

# **DIVIDER**

**STATE OF NORTH DAKOTA**

**□ INFORMATION TECHNOLOGY DEPARTMENT**

**SFN 2053 (4-2002)**

**PU-07-689**

**Roberts County Telephone Cooperative Association**

**2007 High-Cost Universal Service Support**

**Annual Report**

**07**

**Filed 9/27/2007**

**Closed 3/14/2008**

**12** **PU-07-689** Filed: 10/14/2009 Pages: 1  
**Note to File – Trades Secret Documents have been Shredded**

Public Service Commission Staff

John Hamre

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 20<sup>th</sup> 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:

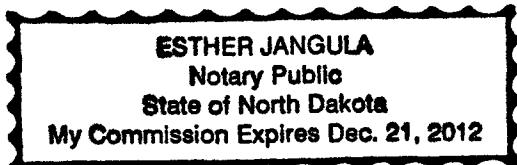
Pamela Harrington, CEO/General Manager  
Roberts County Telephone Cooperative Association  
and RC Communications, Inc.  
205 Main Street, PO Box 197  
New Effington, SD 57255  
Cert. No. 7007 2560 0001 6050 7381

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

*Peggy Vaagen*  
\_\_\_\_\_

Subscribed and sworn to before me  
this 20<sup>th</sup> day of March, 2008.

*Esther Jangula*  
\_\_\_\_\_  
Notary Public



SEAL

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

11 PU-07-689 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."

10 **PU-07-688** Filed: 3/12/2008 Pages: 4  
10 **PU-07-689** Filed: 3/12/2008 Pages: 4  
**Order Granting Trade Secret Protection**

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.<sup>1</sup>

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

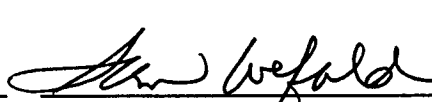
The Commission Orders:

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**  
Commissioner



**Susan E. Wefald**  
President



**Kevin Cramer**  
Commissioner

<sup>1</sup> *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").

**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**

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10 **PU-07-688** Filed: 3/12/2008 Pages: 4

10 **PU-07-689** Filed: 3/12/2008 Pages: 4  
Order Granting Trade Secret Protection

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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.

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will be withheld from disclosure to the public in accordance with the Freedom of Information Act.<sup>1</sup>

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.

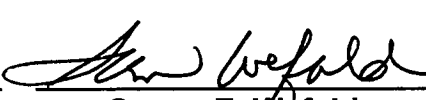
### Order

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**  
Commissioner

  
\_\_\_\_\_  
**Susan E. Wefald**  
President

  
\_\_\_\_\_  
**Kevin Cramer**  
Commissioner

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<sup>1</sup> *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").

**APPROVED**

DATE: 3-12-08  
[Signature]

**MOTION**

**March 12, 2008**

**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**

I move the Commission adopt the Order Granting Trade Secret Protection to RC Communications, Inc. and Roberts County Telephone Cooperative Association, Case Nos. PU-07-688 and PU-07-689.

PJF

9 **PU-07-688** Filed: 3/12/2008 Pages: 1  
9 **PU-07-689** Filed: 3/12/2008 Pages: 1  
**Motion to Adopt Order Granting Trade Secret  
Protection**

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Roberts County Telephone Cooperative  
Association and RC Communications, Inc.  
ETC Compliance  
Annual Report

Case Nos. PU-07-688 and 689

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

Lisa Zeimer deposes and says that:

she is over the age of 18 years and not a party to this action and, on the 20<sup>th</sup> day of December, 2007, she deposited in the United States Mail, at Bismarck, North Dakota, one envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

AMENDED STAFF RESPONSE TO APPLICATION REQUESTING TRADE  
SECRET PROTECTION FILED BY ROBERTS COUNTY TELEPHONE  
COOPERATIVE AND RC COMMUNICATIONS, INC., AS CORRECTED

The envelope was addressed as follows:

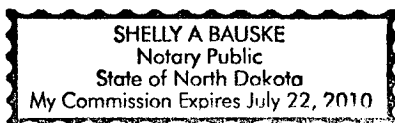
Pamela Harrington, CEO/General Manager  
Roberts County Telephone Cooperative and  
RC Communications, Inc.  
Main Street, PO Box 197  
New Effington SD 57255

