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July 28, 2008

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PUBLIC SERVICE COMMISSION

VIA FEDERAL EXPRESS

Executive Secretary
North Dakota Public Service Commission
600 East Boulevard – Dept. 408
Bismarck, ND 58505-0480

**Re: 2008 ETC Compliance Report of North Dakota 5 – Kidder Limited Partnership
Docket No. _____**

Dear Sir or Madam:

Enclosed for filing please find the 2008 ETC Compliance Report of North Dakota 5 – Kidder Limited Partnership as required by N.D. Admin. Code §§ 69-09-5-12(4) and 69-09-05-12.1.

Certain exhibits to this Report contain information and data considered to be trade secret/confidential under N.D. Cent. Code 44-04-18.4 and N.D. Admin. Code § 69-02-09-01 *et seq.* Accordingly, also enclosed herein for filing is North Dakota 5 – Kidder Limited Partnership’s Application to Protect Trade Secret and Confidential Information submitted with the 2008 ETC Compliance Report. An original, plus seven copies, of the ETC Compliance Report containing the trade secret/confidential material has been placed in a separate sealed envelope marked TRADE SECRET – PRIVATE. Seven public copies of the ETC Compliance Report, with the trade secret/confidential material redacted, as well as an original and seven copies of the Confidentiality Application, are also enclosed.

An eighth copy of the Confidentiality Application and an eighth public copy of the ETC Compliance Report are also enclosed. Please file-stamp the copies and return them to me in the enclosed self-addressed stamped envelope. Please contact me immediately if there are any questions about this filing.

Sincerely,

Andrew M. Carlson

AMC/sjc
Enclosures

2058237v6

1 **PU-08-620** Filed: 7/29/2008 Pages: 24
2008 High Cost Universal Service Support Annual Report

North Dakota 5 - Kidder Limited Partnership

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STATE OF NORTH DAKOTA

BEFORE THE PUBLIC SERVICE COMMISSION

Susan E. Wefald
Tony Clark
Kevin Cramer

President
Commissioner
Commissioner

NORTH DAKOTA 5 - KIDDER
LIMITED PARTNERSHIP
2008 ETC ANNUAL REPORT

CASE NO. _____

as Required by N.D. Admin. Code
§ 69-09-05-12.1

In accordance with the regulations adopted by the North Dakota Public Service Commission (“Commission”), North Dakota 5 - Kidder Limited Partnership (the “Company”) submits this 2008 ETC Annual Report.

I. BACKGROUND

North Dakota 5 - Kidder Limited Partnership is a limited partnership, organized under the laws of Colorado, that provides wireless telecommunications services in North Dakota. The Company is licensed by the Federal Communications Commission (“FCC”) to provide commercial mobile radio service (“CMRS”) in North Dakota Rural Service Area No. 5 and serves customers in the following North Dakota counties: Kidder, Stutsman, Emmons, Eddy, Foster, Sheridan, Wells, Logan, and McIntosh.

The Company has been designated as a competitive eligible telecommunications carrier (“ETC”) in areas of North Dakota pursuant to the Commission’s February 25, 2004 *Designation Order*.¹ The Commission designated the Company as an ETC in certain full and partial study

¹ *Northwest Dakota Cellular of North Dakota Limited Partnership Designated Eligible Carrier Application*, Case No. PU-1226-03-597; *North Central RSA 2 of North Dakota Limited Partnership*

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areas identified in the *Designation Order* (the “Designated Area”). *Designation Order*, pp. 4-9, 13-14. Designation in some areas was contingent on redefinition of the study area requirement by the Federal Communications Commission (“FCC”). The FCC granted redefinition effective September 17, 2004.²

II. THE COMPANY’S ANNUAL REPORT IN ACCORDANCE WITH N.D. ADMIN. CODE § 69-09-05-12.1

N.D. Admin. Code § 69-09-05-12.1 requires an ETC to file with the Commission an annual report on or before August 1 of each year. The Company respectfully submits the following information in satisfaction of the Commission’s annual reporting requirement. By submitting this information, the Company commits to complying with applicable Commission regulations and North Dakota statutes to the extent required by law. Nothing in this submission constitutes a waiver of the Company’s rights under federal law.

