

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

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| IN RE: U S WEST COMMUNICATIONS, INC., AND QWEST INC. | DOCKET NO. SPU-99-27 |
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ORDER DENYING REQUEST FOR CONFIDENTIAL TREATMENT

(Issued June 19, 2000)

On September 20, 1999, Qwest Communications Corp., LCI International Telecom Corp., USLD Communications Inc., Phoenix Network Inc., and Qwest Communications International Inc. and U S WEST, Inc. filed a "Joint Application" for an order approving the proposed merger of Qwest Inc. and U S WEST, Inc., pursuant to Iowa Code §§ 476.76 and 476.77 (1999). On March 17, 2000, the Board entered an order approving a settlement and terminating the docket, thereby permitting the proposed merger to proceed. That order required that U S WEST Communications, Inc. (U S West), a subsidiary of U S WEST, Inc., file certain service quality reports on a regular basis.

U S West filed its March service quality reports on May 15, 2000. The service quality reports are marked "Confidential." On the same date, U S West filed a request for confidential treatment for the service quality reports, describing the information contained therein as "confidential service quality results at a statewide level and at a wire center level, service order volumes and customer specific information." The request relies upon Iowa Code §§ 22.7(3), relating to trade

secrets, and 22.7(6), relating to reports to governmental agencies, as the basis for requesting confidential treatment. The request alleges the information qualifies as a trade secret, as defined in the Uniform Trade Secrets Act, Iowa Code § 550.2(4).

The affidavit attached to the request for confidential treatment states that the information in the service quality reports (a) is not generally known outside of U S West; (b) within U S West, is restricted to employees with a need to know; (c) is kept in locked file cabinets; (d) is valuable; (e) is nearly impossible to duplicate without obtaining it from U S West; and (f) if released, would serve no public purpose.

The purpose of Iowa Code ch. 22 is to remedy unnecessary secrecy in conducting the public's business. City of Dubuque v. Telegraph Herald, Inc., 297 N.W.2d 523, 527 (Iowa 1980). The courts have interpreted the public records law to impose a presumption in favor of disclosure and to give a narrow interpretation to statutory exemptions from disclosure. Board of Directors of Davenport Community School Dist. v. Quad City Times, 382 N.W.2d 80, 82 (Iowa 1986). U S West has claimed that the service quality reports are exempt from disclosure under Iowa Code § 22.7(3), relating to trade secrets.

For purposes of § 22.7(32), the Iowa Supreme Court has defined "trade secrets" by reference to Iowa Code § 550.2(4), the definition contained in the Uniform Trade Secrets Act. U S WEST Communications, Inc., v. Office of Consumer Advocate, 498 N.W.2d 711, 714 (Iowa 1993). That statute provides:

"Trade secret" means information, including but not limited to a formula, pattern, compilation, program, device, method, technique, or process that is both of the following:

a. Derives independent economic value, actual or potential, from not being generally known to, and not being

readily ascertainable by proper means by a person able to obtain economic value from its disclosure or use.

b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The question of whether information is a trade secret is a mixed question of law and fact. APAC Teleservices, Inc., v. McRae, 985 F. Supp. 852, 864 (ND Ia. 1997).

It is clear that the service quality reports contain “information” within the meaning of the statute. Trade secrets are not limited by the listed examples; business information may also fall within the definition. U S WEST, 498 N.W.2d at 714. The Board concludes that the service quality reports contain “information” as the term is used in § 550.2(4).

The next question is whether U S West has taken reasonable steps to maintain the secrecy of the information, as required in § 550.2(4)(b). U S West offers conclusory allegations regarding its efforts to maintain the secrecy of the information, but those allegations are contradicted by other information filed by U S West in this docket. That information shows that U S West has voluntarily agreed to release the same type of information in at least one other state.

As a part of the Board’s March 17, 2000, order terminating this docket, the Board directed U S West to file with the Board any and all settlements entered into by U S West in other states as a part of obtaining approval of the proposed merger. U S West filed one such settlement on April 18, 2000. That joint stipulation and agreement was filed with the Minnesota Public Utilities Commission on April 14, 2000, in “The Matter Of The Merger Of The Parent Corporations Of Qwest Communications Corporation, LCI International Telecom Corp., USLD”

Communications, Inc., Phoenix Network, Inc., and U S WEST Communications, Inc.,” Docket No. P-3009, 3052, 5096, 421, 3017/PA-99-1192 (the Minnesota Stipulation). In the Minnesota Stipulation, U S West agreed to certain penalties and customer remedies associated with retail service quality. (Minnesota Stipulation, § III.A.) U S West also agreed to file service quality reports with the Minnesota Public Utilities Commission covering such retail service subjects as missed installation commitments, held orders (that is, new service requests not filled within specified time frames), missed design service installation intervals, repeat trouble reports, and service outages. (Minnesota Stipulation, §§ IV.A through IV.D.) Most important for purposes of this order, however, in § V.A of the Minnesota Stipulation, U S West agreed as follows:

A. Public Filing Of Retail Service Quality Reporting.

The Company [U S West] shall file its service quality compliance reports under the AFOR [a modified alternative form of regulation used by U S West in Minnesota], including wire-center specific information as public data.