Certified No. 7007 0710 0003 6055 1473

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

Subscribed and sworn to before me  
this 20<sup>th</sup> day of December, 2007

SEAL



*[Signature]*

*Shelly A Bauske*  
Notary Public

8 PU-07-688 Pages: 8

8 PU-07-689 Pages: 8

Amended Staff Response to Request for  
Trade Secret Protection as Amended  
by Public Service Commission  
12/20/2007



Public Service Commission  
State of North Dakota

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COMMISSIONERS

Susan E. Wefald, President  
Kevin Cramer  
Tony Clark

Executive Director  
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408  
Bismarck, North Dakota 58505-0480  
web: www.nd.gov/psc  
e-mail: ndpsc@nd.gov  
TTY 800-366-6888 or 711  
Fax 701-328-2410  
Phone 701-328-2400

December 20, 2007

Illona Jeffcoat-Sacco  
Executive Director  
Public Service Commission  
600 E Boulevard Ave. Dept. 408  
Bismarck, ND 58505-0480

RE: **Roberts County Telephone Cooperative Association  
And RC Communications, Inc.  
ETC Compliance  
Annual Report  
Case Nos. PU-07-688 and 689**

Dear Illona:

Enclosed for filing in the above referenced case are the original and seven copies of the **Amended Staff Response to Requests for Trade Secret Protection by Roberts County Telephone Cooperative Association and RC Communications, Inc., As Corrected.**

Thank you.

Sincerely,

William Binek  
Chief Counsel

Enclosure

C: Parties of Record

7 **PU-07-688** Pages: 7  
7 **PU-07-689** Pages: 7  
Amended Staff Response to Request for  
Trade Secret Protection as Corrected  
by Public Service Commission  
12/20/2007

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

**Roberts County Telephone Cooperative  
Association and RC Communications,  
Inc.  
ETC Compliance  
Annual Report**

**Case Nos. PU-07-688 and 689**

**AMENDED STAFF RESPONSE TO REQUESTS FOR TRADE SECRET  
PROTECTION BY ROBERTS COUNTY TELEPHONE COOPERATIVE  
ASSOCIATION AND RC COMMUNICATIONS, INC., AS CORRECTED**

On September 25, 2007, Roberts County Telephone Cooperative 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.

**1. A General Description of the Nature of the Information Sought to be Protected.**

Applicants include as TRADE SECRET-PRIVATE all of the information provided to the Commission pursuant to N.D. Admin. Code §69-09-05-12 (and staff presumes N.D. Admin. Code §69-09-05-12.1 although the Applicants did not identify that section of the rules in their Application). However, the Applicants state in their Application that the information sought to be protected "is financial information, including financial data and strategy of the Company."

It is difficult to determine from the filing exactly what the Applicants want to protect. Staff presumes that it is 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).

**2. An Explanation of Why the Information Derives Independent Economic Value, Actual or Potential, from not Being Generally Known to Other Persons.**

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

**3. An Explanation of Why the Information is Not Readily Ascertainable by Proper Means by Other Persons.**

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

**4. A General Description of the Persons or Entities that would Obtain Economic Value from Disclosure or Use of the Network.**

The only description provided by Applicants is “competitors, particularly, competitive local exchange carriers.”

**5. A Specific Description of Known Competitors and Competitors' Goods and Services that are Pertinent to the Tariff or Rate Filing.**

See response to section 4 above.

**6. A Description of the Efforts Used to Maintain the Secrecy of 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.

**Staff Recommendation**

Staff has reviewed Applicants' request for trade secret protection. 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:

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It should be noted that 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:

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*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 Federal Communications Commission (“FCC”) for national security reasons and should be granted trade secret protection by the Commission. 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.<sup>1</sup>

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<sup>1</sup> *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*”).

Staff agrees 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. §§ 0.0457 and 0.0459. 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 outage information is protected under federal regulation. The information Applicants include as TRADE SECRET-PRIVATE is protected under federal regulation.

For reasons set forth above, staff recommends that the Commission grant Applicants' requests for Trade Secret Protection.