A. Report Regarding Federal High-Cost Universal Service Support Received in 2007 and Expected to be Received in 2009

N.D. Admin. Code § 69-09-05-12.1(1) requires an ETC to submit a report describing the amount of federal high-cost universal service support the carrier received in the prior calendar year and how that support was used for the provision, maintenance, or upgrading of the carrier’s facilities and services pursuant to 47 U.S.C. § 254(e). The report must also include an estimate of the amount of federal high-cost universal service support the carrier anticipates receiving in

Designated Eligible Carrier Application, Case No. PU-386-03-598; *North Dakota RSA No. 3 Limited Partnership Designated Eligible Carrier Application*, Case No. PU-897-03-599; *Badlands Cellular of North Dakota Limited Partnership Designated Eligible Carrier Application*, Case No. PU-1225-03-600; *North Dakota 5 – Kidder Limited Partnership Designated Eligible Carrier Application*, Case No. PU-338-03-601; *Bismarck MSA Limited Partnership Designated Eligible Carrier Application*, Case No. PU-494-03-602, Order, (Feb. 25, 2004) (“*Designation Order*”).

² *Wireline Competition Bureau Seeks Comment on Petition to Redefine Certain Rural Telephone Company Study Areas in the State of North Dakota*, CC Docket No. 96-45, *Public Notice*, DA 04-1739 (rel. June 17, 2004) (“*Public Notice*”); 47 C.F.R. § 54.207(c)(3)(ii) (because the FCC did not initiate a proceeding, the Petition is deemed effective 90 days after issuance of the Public Notice).

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the following calendar year and describe how that support is projected to be used for the provision, maintenance, or upgrading of the carrier's facilities and services pursuant to 47 U.S.C. § 254(e).

The Company has developed a "2008 Report of Federal High-Cost Universal Service Support" ("2008 USF Report") which contains the required information concerning the Company's use of federal high-cost universal service support. The Company's 2008 USF Report is attached as Exhibit A.³ In calendar year 2007, the Company received \$2,757,087 in federal universal service high-cost support. For calendar year 2009, the Company projects it will receive approximately \$2,757,087 in federal high-cost support.⁴

The Company's 2008 USF Report includes all information required by N.D. Admin. Code § 69-09-05-12.1(1). It describes how support received in calendar year 2007 was used for the provision, maintenance or upgrading of the Company's facilities and services, including network maintenance and operating expenses, pursuant to 47 U.S.C. § 254(e) and explains any changes from reports that have been previously provided to the Commission. The 2008 USF

³ Confidential Exhibits A-1, A-2 and A-3 to the USF Report contain trade secret and confidential information and are accordingly being filed separately in an envelope labeled Trade Secret pursuant to N.D. Cent. Code. 44-04-18.4 and N.D. Admin. Code ch. 69-02-09, consistent with the Commission's March 12, 2008 Order Granting Trade Secret Protection to analogous information provided by the Company last year. *Badlands Cellular of North Dakota Limited Partnership 2007 High-Cost Universal Service Support Annual Report*, Case No. PU-07-587, *North Dakota RSA No. 3 Limited Partnership 2007 High-Cost Universal Service Support Annual Report*, Case No. PU-07-588, *North Central RSA 2 of ND Limited Partnership 2007 High-Cost Universal Service Support Annual Report*, Case No. PU-07-590, *North Dakota 5 – Kidder Limited Partnership*, Case No. PU-07-591, *Northwest Dakota Cellular of North Dakota Limited Partnership*, Case No. PU-07-592, *Bismarck MSA Limited Partnership*, Case No. PU-07-593, Order Granting Trade Secret Protection (March 12, 2008) ("*Trade Secret Order*").

⁴ The FCC recently adopted an interim cap on the amount of high-cost support competitive ETCs such as the Company may receive. *In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers, RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, WC Docket No. 05-337, CC Docket No. 96-45, Order, FCC 08-122 (rel. May 1, 2008). In light of the cap, it is difficult for the Company to project 2009 support. Therefore, the Company's projection is based on its actual 2007 USF receipts.

