

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Qwest Corporation  
Non-Impaired Wire Centers  
Investigation**

**Case No. PU-08-373**

**STAFF RESPONSE TO QWEST CORPORATION'S APPLICATION FOR  
TRADE SECRET PROTECTION**

On June 27, 2008, Qwest Corporation filed an application for a trade secret protective order under North Dakota Administrative Code Chapter 69-02-09 for protecting against public disclosure of the confidential information. Qwest provided the general description of the nature of the information sought to be protected, as follows:

**1. General description of the nature of the information sought to be protected.**

The information Qwest seeks to protect is attachments that describe evidence in support of the inventory of fiber-based collocations in Qwest's North Dakota wire centers that were used to ascertain the appropriate tier designation and subsequent non-impairment designation, including confidential and proprietary information regarding details of CLEC collocation facilities in Qwest's Fargo, Moorhead, and West Fargo central offices.

**2. Explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.**

Qwest states that the information derives independent economic value from not being generally known to, and not being readily ascertainable to, other persons who can obtain economic value from its disclosure.

**3. An explanation of why the information is not readily ascertainable by proper means by other persons.**

Qwest states the information is available only to those employees and representatives who have a need to know the information to perform their duties and responsibilities.

**4. A general description of the persons or entities that would obtain economic value from disclosure or use of the information.**

Qwest states competitors or potential competitors would obtain economic value from disclosure or use of the information.

**5. A specific description of known competitors and competitors' goods and services that are pertinent to the information.**

Qwest did not provide a specific description of known competitors and competitors' goods and services, but did provide a list of potential competitors of Qwest in North Dakota, including AT&T Communications of the Midwest, Inc., McLeod USA Telecommunications Services, Inc., MCImetro Access Transmission Services, LLC, Sprint Communications Company L.P., and Excel Telecommunications, Inc.

**6. A description of the efforts used to maintain the secrecy of the information.**

Qwest states the information that is proprietary is only available to those employees and representatives of Qwest that need to know the information to perform their duties and responsibilities.

**Staff Review**

Staff has reviewed Qwest's request for trade secret protection. North Dakota Century Code section 47-25.1-01(4) defines the term "trade secret" as:

"Trade secret" means information, 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.

The definition of "trade secret" under North Dakota Century Code section 44-04-18.4(2)(d), which is almost identical to North Dakota Century Code section 47-25.1-01(4), reads:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, *technical know how*, or process, that:

1. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that can obtain economic value from its disclosure or use; and
2. Is the subject of efforts that are reasonable under the circumstances to maintain *the secrecy of the information*. (Differences italicized).

North Dakota Administrative Code §69-02-09-04 requires that the "commission staff examine the information and application and make a prima facie recommendation of whether the information is relevant and a trade secret under the definition of trade secret in North Dakota Century Code section 47-25.1-01."

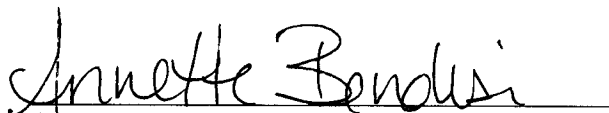
Staff recommends that the information is relevant because, the information is used to determine the appropriate tier designation and subsequent non-impairment designation and could be used by Qwest's competitors

Staff recommends that the information in the attachments to Qwest's filing is trade secret information that should be protected.

Staff believes that Qwest's application satisfies the requirements of North Dakota Century Code section 47-25.1-01 that allows the Commission to grant trade secret protection in this proceeding. The Commission's process provides a means for interested parties to review trade secret documents upon signing a nondisclosure agreement.

For reasons set forth above, staff recommends that the Commission grant Qwest's Application Requesting Trade Secret Protection in this case.

Dated this 8 day of December, 2008.

  
Annette Bendish  
Staff Counsel