

**ATTACHMENT 1**

**TO THE**

**QWEST'S AND CENTURYLINK'S  
REPLY TO THE JOINT CLEC RESPONSE TO  
JOINT MOTION FOR PROTECTIVE ORDER**

**Docket No. 10-049-16**

**July 29, 2010**

Service Date: November 17, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER of the Joint Application of	)	
Qwest Communications Corporation, <u>et al.</u> , and	)	UTILITY DIVISION
U S WEST Communications, Inc., <u>et al.</u> , for	)	
Approval of the Merger of Parent Corporations,	)	DOCKET NO. D99.8.200
U S WEST, Inc. and Qwest Communications	)	
International Inc.	)	ORDER NO. 6199a

**PROTECTIVE ORDER**

On November 15, 1999, U S West Communications, Inc. (U S West) and Qwest Communications International Inc. (Qwest) filed with the Montana Public Service Commission (Commission) a Joint Motion for Protective Order to govern certain information expected to be filed in Docket No. D99.8.200. U S West and Qwest request two kinds of protection of confidential information: (1) Proprietary Information, to be given to Commission Staff and Intervenors under the customary Protective Order requirements provided herein; and (2) Competitive Information, to be provided to Commission Staff and Montana Consumer Counsel (MCC) Staff only, under the special protection of this Protective Order.

The Commission considers it appropriate to issue a Protective Order in this Docket, to provide a procedure for balancing the public's right to know against the providing party's right to nondisclosure of confidential trade secret and/or competitive information. This Protective Order is issued in the manner and form considered appropriate by the Commission, modifying U S WEST/Qwest's proposed Protective Order, but in general granting the motion.

This Order affords interested parties an opportunity to challenge the confidential designation for information claimed to be proprietary or trade secret in nature, as well as the confidential designation for information claimed to be competitive information to be given to Staff and MCC Staff. The Commission has the right to determine, after notice and hearing, that Competitive Information reviewed only by the MCC and/or the Commission Staff should be

provided as Proprietary Information under the general protection of this Protective order. In issuing this Order, the Commission is not prejudging whether the subject information is or is not proprietary or confidential information under Montana law.

Based on the foregoing, it is Ordered that this Protective Order shall be in effect with respect to information claimed to be of a proprietary nature or of a competitive nature submitted by U S WEST and/or Qwest in Docket No. D99.8.200 (providing party or parties). It is further ordered that the following Protective Order shall be in effect throughout the proceedings in Docket No. D99.8.200. The Commission cautions that U S West/Qwest should use care in categorizing information as confidential in this proceeding and in ensuring that access to information is restricted only where justified. With these caveats, the Commission grants U S West/Qwest's request and orders that information submitted in accordance with this Order be treated as "confidential" under the terms of this Order.

WHEREFORE, the following Protective Order provisions shall be in effect:

1. Confidential Information. (a) Proprietary Information. All documents, data, information, studies and other materials furnished pursuant to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery, or pursuant to Commission order, that are claimed to be of a trade secret, privileged, or confidential nature shall be furnished pursuant to the terms of this Order. All persons accorded access pursuant to this Order must treat this information as constituting trade secret, private, confidential, or privileged commercial and financial information ("Proprietary Information"), and must not use or disclose this information except for the purpose of this proceeding, and solely in accordance with this Order. This Proprietary Information includes all documents and materials subsequently derived from notes or summaries authorized by MCC or Commission Staff. All material claimed to be Proprietary Information must be submitted on **yellow** paper and so marked by the party or affiliate by stamping the same with a designation indicating its proprietary nature.

(b) Competitive Information. Competitive Information is that information that is not only claimed to be Proprietary Information (trade secret, private, confidential, or privileged commercial and financial information), but that also discloses how the providing party competes

or intends to compete with competitors. Until further proceedings as provided under this Order, only MCC and Commission Staff shall have access to Competitive Information as provided in this Order. All documents, data, information, studies and other materials furnished pursuant to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery, or pursuant to Commission order, or otherwise requested by the Commission or the MCC in this Docket, that are claimed to Competitive Information shall not be used or disclosed except in accordance with this Order. This protected Competitive Information includes all documents and materials subsequently derived from notes or summaries authorized by MCC or Commission Staff. All material claimed to be Competitive Information must be submitted on **pink** paper stamped and designated as protected Competitive Information, and at a minimum made available for inspection by the MCC and Commission Staff at the U S WEST offices in Helena, Montana. U S WEST/Qwest shall provide the Competitive Information at another location, if more convenient for MCC or the Commission staff. (For example, MCC's expert witness is located in Washington, D.C. Joint Applicants can make arrangements for viewing.)