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Report further includes a projection of how federal universal service high-cost support projected to be received in calendar year 2009 will be used for the provision, maintenance, or upgrading of the Company's facilities and services, including network maintenance and operating expenses. It identifies specific construction or upgrade projects expected to be undertaken in 2009, including a description of each project, a description of how service is expected to be improved by the project, the anticipated start and completion dates for each improvement, the estimated amount of investment for each project, the geographic location of each project, and the estimated population to be served by each improvement.

B. Outage Information

N.D. Admin. Code § 69-09-05-12.1(2) requires an ETC to include in its annual report detailed information on certain service outages within its Designated Area. Section 69-09-05-12.1(2) does not establish the time period for which an outage report is required. The Company has adopted the prior calendar year as an appropriate time period for providing the outage report. Attached as Confidential Exhibit B⁵ is the Company's Outage Report in satisfaction of this requirement.

C. Unfulfilled Requests for Service

N.D. Admin. Code § 69-09-05-12.1(3) requires an ETC to include in its annual report the number of requests for service from potential customers within the ETC's designated service area that were unfulfilled during the past year, and to detail how the ETC attempted to provide services to those potential customers. Section 69-09-05-12.1(3) does not establish the applicable time period for which unfulfilled requests for service must be reported. The Company has

⁵ Confidential Exhibit B-1 to the Outage Report contains trade secret and confidential information and is accordingly being filed separately in an envelope labeled Trade Secret, pursuant to N.D. Cent. Code 44-04-18.4 and N.D. Admin. Code ch. 69-02-09, consistent with the *Trade Secret Order*, which granted trade secret protection to analogous information provided by the Company last year.

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adopted the prior calendar year as an appropriate time period for reporting unfulfilled requests for service. As shown on Exhibit C, the Company had no unfulfilled requests for service within its Designated Area to report for 2007.

D. Complaints per One Thousand Handsets

N.D. Admin. Code § 69-09-05-12.1(4) requires an ETC to include in its annual report the number of complaints per 1,000 handsets or lines. Section 69-09-05-12.1(4) does not establish the applicable time period for which complaints should be reported. The Company has adopted the prior calendar year as an appropriate time period for providing complaint information. Exhibit D identifies the number of complaints per 1,000 handsets for its Designated Area that the Company received during 2007.

E. Certification of Compliance with Applicable Service Quality Standards and Consumer Protection Rules

N.D. Admin. Code § 69-09-05-12.1(5) requires an ETC to certify in its annual report that it is complying with applicable service quality standards and consumer protection rules. Pursuant to N.D. Admin. Code § 69-09-05-12(3)(d), a wireless carrier's commitment to comply with the CTIA Consumer Code for Wireless Service ("CTIA Code") within its Designated Area satisfies this requirement. The Company certifies it is complying with the CTIA Code.

F. Certification of Functionality in Emergency Situations

N.D. Admin. Code § 69-09-05-12.1(6) requires an ETC to certify in its annual report that it is able to function in emergency situations. The Company certifies it is able to remain functional in emergency situations within its Designated Area, including it has a reasonable amount of back-up power to ensure functionality without an external power source, it is able to reroute traffic around damaged facilities, and it is capable of managing traffic spikes arising from emergency situations.

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G. Comparable Local Usage Certification

N.D. Admin. Code § 69-09-05-12.1(7) requires an ETC to certify in its annual report that it offers a local usage plan comparable to that offered by the incumbent LECs in its designated service areas. The Company certifies it is offering a local usage plan comparable to that offered by the incumbent local exchange carriers serving its Designated Area.

H. Equal Access Certification

N.D. Admin. Code § 69-09-05-12.1(8) requires a wireless ETC to certify in its annual report that the FCC may require it to provide equal access to long distance carriers in the event no other ETC is providing equal access within its designated service area. The Company certifies and acknowledges that the FCC, pursuant to 47 U.S.C. § 332(c)(8), may require it to provide equal access to long distance carriers in the event no other ETC in its Designated Area is providing equal access.