Dated December 20, 2007.

  
\_\_\_\_\_  
William W. Binek  
Chief Counsel



Public Service Commission  
State of North Dakota

---

COMMISSIONERS

Susan E. Wefald, President  
Kevin Cramer  
Tony Clark

Executive Director  
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408  
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December 14, 2007

Illona Jeffcoat-Sacco  
Executive Director  
Public Service Commission  
600 E Boulevard Ave. Dept. 408  
Bismarck, ND 58505-0480

RE: **Roberts County Telephone Cooperative Association  
And RC Communications, Inc  
ETC Compliance  
Annual Report  
Case Nos. PU-07-688 and 689**

Dear Illona:

Enclosed for filing in the above referenced case are the original and seven copies of the **Amended Staff Response to Requests for Trade Secret Protection by Roberts County Telephone Cooperative Association and RC Communications, Inc.**

Thank you.

Sincerely,

  
William W. Binek  
Chief Counsel

Enclosure

C: Parties of Record

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6 **PU-07-689** Pages: 8

Amended Staff Response to Requests for  
Trade Secret Protection  
by Public Service Commission  
12/14/2007

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

**Roberts County Telephone Cooperative  
Association and RC Communications,  
Inc.  
ETC Compliance  
Annual Report**

**Case No. PU-07-688 and 689**

**AMENDED STAFF RESPONSE TO APPLICATION REQUESTING TRADE SECRET  
PROTECTION FILED BY ROBERTS COUNTY TELEPHONE COOPERATIVE  
AND RC COMMUNICATIONS, INC.**

On September 25, 2007, Roberts County Telephone 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.

**1. A General Description of the Nature of the Information Sought to be Protected.**

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Applicants include as TRADE SECRET-PRIVATE all of the information provided to the Commission pursuant to N.D. Admin. Code § 69-09-05-12 (and staff presumes N.D. Admin. Code §69-09-05-12.1 although the Applicants did not identify that section of the rules in their Application). However, the Applicants state in their Application that the information sought to be protected "is financial information, including financial data and strategy of the Company."

It is difficult to determine from the filing exactly what the Applicants want to protect. Staff presumes that it is 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 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 Applicants also include categories in their trade secret report entitled Outage Report, Unfulfilled Requests for Service, Complaints, 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) through (8).

**2. An Explanation of Why the Information Derives Independent Economic Value, Actual or Potential, from not Being Generally Known to Other Persons.**

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

**3. An Explanation of Why the Information is Not Readily Ascertainable by Proper Means by Other Persons.**

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

**4. A General Description of the Persons or Entities that would Obtain Economic Value from Disclosure or Use of the Network.**

The only description provided by Applicants is “competitors, particularly, competitive local exchange carriers.

**5. A Specific Description of Known Competitors and Competitors’ Goods and Services that are Pertinent to the Tariff or Rate Filing.**

See response to section 4 above.

**6. A Description of the Efforts Used to Maintain the Secrecy of 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.”

**Staff Recommendation**

Staff has reviewed Applicants’ request for trade secret protection. 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.

It should be noted that 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.”

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 Applicants claim to be confidential 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 provided in Confidential Exhibit D 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, and quote the following:

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.<sup>1</sup>

Staff agrees that the information in Confidential Exhibits A, C and attachments 1 and 2, and D is trade secret information that should be protected. The information provided in Confidential Exhibits A, C and attachments 1 and 2 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.

For reasons set forth above, staff recommends that the Commission grant Alltel's Application Requesting Trade Secret Protection for Confidential Exhibits A, C and attachments 1 and 2, and D.

Dated December 14, 2007.

  
William W. Biniek  
Chief Counsel

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<sup>1</sup> *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").

