

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Qwest Corporation/360networks (USA) Inc.
Interconnection Agreement Amendment
Application**

Case No. PU-08-690

ORDER GRANTING TRADE SECRET PROTECTION

February 25, 2009

On August 18, 2008, Qwest Corporation (Qwest) filed an application for a trade secret protective order under North Dakota Administrative Code Chapter 69-02-09-01 for protection against public disclosure of trade secret information as defined by North Dakota Century Code (NDCC) Section 47-25.1-01(4). Qwest provided the following general description of the nature of the information sought to be protected:

Information included in the Confidential Billing Dispute Settlement Agreement with 360networks (USA) Inc., submitted by Qwest. The Attachment to the Settlement Agreement lists the amounts associated with the disputed billings.

Qwest Corporation states that 360networks (USA) Inc. has disputed Qwest billings for transit services in states in which 360networks (USA) Inc. Qwest states competitors or potential competitors of Qwest and 360networks (USA) Inc. that provide local exchange service and other telecommunications service would obtain economic value from disclosure of this information. Competitors and potential competitors of Qwest in North Dakota include AT&T Communications of the Midwest, Inc.; McLeodUSA Telecommunications Services, Inc.; MCI metro Access Transmission Services, LLC; Sprint Communications Company, L.P.; Excel Telecommunications, Inc., and any other provider of telecommunications services in North Dakota or any of the other states in which Qwest operates.

Qwest Corporation states that the confidentiality of the information has been maintained by Qwest and 360networks (USA) Inc., and is only available to those employees and representatives who have a need to know the information to perform their duties and responsibilities.

Under North Dakota Century Code (NDCC) Section 47-25.1-01(4) :

“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.

Under NDCC Section 44-04-18.4(2)(d), which is almost identical to NDCC Section 47-25.1-01(4):

“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.

On February 18, 2009, Commission staff (Staff) filed a response to Qwest’s request for trade secret protection. Staff believes that Qwest’s application satisfies the requirements of NDCC Chapter 47-25.1-01, which allows the Commission to grant trade secret protection in this proceeding, and that the information Qwest seeks to protect qualifies as “trade secret” as that term is defined in NDCC Section 47-25.1-04 and NDCC Section 44-04-18.4(2)(d).

The information is relevant to the application because the information is included in the settlement agreement between the parties.

The Commission’s process provides a means for interested parties to review trade secret documents upon signing a nondisclosure agreement.


Order

The Commission Orders:

1. Qwest Corporation's application for trade secret protection is GRANTED.
2. This Order does not constitute precedent for subsequent trade secret decisions by the Commission.

PUBLIC SERVICE COMMISSION


Tony Clark
Commissioner


Kevin Cramer
President


Brian P. Kalk
Commissioner