STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

RC Communications, Inc.
2007 High-Cost Universal Service Support
Annual Report

Case No. PU-07-688

Roberts County Telephone Cooperative Association
2007 High-Cost Universal Service Support
Annual Report

Case No. PU-07-689

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Peggy Vaagen deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **20th day of March, 2008**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing photocopies of:

Order Granting Trade Secret Protection

The envelope was addressed as follows:

Pamela Harrington, CEO/General Manager
Roberts County Telephone Cooperative Association
and RC Communications, Inc.
205 Main Street, PO Box 197
New Effington, SD 57255
Cert. No. 7007 2560 0001 6050 7381

The address shown is the respective addressee's last reasonably ascertainable post office address.

Peggy Vaagen

Subscribed and sworn to before me
this **20th day of March, 2008**.

Esther Jangula
Notary Public

SEAL

ESTHER JANGULA
Notary Public
State of North Dakota
My Commission Expires Dec. 21, 2012

11 PU-07-689 Filed: 3/20/2008 Pages: 5
Affidavit of Certified Mail Order Granting Trade Secret Protection
Public Service Commission

11 PU-07-688 Filed: 3/20/2008 Pages: 5
Affidavit of Certified Mail Order Granting Trade Secret Protection
Public Service Commission

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

RC Communications, Inc.
2007 High-Cost Universal Service Support Annual Report

Case No. PU-07-688

Roberts County Telephone Cooperative Association
2007 High-Cost Universal Service Support Annual Report

Case No. PU-07-689

ORDER GRANTING TRADE SECRET PROTECTION

March 12, 2008

On September 25, 2007 Roberts County Telephone Cooperative Association and RC Communications, Inc. (Applicants) filed an Application for Confidential Treatment of Information contained in the 2007 High Cost Universal Service Support Annual Report required by N.D. Admin. Code §§69-09-05-12 and 69-09-05-12.1. On November 2, 2007, Commission Staff (Staff) filed its response to the Applications. On November 7, 2007, the Commission held an informal hearing. On December 20, 2007 Staff filed an amended response to the application.

Applicants include as TRADE SECRET-PRIVATE all of the information that "is financial information, including financial data and strategy of the Company."

The Applicants provided financial data relating to the following:

A. Year 2006 Federal Universal Service Receipts;
B. Expenditures for Provision, Maintenance, and Upgrading of Facilities and Services Supported by Federal Universal Service Funding; and
C. Estimated Year 2008 Federal Universal Service Receipts.

The categories listed above appear to be in response to the requirements of N.D. Admin. Code §69-09-05-12.1(1). The Applications also include categories in their trade secret report entitled Outage Report, Unfulfilled Requests for Service, Complaints, Consumer Protection/Service Quality Standards, Emergency Situations, Local Usage, and Equal Access which appear to be in response to the requirements of N.D. Admin. Code §69-09-05-12.1(2) thru (8).

Applicants state that "[i]f released, the information would provide advantage to competitors, particularly, competitive local exchange carriers."

Applicants state that "[t]he information has not been previously publicly disclosed."

Applicants state the competitors, particularly competitive local exchange carriers, would obtain economic value from disclosure or use of the information.

Applicants state that "[t]he company routinely takes measures to protect its financial information, such as labeling such data as confidential or proprietary and prohibiting general distribution of the information.

N.D.C.C. §47- 25.1-01 defines the term "trade secret" as follows:

> "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 N.D.C.C. §44-04-18.4, which is almost identical to N.D.C.C. §47-25.1-01, reads as follows:

> "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).

N.D. Admin. 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, under N.D. Admin. Code §69-09-05-12.1(1) and 69-09-05-12.1(2) designated eligible telecommunications carriers must provide the information to the Commission in an annual report to show that the company is in compliance with its obligations as an eligible telecommunications carrier.

The financial information and information relating to the strategy of the company is considered confidential by the FCC under its rules. Under 47 C.F.R. § 0.457(d) trade secrets and commercial or financial information obtained from any person and privileged or confidential materials not routinely available for public inspection are treated a confidential by the FCC, and a request for protection is not required. In addition, a request for protection of confidential information may be submitted to the FCC under 47 C.F.R. §0.459. The FCC has acted to routinely grant protective orders pursuant to FCC Rules 0.457 and 0.459 in order to accord confidential treatment to financial information about cell site expenditures and operating expenses set forth in wireless ETCs' build-out plans filed with the FCC. *See Petition of Singular Wireless, LLC for designation as an Eligible Telecommunications Carrier in the State of Georgia, Protective Order*, CC Docket 96-45, DA 07-3627 (rel. August 15, 2007) (*"Cingular Order"*); *NEP Cellcorp, Inc. Application for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania, Protective Order*, CC Docket 96-45, DA 07-3628 (rel. August 15, 2007) (*"NEP Order"*); *Corr Wireless Communications, LLC Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, Protective Order*, CC Docket 96-45, DA 07-3629 (rel. August 15, 2007) (*"Corr Order"*). In the *Cingular* docket, the confidential information related to the projected uses of universal support set forth in the company's 5-year service improvement plan, including capital expenditures, operating expenses and proposed new cell sites. *See Cingular Order*, ¶ 2.

The information, if any, relating to outages is considered confidential by the FCC for national security reasons and should be granted trade secret protection under N.D. Admin. Code §69-02-09-01. The information required in the Commission's ETC Outage Report is similar to the information which the FCC requires wireless carriers to file in Part 4 Outage Reports as contained in 47 C.F.R. §4.1 et seq., especially §4.9. The FCC has determined that the information required in Part 4 Outage Reports is highly sensitive and protected from public dissemination under the Freedom from Information Act. The FCC states:

> The overwhelming majority of the commenting parties, including the Department of Homeland Security ("DHS"), have demonstrated that the outage reports will contain sensitive data, which requires confidential treatment under the Freedom of Information Act ("FOIA"). This data, though useful for the analysis of past and current outages in order to increase the reliability and security of telecommunications networks in the future, could be used by hostile parties to attack those networks, which are part of our Nation's critical information infrastructure. The disclosure of outage reporting information to the public could present an unacceptable risk of more effective terrorist activity. We therefore will treat the information that will be provided as confidential. This information

will be withheld from disclosure to the public in accordance with the Freedom of Information Act.[1]

Staff recommends that the information Applicants seek to protect is trade secret information that should be protected. The financial information provided to the Commission is considered confidential by the FCC under 47 C.F.R. §§ 0.457 and 0.459. The FCC also considers information in outage reports to be highly sensitive and protects the information from public dissemination in the Freedom from Information Act. N.D.C.C. §44-04-18(1), as interpreted by the North Dakota Attorney General, allows a state agency to provide confidentiality protection of information if the information is specifically protected under federal regulation. The information in Confidential Exhibits A, C and attachments 1 and 2, and D is protected under federal regulation.

The Commission agrees that the Applicants' requests for trade secret protection should be granted.

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. The applications by Roberts County Telephone Cooperative Association and RC Communications, Inc. for trade secret protection are GRANTED.

2. This Order does not constitute precedent for subsequent trade secret decisions by the Commission.

PUBLIC SERVICE COMMISSION

Tony Clark	**Susan E. Wefald**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

[1] *In the matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 04-188, 19 FCC Rcd. 16830 (rel. Aug. 19, 2004), ¶ 3 ("Outage Order").