

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

dishNet Wireline L.L.C.
Access Services

Case No. PU-12-298

STAFF RESPONSE TO THE REQUEST OF dishNET WIRELINE L.L.C.
APPLICATION FOR TRADE SECRET PROTECTION

On June 12, 2012 dishNET Wireline L.L.C. (dishNET or Applicant) 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 confidential support documentation for its tariff filing. Specifically, dishNET is seeking protection "for the Fiscal Year 2011 Intrastate demand (volume) for intrastate access services".

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

DishNET access indicates that the information sought to be protected provides competitors with detailed information regarding the Company's scope of operations in North Dakota, and allows interpolation of the Company's scope of operations in other states.

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

DishNET asserts that it would not otherwise have occasion to make such demand data available to the public.

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

DishNET indicates that any local exchange carrier operating in North Dakota or surrounding states would derive economic value from the knowledge of the Company's scope of operations.

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

All dominant incumbent and competitive local exchange carriers operating in North Dakota and surrounding states.

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

DishNet indicates that demand data is available only to those employees with responsibility for company operations. These data are not otherwise available or accessible by employees or the public.

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. DishNet indicates that the information is highly confidential, and is not available through any source other than through DishNet 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 27th day of June, 2012.



Mark Gruman
Legal Counsel
North Dakota Public Service Commission