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

**Roberts County Telephone Cooperative  
Association and RC Communications,  
Inc.  
ETC Compliance  
Annual Report**

**Case No. PU-07-688 and 689**

**AFFIDAVIT OF SERVICE BY REGULAR MAIL**

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Lisa Zeimer** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **14<sup>th</sup> day  
December, 2007**, she served **one** envelope by first class mail, fully prepaid, securely  
sealed and containing a photocopy of:

**AMENDED STAFF RESPONSE TO APPLICATION REQUESTING TRADE SECRET  
PROTECTION FILED BY ROBERTS COUNTY TELEPHONE COOPERATIVE  
AND RC COMMUNICATIONS, INC.**

The envelopes were addressed as follows:

Pamela Harrington, CEO/General Manager  
Roberts County Telephone Cooperative and  
RC Communications, Inc.  
Main Street, P.O. Box 197  
New Effington, South Dakota 57255

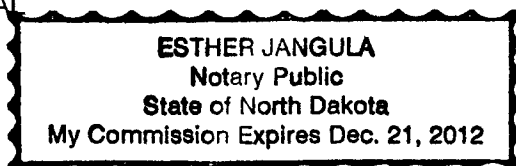
Each address shown is the respective addressee's last reasonably ascertainable post office  
address.

  
\_\_\_\_\_

Subscribed and sworn to before me  
this **14th day of December, 2007**.

  
\_\_\_\_\_  
Notary Public

SEAL



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

**Roberts County Telephone Cooperative  
Association and RC Communications,  
Inc.  
ETC Compliance  
Annual Report**

**Case Nos. PU-07-688 and 689**

**AFFIDAVIT OF SERVICE BY REGULAR MAIL**

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Lisa Zeimer** deposes and says that:


she is over the age of 18 years and not a party to this action and, on the **2nd day of November, 2007**, she served **one** envelope by first class mail, fully prepaid, securely sealed and containing a photocopy of:

**STAFF RESPONSE TO ALLTEL COMMUNICATIONS, INC.'S APPLICATION  
REQUESTING TRADE SECRET PROTECTION**

The envelope was addressed as follows:

Pamela Harrington, CEO/General Manager  
Roberts /county Telephone Cooperative and  
RC Communications, Inc.  
Main Street, P.O. Box 197  
New Effington, South Dakota 57255

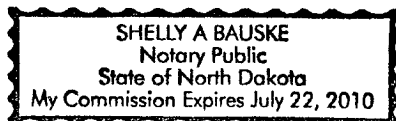
The address shown is the respective addressee's last reasonably ascertainable post office address.

  
\_\_\_\_\_

Subscribed and sworn to before me  
this **2nd day of November, 2007**.

  
\_\_\_\_\_  
Notary Public

SEAL



**5**      **PU-07-688**      Pages: 1

**5**      **PU-07-689**      Pages: 1

Affidavit of Service by Regular Mail

by Public Service Commission  
11/02/2007

CC: Comm Legal Illona Pat .



Public Service Commission  
State of North Dakota

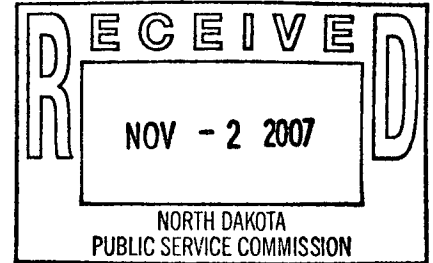
COMMISSIONERS

Susan E. Wefald, President  
Kevin Cramer  
Tony Clark

Executive Director  
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408  
Bismarck, North Dakota 58505-0480  
web: www.nd.gov/psc  
e-mail: ndpsc@nd.gov  
TTY 800-366-6888 or 711  
Fax 701-328-2410  
Phone 701-328-2400

November 2, 2007



Illona Jeffcoat-Sacco  
Executive Director  
Public Service Commission  
600 E Boulevard Ave. Dept. 408  
Bismarck, ND 58505-0480

RE: **Roberts County Telephone Cooperative Association  
And RC Communications, Inc.  
ETC Compliance  
Annual Report  
Case Nos. PU-07-688 and 689**

Dear Illona:

Enclosed for filing in the above referenced case are the original and seven copies of the **Staff Response to Requests for Trade Secret Protection by Roberts County Telephone Cooperative Association and RC Communications, Inc.**

Thank you.