III. CONCLUSION

Based on these certifications, demonstrations and acknowledgements, the Company respectfully states that it has complied with the requirements of N.D. Admin. Code § 69-09-05-12.1.

North Dakota 5 – Kidder Limited Partnership

Dated: July 22, 2008

By Kathleen McCracken

Kathleen McCracken
President, Central Dakota Cellular, Inc., general partner of Central Dakota Cellular of North Dakota Limited Partnership, general partner of North Dakota 5 - Kidder Limited Partnership

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EXHIBIT A

THE COMPANY'S 2008 USF REPORT

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NORTH DAKOTA 5 - KIDDER LIMITED PARTNERSHIP

**2008 REPORT OF FEDERAL HIGH-COST UNIVERSAL SERVICE SUPPORT
for 2007 and 2009**

I. INTRODUCTION

In accordance with the regulations established by the North Dakota Public Service Commission (“Commission”), North Dakota 5 - Kidder Limited Partnership (the “Company”) submits this 2008 Report of Federal High-Cost Universal Service Support (“USF Report”).

N.D. Admin. Code § 69-09-05-12.1(1) requires an ETC to submit a report concerning the use of federal high-cost universal service support the ETC has received in the prior calendar year and expects to receive in the following calendar year. Additionally, the report must explain any changes from reports previously provided to the Commission. The Company respectfully submits this USF Report in compliance with the requirements of N.D. Admin. Code § 69-09-05-12.1(1).

II. USE OF SUPPORT RECEIVED IN 2007

Pursuant to 47 U.S.C. § 254(e), federal high-cost universal service support may be used by an ETC only for the provision, maintenance and upgrading of facilities and services for which the support is intended. For calendar year 2007, all federal high-cost universal service support the Company received for its Designated Area in North Dakota was used only for either network improvements, such as construction or upgrade projects, or for operating expenses and maintenance or repair of its network, for purposes of providing the supported services in the Company’s Designated Area.

Attached as Confidential Exhibit A-1 is a spreadsheet identifying specific construction or upgrade projects that the Company undertook in its Designated Area in North Dakota in 2007 in

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order to expand or improve service. For each improvement, the spreadsheet includes a description of the project, the purpose for the project, the start and completion dates of the project, the amount of investment made in the project, the location of the project, and the estimated population served by the project.¹

The Company also used some of the federal high-cost universal service support it received in 2007 for operating and maintenance expenses, as contemplated and permitted by 47 U.S.C. § 254(e). The categories of operating and maintenance expenses include the costs of telecommunications, long distance, switching, service allocations, rent and lease payments, buildings and utilities, and roaming charges associated with providing service. The Company's total operating and maintenance expenses for providing service in its Designated Area in North Dakota for 2007 is set forth on Confidential Exhibit A-2.

III. PROJECTED NETWORK IMPROVEMENTS FOR 2009

The Company projects that in calendar year 2009 it will receive approximately \$2,757,087 in federal high-cost universal service support for the provision of service within its Designated Area in the State of North Dakota. The actual amount of federal universal service support to be received by the Company may vary from this estimate as universal service funding levels and subscribership change over time. If the projected amount of support is not received, the Company reserves the right to modify the projects and other information in this Report accordingly.

All federal high-cost universal service support the Company receives in 2009 for its Designated Area in North Dakota will be used only for either network improvements, such as

¹ The Company has estimated the population covered based on 2000 U.S. Census Bureau information. For cell sites, the Company has assumed a radius of signal propagation and has estimated the population residing within the projected coverage.

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construction or upgrade projects, or for operating expenses and maintenance or repair of its network, for purposes of providing the supported services in the Designated Area.

The Company has identified certain 2009 construction or upgrade projects that are intended to expand or improve service within its Designated Area in North Dakota. Attached as Confidential Exhibit A-3 is a spreadsheet containing detailed information about these projects, including a description of each project, the purpose for each project, the estimated start and end dates of each project, the amount of investment expected to be made in the project, the expected location of the project, and the estimated population to be served by the project.

