

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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**STAFF RESPONSE TO THE REQUEST OF NORTH DAKOTA INTRASTATE
COALITION – NORTH DAKOTA TARIFF No. 1 ISSUING CARRIERS –
APPLICATION FOR TRADE SECRET PROTECTION**

On May 15, 2012 the North Dakota Intrastate Coalition (Carriers) filed an application for a trade secret protective order under North Dakota Administrative Code section 69-02-09-01 for protecting against public disclosure trade secret information as defined by North Dakota Century Code section 47-25.1-01(4). Applicants provided the following to support its application:

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

The information sought to be protected is detailed, financial, minutes-of-use, demand, revenue, and rate design information that is only known to the respective companies within the coalition, and their authorized agents.

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

The Carriers indicated that the information sought to be protected could have economic value to potential vendors, contractors, and suppliers who may desire to supply components of services being offered by them. Additionally, the Carriers assert that their competitors may wish to “cherry pick”, based on this information, to target certain parts of the various carriers’ service territories where the revenue potential is the

greatest. The Carriers indicate that their competitors could use such information against their (Carriers) interests in the course of submitting proposals as well as in developing their own business plans.

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

The Carriers assert that the information sought to be protected has been maintained by them (Carriers). The Carriers indicate that the information is not disclosed to the public or persons other than employees or their (Carriers) authorized agents who need to know the information to fulfill their responsibilities in connection with the project or to third persons pursuant to agreement to maintain the confidentiality of the information.

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

The Carriers indicate that Competitive Local Exchange Carriers, potential equipment and material vendors, contractors, and other suppliers of telecommunications services would obtain economic value from disclosure of the costs, demand, minutes-of-use, and other confidential information.

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

Please see Staff's response under paragraph 4 above.

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

The Carriers assert that the confidentiality of the information has been maintained by the Carriers. The information is not disclosed to the public or to persons

other than employees or authorized agents of the Carriers who need to know the information to fulfill their responsibilities in connection with the project or to third person pursuant to agreement to maintain the confidentiality of the information.

Staff has reviewed Applicants' request for trade secret protection of the information. N.D.C.C. § 47-25.1-01(4) 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."

N.D. Admin Code North Dakota Administrative Code section 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 it is necessary supporting information, as so outlined in the Commission's Letter Order of May 3, 2012, for the Tariff filing in question. The Carriers indicate that the information is highly confidential, and is not available through any source other than through the Carriers or their authorized agents. If the information is disclosed to third parties, it is done pursuant to a confidentiality agreement. The information, therefore, is not readily ascertainable by proper means by other persons.

Staff believes that the application satisfies the requirements of the law which allows the Commission to grant trade secret protection in this proceeding. The Commission's process provides a means for interested parties to review trade secret documents upon signing a nondisclosure agreement.

For reasons set forth above, staff recommends that the Commission grant the Applicants' request for trade secret protection.

Dated this 8th day of June, 2012.



Mark Gruman
Legal Counsel
North Dakota Public Service Commission