competitor.
- CAF Phase 1 Round 1 incremental Support (Company copayment)

Exhibit 5 provides, for each of the scenarios listed above, the specific geographic location of each equipment upgrade, the reason for the upgrade and the specific dollar amount of the capital expenditure. For example, these data show the actual dollar amount for a capital expenditure at a specific cross-box location, along with the cross-box address.

4. The data are collected directly by CenturyLink QC and are 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.
5. The telecommunications industry in Montana is highly competitive and service providers aggressively market their products and services throughout the state. Possession of the Information for which protection is sought would give CenturyLink's competitors a detailed geographic and project-level view of CenturyLink investments and expenditures related to broadband deployment in Montana. Access to these data would provide competitors with a distinct competitive advantage in marketing services to persons in identified geographic areas of the state, as described further below.
6. In denying CenturyLink's original request to protect the data in Exhibit 5, the Commission concluded:
 - The areas in which CenturyLink QC is supposed to be making broadband investments using Universal Service Fund (USF) high cost support are

expensive to serve with little or no competition. Therefore, CenturyLink QC's arguments that its broadband speeds and project level capital expenditures would bestow a competitive advantage to its competitors are specious.

- If investments made by CenturyLink QC are truly in unserved areas there should be no unsubsidized competitors serving those areas that could gain a competitive advantage.
7. The geographic areas identified in Exhibit 5 are not free of current competitors as the Commission has assumed. The bulk of the data in Exhibit 5 shows capital expenditures in exchanges where "60% - 100% of the exchange is substantially unserved by an unsubsidized competitor." Thus, these areas often have competitors serving a portion of the exchange, and competitors may in fact be serving the specific area where a CenturyLink capital expenditure has been made. Only the CAF 1 capital expenditures identified in Exhibit 5 have been made in areas that are defined as currently unserved by an "unsubsidized competitor" as defined by the FCC. However, even in these areas, as noted in CenturyLink's *Motion*, there may be providers offering competitive services that do not meet the FCC's specific CAF criteria. For example, a competitor that offers HSI service below 4 mbps downstream would not be considered an unsubsidized competitor.
 8. Even if there is no competitor currently serving a specific geographic area, that does not mean that the area is not subject to competition, or that possession of the data in Exhibit 5 would not provide a competitive advantage to CenturyLink's competitors. The geographic areas served by competitors have increased markedly over the years and will no doubt increase in the future. By definition, as a competitor expands its geographic reach, it will serve areas that it did not previously serve, i.e., an unserved area. Competitors are always looking to move into new areas, and thus detailed information regarding CenturyLink's network is valuable even in areas not currently served by the competitor. In many cases, an area that is unserved today may be under evaluation by a competitor, and may be served in the future. This is especially true for areas that are geographically close to a competitor's current serving area, which may be targeted for expansion.
 9. It also must be recognized that *competitors serve high cost areas today, and will continue to do so in the future*. For example, many high cost areas in Montana are served by Fixed Wireless providers today. This is the reason why federal CAF II dollars will *not* be available in many high cost rural areas in Montana; these areas are served by an unsubsidized Fixed Wireless competitor. Detailed network location and expenditure information as provided in Exhibit 5 would be very helpful to a Fixed

Wireless provider seeking to define specific geographic areas for expansion or facility upgrade.

10. In sum, the Information in Exhibit 5 contains granular, location-specific data showing where CenturyLink has upgraded its 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 Exhibit 5 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. Historically, the Commission has recognized this kind of data as warranting confidential treatment. Significantly, since CenturyLink does not have any such detailed data on its competitors, conferring this advantage to a competitor does not promote fair competition.
11. Exhibit 5 data shows the exact geographic location of CenturyLink HSI facilities. Providing this information on a public basis could make this equipment subject to theft, vandalism or sabotage, which increases the likelihood of a service outage, which would have a direct negative impact on Montana consumers.
12. To the best of my knowledge the Information for which protection is sought is routinely protected in other state and federal jurisdictions where CenturyLink has provided detailed broadband deployment information. I am aware of no other instance in any other state where detailed geographic investment expenditure data like the data in Exhibit 5 has been released to the public.
13. 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: February 6, 2015


Robert Brigham

SUBSCRIBED AND SWORN TO, before me, this 6th day of February, 2015.

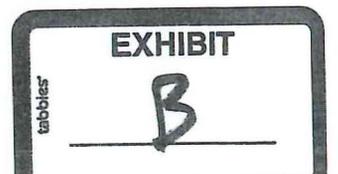


Catherine Hansen
Notary Public for the State of Colorado
Print Name: Catherine I. Hansen
Residing at: Denver, CO
My Commission Expires: 4/25/2016

Qwest Corporation d/b/a CenturyLink QC (Montana)

PERIOD	DESCRIPTION	EXCHANGE	INVESTMENT_REASON	AMOUNT
[REDACTED]				

REDACTED



Qwest Corporation d/b/a CenturyLink QC (Montana)

PERIOD	DESCRIPTION	EXCHANGE	INVESTMENT_REASON	AMOUNT
[REDACTED]				

REDACTED