Sincerely,

William W. Binek  
Chief Counsel

Enclosure

C: Parties of Record

4 **PU-07-688** Pages: 8

4 **PU-07-689** Pages: 8

Staff Response to Requests for Trade Secret  
Protection  
by Public Service Commission

11/02/2007

CC: Comm Legal Illona Pat

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

**Roberts County Telephone Cooperative  
Association and RC Communications,  
Inc.  
ETC Compliance  
Annual Report**

**Case Nos. PU-07-688 and 689**

**STAFF RESPONSE TO REQUESTS FOR TRADE SECRET PROTECTION  
BY ROBERTS COUNTY TELEPHONE COOPERATIVE ASSOCIATION  
AND RC COMMUNICATIONS, INC.**

On September 25, 2007, Roberts County Telephone Cooperative 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.

**1. A General Description of the Nature of the Information Sought to be Protected.**

Applicants include as TRADE SECRET-PRIVATE all of the information provided to the Commission pursuant to N.D. Admin. Code §69-09-05-12 (and staff presumes N.D. Admin. Code §69-09-05-12.1 although the Applicants did not identify that section of the rules in their Application). However, the Applicants state in their Application that the information sought to be protected "is financial information, including financial data and strategy of the Company."

It is difficult to determine from the filing exactly what the Applicants want to protect. Staff presumes that it is 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).

**2. An Explanation of Why the Information Derives Independent Economic Value, Actual or Potential, from not Being Generally Known to Other Persons.**

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

**3. An Explanation of Why the Information is Not Readily Ascertainable by Proper Means by Other Persons.**

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

**4. A General Description of the Persons or Entities that would Obtain Economic Value from Disclosure or Use of the Network.**

The only description provided by Applicants is “competitors, particularly, competitive local exchange carriers.”

**5. A Specific Description of Known Competitors and Competitors’ Goods and Services that are Pertinent to the Tariff or Rate Filing.**

See response to section 4 above.

**6. A Description of the Efforts Used to Maintain the Secrecy of 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.

**Staff Recommendation**

Staff has reviewed Applicants’ request for trade secret protection. 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.”

It should be noted that 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:

- c. 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
- d. 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.”

The information is relevant because, under N.D. Admin. Code §69-09-05-12.1(1) designated eligible telecommunications carriers must provide the financial 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 Applicants seek to protect is not the type of information that is ordinarily eligible for trade secret protection. This is information the users of telecommunications services have a right to know because it is those users of telecommunications service who pay the universal fund charges that fund the payments that are provided to these companies. The information that is required under N.D. Admin. Code §69-09-05-12.1(1) is not general financial information about the company. It is information specific to the high-cost universal support that a company receives and information regarding the use of those funds.

Applicants state that if the information is released, it would provide advantage to competitors, particularly competitive local exchange carriers. Applicants’ reasoning does not support granting of trade secret protection for this information. All eligible telecommunications carriers are treated the same and all of them are required to provide the same information. Therefore, all eligible telecommunications carriers will have the exact same information about each other and there will be no competitive advantage to anyone. The North Dakota Attorney General has determined that there is no competitive disadvantage from disclosure of commercial information if all competitors are required to provide the information. 1998 N.D. Op. Att’y Gen. L-77.

Even if the Commission were to determine that the information is trade secret, the Commission still could not protect it. The North Dakota Supreme Court ruled in Northern States Power Company v. North Dakota Public Service Commission, 502 N.W.2d 240, 243 (N.D. 1993) that finding information a trade secret for purposes of the Uniform Trade Secrets Act does not automatically except that information from North Dakota's open-records law. The Court stated that "for an exception to the open-records law to exist under our constitutional and statutory provisions, it must be specific, i.e., the Legislature must directly address the status of the record in question, for a specific exception, by the plain terms of those provisions, may not be implied." Id. There is no specific legislated exemption under N.D.C.C. §44-04-18.4 to protect information contained in ETC annual reports required by law or rules to be filed with the Commission. Therefore, even if the information may constitute a trade secret under N.D.C.C. §47-25.1-01(4), it does not fall within any specific exemption to the open records law. Id. at 242. A finding that the information is a trade secret does not automatically provide an exception to the open records requirement. If there is no legislative exception, and if there is no protection available through the Rules of Evidence, such trade secret information is still subject to the open records requirement. Id. Protection under Rule 507 of the North Dakota Rules of Evidence is only available in an adjudicative proceeding under N.D.C.C. Chapter 28-32, the Administrative Agencies Practice Act. Id. at 244-245. Filing of a report that is required under the Commission's rules does initiate an adversarial proceeding. Id.