The selection of these 2009 facility construction projects is based on the Company's evaluation of many factors, including current consumer demand, competitive forces and available capital. These and other external factors are not within the Company's control and are subject to change. Such changes may affect the Company's assumptions and calculations of where current network facilities could be improved to provide better coverage and service and where current and projected consumer demand may require increased capacity. As these externally-driven changes occur, the Company will reevaluate and modify its estimates for implementing these projects accordingly. The order in which the Company's proposed 2009 projects will be undertaken has not been finally determined and may be revised over time. As a result, the content and timing of the 2009 projects in Confidential Exhibit A-3 is subject to change.

The Company will also use some of the federal high-cost universal service support it receives in 2009 for operating and maintenance expenses, as contemplated and permitted by 47 U.S.C. § 254(e). The categories of projected operating and maintenance expenses include the costs of telecommunications, long distance, switching, service allocations, rent and lease

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payments, buildings and utilities, and roaming charges associated with providing service. The Company's estimated total operating and maintenance expenses for providing service in its Designated Area in North Dakota in 2009 are set forth on Confidential Exhibit A-2.

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**CONFIDENTIAL EXHIBIT A-1
2007 Network Improvements – North Dakota 5 - Kidder Limited Partnership**

Location of Improvement	Project Description	Project Purpose	2007 Actual Cost	Estimated Population Served	Project Start	Project Completion	Wire Centers Benefited
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CONFIDENTIAL EXHIBIT A-2

**2007 and 2009 Operating and Maintenance Expenses
North Dakota 5 - Kidder Limited Partnership**

Operating and Maintenance Expenses, January 1, 2007 – December 31, 2007:

Estimated Operating and Maintenance Expenses, January 1, 2009 – December 31, 2009:

CONFIDENTIAL EXHIBIT A-3

Projected 2009 Network Improvements – North Dakota 5 - Kidder Limited Partnership

Location of Improvement	Project Description	Project Purpose	Budget (est)	Estimated Population Served	Projected Start Date	Projected Completion Date	Wire Centers Benefited
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EXHIBIT B

THE COMPANY'S 2007 ETC OUTAGE REPORT

N.D. Admin. Code § 69-09-05-12.1(2) only requires an ETC to report outages of over 30 minutes in length that potentially affect at least 10% of end users served in the ETC's designated area, or that potentially affect a 911 special facility. However, it is not technically feasible for a wireless carrier to precisely identify 10% of end users served in the Designated Area, because there is no way for a carrier to know which of its customers are about to place or receive a call at any specific moment. Therefore, the Company has included, in its list of outages, all outages of over 30 minutes, not just those that potentially affect 10% of end users or a 911 special facility.

Confidential Exhibit B-1 lists the Company's outages for the reporting period of January 1, 2007 through December 31, 2007.

CONFIDENTIAL EXHIBIT B-1

North Dakota 5 - Kidder Limited Partnership

Outages over 30 minutes in length
 Reporting period: January 1, 2007 through December 31, 2007

Geographic Area	Outage Onset		Outage Restored		Outage Description	Resolution of Outage	Services Affected	# Customers Affected ¹	Steps Taken to Prevent Similar Situations
	Date	Time	Date	Time					

¹ Information relating to the number of customers affected by an outage is estimated based on the number of customers with a billing address in the wire center as of December 31, 2007. The exact number of customers affected by an outage would be dependent upon the number of call attempts during the service disruption, which is not capable of being ascertained.