Thus, in the Minnesota Stipulation U S West agreed to file retail service quality reports at the statewide and wire center levels as public data.

The categories of information U S West has agreed to file in Minnesota are nearly identical to the categories of information U S West must file in Iowa. The Iowa service quality reporting categories include held orders, customer trouble reports, and service outages, just like the Minnesota categories; the only category of information required in Iowa, but not in Minnesota, appears to be a summary of

customer call answering intervals, a category of information that is unique to U S West and appears to have no potential value to any competitor of U S West.

The Iowa service quality reports also contain a level of information that is not explicitly addressed in the Minnesota Stipulation: Customer-specific information relating to held orders. The Iowa reports identify each customer whose service order has been held for longer than a specified interval. In the Minnesota Stipulation, U S West agreed only that the customer service reports should be public data at the wire center level, not on a customer-specific basis. The Board will further discuss this difference below.

With respect to the statewide and wire center information contained in the reports, it is difficult for U S West to claim that the information is a trade secret and should be withheld from public scrutiny in Iowa when U S West is voluntarily releasing the same categories of information to the public in Minnesota. U S West's affidavit claiming this information qualifies as a trade secret lacks credibility. The Board will make a tentative finding that the information is not a trade secret and is not exempt from public disclosure pursuant to Iowa Code § 22.7(3).

U S West also alleges that the service quality reports are reports to governmental agencies, the release of which would give an advantage to competitors and serve no public purpose. However, it appears likely that it would serve a public purpose to reveal information to the public which might indicate that U S West's retail service quality is, or is not, meeting the standards required by Iowa law. A public utility like U S West, offering service in Iowa, is required to furnish reasonably adequate service and facilities. Iowa Code § 476.8. It may be difficult for the public

to determine whether U S West is meeting this standard if the service quality reports are treated as confidential records, not available for public inspection. Further, without this information customers may be unable to make the best choice among competitive local exchange service providers, which would tend to hamper the development of competition.

In summary, based upon the Minnesota Stipulation, it would appear that U S West does not actually maintain the secrecy of these categories of information, at least at the statewide and wire center levels. Because the Minnesota Stipulation appears to preserve the confidentiality of customer-specific information, however, the Board finds that the confidential status of that detailed information is not called into question by the Minnesota Stipulation.

The Board is aware that it has granted confidential treatment to similar reports and information in the past. Those decisions were made prior to U S West's voluntary decision to file the same categories of information in Minnesota on a public basis, a decision that calls into question the current affidavit. U S West may have relied upon those earlier Board decisions when it prepared the affidavit that accompanied its May 15, 2000, filing, and it is possible that U S West may have more to say on this subject. Therefore, pursuant to 199 IAC 1.9(6)"d," the Board will hold the service quality reports filed in this docket on May 15, 2000, confidential for 21 days from the date of this order to allow U S West an opportunity to file a more detailed request for confidential treatment, including an affidavit providing an explanation as to why U S West believes the statewide and wire-center information contained in the customer service reports qualifies for confidential treatment

pursuant to Iowa Code § 22.7(3) or (6). If the 21 days pass without the filing of a more detailed application for confidential treatment, the parts of the customer service reports that contain statewide or wire center information will be available for public inspection and U S West will be directed to re-file its May 15, 2000, service quality report, designating as "Confidential" only that information that is customer-specific.

Finally, the Board notes that even if one of the exceptions under Iowa Code § 22.7 applies, the decision to keep a document confidential is a matter of discretion for the Board as the lawful custodian of the records. See Iowa Code § 22.7, first unnumbered paragraph. In the absence of a compelling showing, it will be difficult to keep the service quality report information confidential even if it is a trade secret when the same type of information is available as a public record in Minnesota.

IT IS THEREFORE ORDERED:

1. The "Request for Confidentiality" filed in this docket on May 15, 2000, by U S WEST Communications, Inc., is denied with respect to information that is reported on a statewide level or a wire center level. The request is granted with respect to information that is customer-specific.

2. Pursuant to 199 IAC 1.9(6)"d," the Board will hold the statewide and wire center level service quality information filed in this docket on May 15, 2000, confidential for 14 days from the date of this order to allow U S West an opportunity to file a more detailed request for confidential treatment, including an affidavit providing an explanation as to why U S West believes the statewide and wire-center information contained in the customer service reports qualifies for confidential treatment pursuant to Iowa Code § 22.7(3) or (6). If the 21 days pass without the

filing of a more detailed application for confidential treatment, the parts of the customer service reports that contain statewide or wire center information will be available for public inspection. In that event, U S West is directed to re-file its May 15, 2000, service quality report, designating as "Confidential" only that information that is customer-specific.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr.
Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 19th day of June, 2000.