The information provided in response to the requirements contained in N.D. Admin. Code §69-09-05-12.1(3) thru (8) is not financial information. The Applicants

provide no justification for trade secret protection for the information and there is absolutely no justification for such treatment.

Staff agrees that information pertaining to outages as required under N.D. Admin. Code §60-09-05-12.1(2) is trade secret information that should be protected, but not for any reasons set forth in Applicants' application. Staff recommends that the information, if any, relating to outage be given trade secret protection because the information is considered confidential by the Federal Communications Commission ("FCC") for national security reasons.

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.<sup>1</sup>

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 outage information is protected under federal regulation. N.D. Admin. Code §69-09-05-12.1(2) provides that “[e]ligible telecommunications carriers may file a copy of federal communications commission outage reports that include the information required by this subsection to satisfy this requirement.”

For reasons set forth above, staff recommends that the Commission deny Application for Confidential Treatment of Information as requested by Applicants for that has been furnished in compliance of the requirements of N.D. Admin. Code §§ 69-09-05-12 and 69-09-05-12.1 except that information, if any, pertaining to outages filed in response to the requirements of N.D. Admin. Code §69-09-05-12.1(2) should be granted trade secret protection.

Dated November 2, 2007.



William W. Binek  
Chief Counsel

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<sup>1</sup> *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”).



**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Roberts County Telephone Cooperative  
Association and RC Communications, Inc.**

Case No. \_\_\_\_\_

**Application for Confidential Treatment  
of Information Submitted Pursuant to  
ND Admin. Code § 69-09-05-12.**

Roberts County Telephone Cooperative Association and RC Communications, Inc. (together, the "Company"), hereby seek confidential treatment of the information submitted by the Company pursuant to ND Admin. Code § 69-09-05-12. The information sought to be protected is financial information, including financial data and strategy of the Company. The information has not been previously publicly disclosed. The 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. If released, the information would provide advantage to competitors, particularly, competitive local exchange carriers.

Therefore, the Company respectfully requests that the information submitted in accordance with ND Admin. Code § 69-09-05-12 be given confidential treatment.

DATED this 25<sup>th</sup> day of September 2007.

Respectfully submitted,

ROBERTS COUNTY TELEPHONE COOPERATIVE  
ASSOCIATION and RC COMMUNICATIONS, INC.

By: *Pamela Harrington*  
Pamela Harrington, CEO/General Manager  
Main Street, P.O. Box 197  
New Effington, South Dakota 57255  
Telephone: (605) 637-5211  
Facsimile: (605) 637-5302

# ***RC Family of Companies***

**MAIN STREET · BOX 197 · NEW EFFINGTON, SOUTH DAKOTA 57255-0197  
(605) 637-5211 · FAX (605) 637-5302**

September 25, 2007

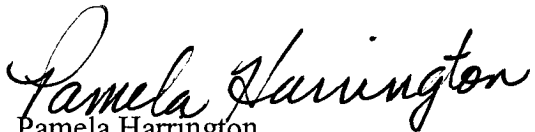
Ms. Illona Jeffcoat-Sacco  
Executive Secretary  
Public Service Commission  
600 East Boulevard Avenue, Dept. 408  
Bismark, North Dakota 58505-0480

RE: Annual Report - ND Admin. Code § 60-09-05-12

Dear Ms. Jeffcoat-Sacco:

Enclosed for filing is the 2007 High-Cost Universal Service Support Annual Report on behalf of Roberts County Telephone Cooperative Association and RC Communications, Inc. (together, the "Company"). The Company consists of one study area (SAC 391674). Also enclosed is the Company's Application for Confidential Treatment of the Annual Report. In making this filing, the Company is at this time neither contesting nor conceding the jurisdiction of the North Dakota Public Service Commission to act in this matter.

Sincerely,



Pamela Harrington  
CEO/General Manager  
Roberts County Telephone Cooperative Association and  
RC Communications, Inc.

Enclosure