2. Terms of Disclosure for Proprietary Information. Proprietary Information made available pursuant to the Order shall be given solely to counsel for the parties, the Commission and Commission staff, and shall not be used or disclosed except for the purposes of this docket, or as otherwise permitted by subsequent order of the Commission. Counsel may authorize access to Proprietary Information by that party's experts as follows:

(a) Five (5) days written notice (counted from the date of receipt by the providing party) shall be given to the party that produced the Proprietary Information. The notice shall contain the name, title, job description, description or previous positions and experience, and area of expertise of any person given access to the information. An expert may be an employee of a party, provided that the employee's duties are solely dedicated to regulatory activities on behalf of the party, and that the employee's duties are not related to marketing or strategic planning of competitive products or services, including those provided by any party to this proceeding.

(b) If it is the good faith position of the party producing the Proprietary Information that the designated person should not be given access to the information, that party must respond to

the notice with written objection.

(c) If the party proposing that access be given to the designated person does not receive written objection by the party that produced the proprietary information within five (5) days after receipt of the written notice, counsel for that party shall be authorized to provide access to the information to the designated person.

(d) If the party producing the Proprietary Information objects to access by the designated person to the information, the party requesting the access and the party producing the information shall attempt to resolve the objection. If these parties are unable to resolve the objection, either may apply to the Commission for a ruling as to the access proposed. The designated person will not have access to the information, pending resolution of the objection by the Commission.

(e) The standard to be applied by the Commission in determining a question of expert access to Proprietary Information shall be whether access by the individual would be reasonably likely to jeopardize the confidential nature of the information sought. A party dissatisfied with a decision of the Commission may appeal to the District Court, and, pending appeal, the information shall not be disclosed to the designated person.

(f) Any member of the Commission, its staff, the MCC, and its staff, may have access to any Proprietary Information made available pursuant to this order and shall be bound by the terms of this order.

3. Prohibition on Disclosure of Competitive Information. The MCC and/or the Commission Staff shall not disclose Competitive Information reviewed under ¶ 1(b) herein to anyone other than the Commission, without a Commission order, entered after notice and a hearing, specifically authorizing disclosure of the Competitive Information. A Commission order authorizing disclosure will delay the effective date of the ruling for a period of seven (7) business days after its issuance, to allow the providing party reasonable opportunity to seek a stay or other appropriate relief.

4. Nondisclosure Agreement. Before giving access to Proprietary Information as contemplated in ¶ 2 above to any expert, counsel for the party seeking review of the Proprietary Information shall deliver a copy of this Order to the person, and prior to disclosure the person

shall agree in writing to comply with and be bound by this Order. Proprietary Information shall not be disclosed to any person who has not signed a nondisclosure agreement in the form attached and incorporated herein as Exhibit "A." Court reporters shall also sign an Exhibit "A." The nondisclosure agreement (Exhibit "A") requires all persons to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and consent to be bound by its terms. The agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. The agreement shall be delivered to counsel for the providing party and to the Commission.

(d) Delivery of Documentation. Where feasible, Proprietary Information will be marked as such and delivered to counsel. In the alternative, the Proprietary Information may be made available for inspection and be reviewed by counsel and experts as defined in paragraph 2(a)-(e) herein in a place and a time mutually agreed on by the parties, or as directed by the Commission.

5. Challenge to Confidentiality. This Order establishes a procedure for the expeditious handling of information that a party claims is confidential; it shall not be construed as an agreement or ruling on the confidentiality of the information. A party to this proceeding or other person or entity with proper standing, or the Commission on its own motion, may challenge the providing party's claim of confidentiality at any time. The petition or motion must be served upon the providing party, and the providing party may file a response or objection within 14 days. The providing party's response may also request hearing or oral argument before the Commission, including the grounds for the request.

(a) If the parties are unable to agree that certain documents, data, information, studies or other matters constitute trade secret, confidential, or privileged commercial and financial information, the party objecting to the trade secret claim shall submit the matter to the Commission for its review pursuant to this Order. The Commission will enter an order resolving the issue of whether any documents, data, information, studies, or other matters submitted to it for review and determination are Proprietary Information.

(b) Any party or appropriate person or entity (as described above) may seek by

appropriate pleading to have documents designated as Proprietary Information or accepted into the sealed record in accordance with this Order removed from the protective requirements of this Order or from the sealed record and placed in the public record. On a challenge of the confidential or proprietary nature of this information, a hearing examiner or the Commission shall resolve the issue after proceedings in camera, in which only those persons duly authorized to have access to the confidential matter may be present. The Court Reporter must sign an Exhibit "A." The record of the in camera hearing shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. D99.8.200," and may be transcribed only by agreement of the parties or by Order of the Hearing Examiner or the Commission. The transcription shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order. The transcription may be released from the restrictions of this Order, on agreement of the parties, or pursuant to an Order of the Hearing Examiner or the Commission after notice to the parties and hearing. If the Hearing Examiner or the Commission orders the removal of information from the protection of this Order, to enable the providing party to seek a stay or other relief, the parties shall not disclose the information or use it in the public record for seven (7) business days.