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EXHIBIT C

THE COMPANY'S UNFULFILLED REQUESTS FOR SERVICE FOR 2007

Reporting period: January 1, 2007 through December 31, 2007

Number of Unfulfilled Requests for Service within <u>Designated Area</u>	Description of Steps Taken To <u>Extend Service</u> Not Applicable
- 0 -	

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EXHIBIT D

COMPLAINTS PER 1,000 HANDSETS FOR 2007

Reporting period: January 1, 2007 through December 31, 2007

Complaints per 1,000 handsets: 0.32

STATE OF NORTH DAKOTA
BEFORE THE PUBLIC SERVICE COMMISSION

Susan E. Wefald
Tony Clark
Kevin Cramer

President
Commissioner
Commissioner

APPLICATION OF NORTH DAKOTA
5 - KIDDER LIMITED PARTNERSHIP
TO PROTECT TRADE SECRET AND
CONFIDENTIAL INFORMATION
SUBMITTED WITH 2008 ETC
ANNUAL REPORT

CASE NO. _____

I. INTRODUCTION

North Dakota 5 - Kidder Limited Partnership (the “Company”) submits this Application to Protect Trade Secret and Confidential Information in conjunction with its 2008 ETC Annual Report (the “Annual Report”). The Company requests that information contained in four exhibits to the Annual Report be treated as trade secret, proprietary, commercial, and financial information protected from public disclosure pursuant to N.D. Cent. Code § 44-04-18 *et seq.* Analogous information submitted by the Company with last year’s annual filing was granted trade secret protection by the Commission in its *March 12 Order*.¹

The information which the Company requests be considered trade secret/confidential are Confidential Exhibits A-1, A-2, and A-3 to the Company’s “USF Report” and Confidential Exhibit C-1 to the Company’s “2007 ETC Outage Report.” Consistent with N.D. Admin. Code § 69-02-09-02, these Exhibits are separately submitted in a sealed envelope marked Trade

¹ *Badlands Cellular of North Dakota Limited Partnership, 2007 High-Cost Universal Service Support Annual Report, Case No. PU-07-587, North Dakota RSA No. 3 Limited Partnership, 2007 High-Cost Universal Service Support Annual Report, Case No. PU-07-588, North Central RSA 2 of ND Limited Partnership, 2007 High Cost Universal Service Support Annual Report, Case No. PU-07-590, North Dakota 5 – Kidder Limited Partnership, Case No. PU-07-591, Northwest Dakota Cellular of North Dakota Limited Partnership, Case No. PU-07-592, Bismarck MSA Limited Partnership, Case No. PU-07-593, Order Granting Trade Secret Protection (rel. March 12, 2008) (“March 12 Order”).*

Secret. Public versions of the USF Report and the 2007 ETC Outage Report, with the trade secret/confidential information in the Exhibits redacted, have also been filed.

II. THE CONFIDENTIAL EXHIBITS

A. Confidential Exhibits A-1, A-2, and A-3 to the Company's USF Report

Confidential Exhibit A-1 is a table identifying specific construction or upgrade projects that the Company undertook in its Designated Area in 2007 in order to expand or improve service. Confidential Exhibit A-3 is a table identifying specific construction, maintenance, or upgrade projects the Company plans to undertake in its Designated Area in 2009. For each project on these tables, the Company has included the start and completion dates, the amount of investment made or expected to be made, the geographic location, and the estimated population served. Confidential Exhibit A-2 is a statement of the Company's 2007 network and operating expenses, as well as a projection of the Company's 2009 network and operating expenses.

B. Confidential Exhibit C-1 to the Company's ETC Outage Report

Confidential Exhibit C-1 to the ETC Outage Report includes certain specific information for each outage of over 30 minutes in duration experienced by the Company in its ETC-designated service area in 2007, including the geographic area, the start and end time, a description, the resolution, the services affected, the number of customers affected, and steps taken to prevent similar situations.

III. THE CONFIDENTIAL EXHIBITS ARE AFFORDED TRADE SECRET PROTECTION BY THE FCC AND UNDER NORTH DAKOTA LAW

North Dakota's Open Records Law (N.D.C.C. § 44-04-18 *et seq.*) provides that "Except as otherwise specifically provided by law, all records of a public entity [such as the Commission] are public records" and therefore must be made available. N.D.C.C. § 44-04-18(1) (emphasis added). The Open Records Law also contains a specific exception – Section 44-04-18.4(1) –

which provides a safeguard for confidential information (the “Confidential Exception”). The information in the Confidential Exhibits falls within the “otherwise specifically provided by law” exception because it information is treated as confidential by the regulations and orders of the Federal Communications Commission (“FCC”). Moreover, the information in the Confidential Exhibits falls within the statutorily-defined Confidential Exception.

