

Service Date: July 27, 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. 7388i  
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 May 1, 2015, the Commission sent CenturyLink Data Requests PSC-015 asking "[p]lease provide the amount of Montana support CenturyLink QC received annually, beginning with 2012, in CAF Phase I Round 1 and Round 2." Data Response (DR) PSC-015 (May 1, 2015).

5. On May 20, 2015, CenturyLink filed a Motion for a Protective Order and Affidavit of Robert Brigham (“Motion”) for the following attachments in response to data request PSC-015:

- 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.
- PSC-015 Confidential Attachment C includes a "cross-connect (project)" column that contains the specific addresses of cross-connect locations for CAF 1 upgrades.

Mot. for Protective Order p. 2 (May 20, 2015).

6. 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 Commission has requested CenturyLink to file.

7. On June 4, 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 a supporting Affidavit with its Motion, as required by Admin. R. Mont. 38.2.5007(3)(c). *Aff. Robert Brigham (May 19, 2015).*

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. 3.*

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”). CenturyLink states that the Commission has already protected similar information in this Docket. Mot. at p. 5; *see also* Or. 7388g ¶ 23 (Mar. 17, 2015) (protecting geographic location information of CAF Phase I Incremental Support Copay); Or. 7324 ¶ 23 (Jan. 16, 2014) (protecting “number and percentage of those living units with active CenturyLink QC voice service as of the end of 2012”); Or. 7345a ¶¶ 6(a), 26 (Nov. 13, 2014) (protecting “OOS<24 Hours reports for each month beginning March, 2014 through July, 2014, for each legacy Qwest wire center”).

20. The Commission finds that the information covered in this Motion is sufficiently granular and location specific to warrant protection. Confidential Attachment B concerns “‘project description’ and ‘description’ columns that contain the specific addresses, geographic locations and work descriptions for specific CAF 1 related upgrades.” Mot. at 2. Confidential Attachment C concerns a “‘cross-connect (project)’ column that contains the specific addresses of cross-connect locations for CAF 1 upgrades.” Mot. at p. 2. Information that contains specific addresses and geographic locations is geographically granular. Given the location specific nature of this information, the Commission agrees that “competitors could use it to prioritize their marketing efforts and efficiently target specific customers or groups of customers in specific areas.” Mot. at p. 4. Therefore, this information derives independent economic value or a competitive advantage from its secrecy.

21. 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:

22. CenturyLink's Motion for Protective Order is hereby GRANTED in its entirety.
23. CenturyLink must produce the information consistent with this Order within 14 calendar days of the service date of this Order.

DONE AND DATED the 27th day of July, 2015.

  
Jeremiah Langston  
Examiner

ATTEST:

  
Aleisha Solem  
Commission Secretary  
(SEAL)

**Nondisclosure Agreement**

(7-26-00)

ARM 38.2.5012

Docket Nos. D2014.11.91, Order No. 7388i  
Order Action Date: July 23, 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:  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
Employer

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