6. Challenge to Designation as Competitive Information. Either the MCC or the Commission Staff may challenge the providing party's designation of the confidential information as Competitive Information, after their review of the information. Any Commission order sustaining such a challenge will delay the effective date of the ruling for a period of seven (7) business days after its issuance, to allow the providing a reasonable opportunity to seek a stay or other appropriate relief.

7. Seal. While in the custody of the Commission and MCC, materials subject to this Order shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. D99.8.200." Due to their proprietary and/or confidential nature, they shall not be considered as records in the possession or retained by the Commission within the meaning of the open meetings or public records statutes.

8. Use in Pleadings, Briefs, etc. Reference to Proprietary Information in the sealed

record in pleadings, briefs, argument or motions shall be by citation of title or exhibit number or by some other non-confidential description. Any further use of or substantive references to Proprietary Information shall be placed in a separate section of the pleading or brief and submitted to the Commission under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed an Exhibit "A." All protections afforded in this Order apply to materials prepared and distributed under this paragraph.

9. Use in Decisions and Orders. The Hearing Examiner or the Commission will refer to Proprietary Information in only a general or summary form and will avoid reproduction in any decision of Proprietary Information to the greatest possible extent. If necessary for a determination in this proceeding to discuss Proprietary Information other than in a general or summary form, it shall be placed in a separate section of the Order or decision under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed an Exhibit "A." Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed an Exhibit "A." If the Commission deems it necessary to discuss Competitive Information in its decisions and orders, the Commission will notify the providers and determine appropriate protections.

10. Summary of Proprietary Information. When material filed with the Commission pursuant to this Order is considered to be Proprietary Information, the provider shall concurrently file a brief non-proprietary written summary of the Proprietary Information. If deemed necessary by the Commission, the provider shall prepare a written summary of the Proprietary Information referred to in a Commission decision or Order, for placement in the public record.

11. Segregation of Files. All Proprietary Information filed with the Commission will be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Order. The Proprietary Information may be released from the restrictions of this Order either through agreement of the parties or, after notice to the parties and hearing, pursuant to the Order of the Commission or a final order of a court. MCC may retain all written Proprietary Information obtained under this Order in its office files, but must withhold the information from inspection by others, except for its staff and



experts, unless released by the Commission or a final order of a court.

12. Preservation of Confidentiality. All persons afforded access to any Proprietary Information pursuant to this Order shall not use or disclose the Proprietary Information for purposes of business or competition, or any purpose other than preparation for and conduct of this proceeding, solely as contemplated in this Order. Reasonable precautions are required to keep the Proprietary Information secure in accordance with the purposes and intent of this Order.

13. Reservation of Rights. The parties affected by the terms of this Protective Order retain the right to question, challenge, and object to the admissibility, on the grounds of relevancy or materiality, of any and all data, information, studies and documents furnished pursuant to this Protective Order in response to interrogatories, requests for information or cross-examination. This Order shall in no way constitute any waiver of the rights of any party herein to contest any assertion or finding of trade secret, confidentiality or privilege, and to appeal any determination of the Commission or assertion by a party.

14. Termination Provision. On the termination of these proceedings, "Proprietary Information" and "Competitive Information" furnished by Joint Applicants, together with all originals and copies of notes, sketches, data, compilations, extracts and reproductions, and any documents or materials subsequently derived therefrom, must be returned to counsel for Joint Applicants. Opposing counsel must certify that all documents and copies provided by Joint Applicants have been returned to Joint Applicants, except to the extent that the Commission may order that such documents are not entitled to continued protection under this Order. Alternatively, opposing counsel may certify under oath that all documents provided by Joint Applicants, copies of the documents, and any documents or materials derived therefrom, have been destroyed.

15. Amendment or Modification. The Commission retains jurisdiction of this matter and may alter or amend these provisions, on motion by an appropriated party and on reasonable notice.

DONE AND DATED this 16th day of November, 1999, by a vote of 5- 0.  
BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DAVE FISHER, Chair

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NANCY MCCAFFREE, Vice Chair

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BOB ANDERSON, Commissioner

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GARY FELAND, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. *See* ARM 38.2.4806.

EXHIBIT "A"

I have reviewed the foregoing Protective Order in USWC Docket No. D99.8.200, dated November 17, 1999, and agree to be bound by the terms and conditions of the order.

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Signature

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

\_\_\_\_\_  
Employer or Firm

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

\_\_\_\_\_  
Party

\_\_\_\_\_  
Date