



# Public Service Commission

## State of North Dakota

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9 October 2012

Darrell Nitschke  
Executive Secretary  
North Dakota Public Service Commission  
600 E. Blvd. Ave. Dept. 408  
Bismarck, ND 58505-0480

Re: Badlands Cellular of North Dakota, *et al.*  
2010 & 2011 High-Cost Universal Support Annual Reports

Dear Mr. Nitschke:

Enclosed is a Staff Response to Applications for Trade Secret Protection in the captioned cases along with a Certificate of Service.

Best regards,

A handwritten signature in black ink, appearing to read "Illona A. Jeffcoat-Sacco".

Illona A. Jeffcoat-Sacco  
PSC General Counsel

c/w enclosures: Andrew M. Carlson

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

<b>North Dakota RSA No. 3 Limited Partnership 2010 High-Cost Universal Service Support Annual Report</b>	<b>Case No. PU-10-538</b>
<b>Badlands Cellular of North Dakota 2010 High-Cost Universal Service Support Annual Report</b>	<b>Case No. PU-10-539</b>
<b>Northwest Dakota Cellular of North Dakota 2010 High-Cost Universal Service Support Annual Report</b>	<b>Case No. PU-10-540</b>
<b>North Dakota 5 - Kidder Limited Partnership 2010 High-Cost Universal Service Support Annual Report</b>	<b>Case No. PU-10-543</b>
<b>North Central RSA 2 of North Dakota 2010 High-Cost Universal Service Support Annual Report</b>	<b>Case No. PU-10-544</b>
<b>Bismarck MSA Limited Partnership 2010 High-Cost Universal Service Support Annual Report</b>	<b>Case No. PU-10-546</b>
<b>North Dakota 5 - Kidder Limited Partnership 2011 High-Cost Universal Service Support Annual Report</b>	<b>Case No. PU-11-576</b>
<b>North Dakota RSA No. 3 Limited Partnership 2011 High-Cost Universal Service Support Annual Report</b>	<b>Case No. PU-11-577</b>
<b>Bismarck MSA Limited Partnership 2011 High-Cost Universal Service Support Annual Report</b>	<b>Case No. PU-11-578</b>
<b>North Central RSA 2 of North Dakota 2011 High-Cost Universal Service Support Annual Report</b>	<b>Case No. PU-11-579</b>

**Northwest Dakota Cellular of North Dakota  
2011 High-Cost Universal Service Support  
Annual Report**

**Case No. PU-11-580**

**Badlands Cellular of North Dakota  
2011 High-Cost Universal Service Support  
Annual Report**

**Case No. PU-11-581**

## **STAFF RESPONSE TO APPLICATIONS FOR TRADE SECRET PROTECTION**

On 27 July 2010, the attorney for each company indicated in each 2010 captioned case filed an application for each company for trade secret protection under North Dakota Administrative Code Ch. 69-02-09, asking the Commission to protect against public disclosure certain information filed by each company in compliance with the Commission's requirements regarding each company's annual Eligible Telecommunications Company report filing. On 29 July 2011, the attorney for each company indicated in each 2011 captioned case, except Case No. PU-11-577, filed a similar application relating to each company's 2011 filings, and a similar application was filed for Case No. PU-11-577 on 31 July 2011.

North Dakota Administrative Code § 69-02-09-04 requires that the Commission staff examine the information and application and make a recommendation to the Commission. Staff has reviewed the requests of the captioned companies for protection of information.

In both the 2010 and 2011 applications, the companies ask the Commission to protect the following information from disclosure:

1. In the 2010 filings, specific 2009 construction and upgrade projects undertaken by each company to expand or improve service, and in the 2011 filings, similar relevant 2010 projects;

2. In the 2010 filings, construction, upgrade and maintenance projects planned for 2011, and in the 2011 filings, similar relevant projects for 2012;
3. In the 2010 filings, each company's 2009 and projected 2011 network and operating expenses and in the 2011 filings, similar information for 2010, 2011, and 2012.
4. In the 2010 filings, outage information for each company's 2009 outages over 30 minutes, including geographic area, start and end times, description, resolution and services affected, and in the 2011 filings, similar information for 2010.

The companies state that the information they seek to protect is protected by the Federal Communications Commission (FCC) under federal rules. The companies also state that the information sought to be protected derives independent economic value from not being generally known to other persons, and disclosure could cause substantial harm to each company. Further, the companies assert that the information has not been previously disclosed.

North Dakota Century Code § 44-04-18.4(2) authorizes protection for commercial, financial, proprietary, and trade secret information if privileged and if the information has not been previously publically disclosed. N.D.C.C. § 44-04-18.4(1). Commercial and financial information can be protected from disclosure if the information has not been previously disclosed and disclosure would impair the Commission's ability to obtain similar information in the future or would cause competitive injury to the person providing the information. N.D.C.C. §§ 44-04-18.4(2)(a) and 44-04-18.4(2)(b). Proprietary and trade secret information can be protected when the information derives

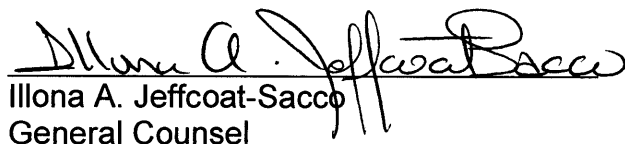
independent economic value from not being generally known to or readily ascertainable by other persons, and is the subject of reasonable efforts to maintain its secrecy. N.D.C.C. §§ 44-04-18.4(2)(c) and 44-04-18.4(2)(d).

Further, 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.

Staff believes that each company's application satisfies the requirements of the North Dakota Century Code for protection of the information which is the subject of this request. The Commission's process provides a means for interested parties to review protected documents upon signing a nondisclosure agreement.

For reasons set forth above, Staff recommends that the Commission grant the application of each named company to protect certain filed information in these cases.

Dated this 9<sup>th</sup> day of October 2012.

  
Ilona A. Jeffcoat-Sacco  
General Counsel

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **STAFF RESPONSE TO REQUEST FOR TRADE SECRET PROTECTION** was, on 9 October 2012, served on the following by regular mail:

Andrew M. Carlson  
Briggs & Morgan  
2200 IDS Center  
80 South 8<sup>th</sup> Street  
Minneapolis, MN 55402-2157

Dated this 9<sup>th</sup> day of October 2012.

  
Ilona Jeffcoat-Sacco  
General Counsel  
North Dakota Public Service Commission