A. The FCC Treats this Information as Confidential

The “term ‘law’ as used in [N.D.C.C. § 44-04-18(1)] includes federal statutes and applicable federal regulations, as well as state law.” N.D. Op. Atty. Gen. L-32, 1998 WL 1058327 (Mar. 30, 1998). The information in the Confidential Exhibits is stated to be confidential by the FCC under 47 C.F.R. §§ 0.457 and 0.459 and its orders. *See, e.g., Cingular Order*,² ¶ 1 (granting a protective order to keep service improvement plan information like that contained in Confidential Exhibits A-1, A-2, and A-3 confidential); *Corr Order*³ ¶ 1 (same); *Outage Order*⁴ ¶ 3 (explaining why outage information similar to that contained in Confidential Exhibit C-1 is considered confidential for reasons of national security). In its *March 12 Order*, the Commission found that “the information in [the Company’s 2007] Confidential Exhibits A-1, A-2, A-3, and C-1 is protected under federal regulation.” *March 12 Order* at 5. Accordingly, the Commission should consider the Company’s current Confidential Exhibits to be confidential under the exception in N.D.C.C. § 44-04-18(1) for information “otherwise specifically provided by law” as non-public.

² *In the Matter of Federal-State Joint Board on Universal Service, Petition of Cingular Wireless, LLC for Designation as an Eligible Telecommunications Carrier in the State of Georgia, Protective Order*, CC Docket No. 96-45, *Order*, DA 07-3627 (rel. Aug. 15, 2007) (“*Cingular Order*”).

³ *In the Matter of Federal-State Joint Board on Universal Service, Corr Wireless Communications, LLC Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, Protective Order*, CC Docket No. 96-45, *Order*, DA 07-3629 (rel. Aug. 15, 2007) (“*Corr Order*”).

⁴ *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) (“*Outage Order*”).

B. The Confidential Exhibits Fall Within the Confidential Exception

Section 44-04-18.4(1)'s Confidential Exception provides as follows: "(1)Trade secret, proprietary, commercial, and financial information is confidential if it is (2)of a privileged nature and (3)it has not been previously publicly disclosed." (emphasis and numbering added). "Trade secret" is defined 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.

N.D.C.C. § 44.04-18.4.⁵

The Confidential Exhibits meet each element of the Confidential Exception under North Dakota Statutes. First, they fall squarely within the definition of a "trade secret." If the Company's competitors obtained the information contained in the Confidential Exhibits, the competitors could obtain economic value from the disclosure. Given this potential, the Company closely safeguards the information by prohibiting employee disclosure and restricting access to the information. Second, the information in the Confidential Exhibits is "of a privileged nature" because "disclosure of the information is likely ... to cause substantial harm to the competitive position of the person from whom the information was obtained." *See* N.D. Op. Atty. Gen. L-77, 1998 WL 1058291 (June 17, 1998). The Company would be substantially harmed if the Confidential Exhibits' information were made public. Finally, the information in the Confidential Exhibits has not previously been disclosed. Therefore, as the Commission found in

⁵ *See also* N.D.C.C. § 47-25.1-01, which provides a nearly identical definition of "trade secret."

its *March 12 Order*, the information found in Confidential Exhibits A-1, A-2, A-3 and C-1 qualifies for confidential treatment under N.D.C.C. § 44-04-18.4.

IV. CONCLUSION

The Company respectfully requests that Confidential Exhibits A-1, A-2, A-3, and C-1 be held confidential pursuant to N.D.C.C. § 44-04-18 *et seq.*, consistent with the *March 12 Order*.

Respectfully submitted,

BRIGGS AND MORGAN, P.A.

Dated: July 28, 2008

By 

Mark J. Ayotte (MN #166315)

Andrew M. Carlson (MN #284828)

Brooke C. Swenson (MN # 0387959)

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Partnership*