



John D Sisemore
Director- Regulatory

AT&T Services, Inc.
208 S Akard, Room 2532
Dallas, TX 75202
T: 214.757.3244
F: 214.746.2232
john.sisemore@att.com

June 3, 2012

RECEIVED

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Mr. Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard, 12th Floor
Bismarck, ND 58505

PUBLIC SERVICE COMMISSION

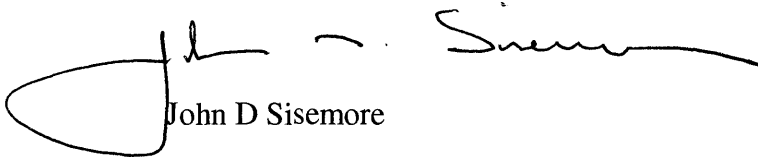
Re: AT&T Mobility's annual Eligible Telecommunications Carrier filing at the FCC for North Dakota

Dear Mr. Nitschke:

Pursuant to 47 C.F.R. §54.313(i), attached please find a Redacted version of AT&T Mobility's annual Eligible Telecommunications Carrier filing for North Dakota that was submitted to the FCC by July 2, 2012.¹ This filing is being made to comply with the FCC's new requirement and please know that a Confidential filing containing much, if not all of, the same data will be made to the North Dakota PSC to comply with North Dakota's ETC requirements on August 1, 2012.

Please do not hesitate to contact me if you have any questions or concerns at (214) 757-3244.

Sincerely,



John D Sisemore

Enclosures

1 PU-12-504 Filed 07/06/2012 Pages: 12
Copy of FCC 47CFR Section 54.313 Annual Report
New Cingular Wireless PCS, LLC

¹ See FCC Public Notice released May 8, 2012, establishing the filing deadline of July 2, 2012 – a copy can be obtained at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0508/DA-12-729A1.pdf.



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Cathy Carpino
General Attorney

AT&T Services, Inc.
1120 20th Street, N.W.
Suite 1000
Washington, D.C. 20036

202.457.3046 Phone
202.457.3073 Fax
cathy.carpino@att.com E-mail

June 28, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: **REQUEST FOR CONFIDENTIAL TREATMENT**
Connect America Fund, WC Docket 10-90
**AT&T Mobility, LLC (SACs 619004; 409004; 479006; 269905;
319026; 539010; 639005; and 209012) Eligible Telecommunications
Carrier Annual Report and Certification in Compliance with 47
C.F.R. § 54.313(a)**

Pursuant to the Commission's decision in *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55 (FCC 98-184), released Aug. 4, 1998 ("*Confidential Information Order*") and in accordance with the Freedom of Information Act ("FOIA") and the Commission's Rules related to public information and inspection of records, e.g. 47 C.F.R. §§ 0.457 and 0.459, AT&T Inc. ("AT&T"), on behalf of itself and its affiliate AT&T Mobility LLC ("AT&T Mobility"), hereby submits this request for confidential treatment of certain information submitted to the Commission in its Eligible Telecommunications Carrier Annual Report and Certification in Compliance with 47 C.F.R. § 54.313(a) ("Annual Reporting Requirements for High-Cost Recipients"). See also *Wireline Competition Bureau Announces Filing Deadline of July 2, 2012, for Eligible Telecommunications Carriers to File Reports Pursuant to Section 54.313(a)(2) through (a)(6) and (h) of the Commission's Rules*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51, CC Docket Nos. 01-92, and 96-45; WT Docket No. 10-208, Public Notice, DA 12-729 (rel. May 8, 2012). This request applies to the outage reports included in Exhibits A through H submitted herewith to the Commission.

Statement pursuant to 47 C.F.R. § 0.459(b)

(1) **Identification of the specific information for which confidential treatment is sought.**

Included in Confidential Exhibits A through H is highly sensitive network outage information required by 47 C.F.R. § 54.313(a)(2). Commission Rule 54.313(a)(2) was modeled on the outage reporting requirements in 47 C.F.R. Part 4. When it adopted the Part 4 reporting requirements, the Commission found that such data present national security and competitive concerns and should be deemed confidential when filed with the Commission. *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, Report and Order and Further Notice of

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Proposed Rulemaking, FCC 04-188, ¶ 3 (rel. August 19, 2004) (“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.”) The outage information in Confidential Exhibits A through H is entitled to be treated as confidential for these same reasons.

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.

The information is being provided to the Commission in response to Commission Rule 47 C.F.R. § 54.313(a)(2) as well as the Commission’s *ETC Designation Order*, 20 FCC Rcd 6371 (2005) and *USF/ICC Transformation Order*, 26 FCC Rcd 17663 (2011).

(4) Explanation of the degree to which the information concerns a service that is subject to competition; and

The information being provided to the Commission is relevant to the various interstate and intrastate telecommunications services provided by AT&T Mobility in competition with other CMRS and wireline providers. Telecommunications, in particular, mobile telecommunications, is a highly competitive industry, and AT&T’s mobile services are subject to significant competition throughout the country. The presence of such competition and the likelihood of competitive injury threatened by release of the information provided to the Commission by AT&T should compel the Commission to withhold the information from public disclosure. *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987); *Frazer v. U.S. Forest Service*, 97 F.3d 367, 371 (9th Cir. 1996); *Gulf & Western Indus. v. U.S.*, 615 F.2d 527, 530 (D.C. Cir. 1979).

(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.

(5) Explanation of how disclosure of the information could result in substantial competitive harm.

Exemption 4 requires a federal agency to withhold from public disclosure confidential or privileged commercial and financial information of a person unless there is an overriding public interest requiring disclosure, and the Commission has a longstanding policy of protecting the confidential commercial information of its regulatees under FOIA Exemption 4.

Two lines of cases have evolved for determining whether agency records fall within Exemption 4. Under *Critical Mass*, commercial information that is voluntarily submitted

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to the Commission must be withheld from public disclosure if such information is not customarily disclosed to the public by the submitter.¹ For materials not subject to *Critical Mass, National Parks* establishes a two part test for determining if information qualifies for withholding under Exemption 4.² The first prong asks whether disclosing the information would impair the government's ability to obtain necessary information in the future. The second prong asks whether the competitive position of the person from whom the information was obtained would be impaired or substantially harmed. If the information meets the requirements of either prong, it is exempted from disclosure under Exemption 4. Whether under *Critical Mass* or *National Parks*, the information provided by AT&T falls within Exemption 4.

The information being provided to the Commission in response to the Commission's rules is not customarily released to the public, is maintained on a confidential basis, and is not ordinarily disclosed to parties outside the company. Disclosure of this information would subject AT&T to substantial competitive harm.

Competitors could use the confidential information to assist in targeting their service offerings and enhancing their competitive positions, to the detriment of the competitive position of AT&T Mobility. *See, e.g., GC Micro Corp. v. Defense Logistics Agency*, 33 F.3d 1109 (9th Cir. 1994).

- (6) **Identification of any measures taken by the submitting party to prevent unauthorized disclosure; and**
- (7) **Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.**

This information has been maintained on a confidential basis within AT&T and would not ordinarily be disclosed to parties outside the company. Company practices instruct employees not to disclose such information outside the company and restrict such access to this information pursuant to a nondisclosure agreement.

- (8) **Justification of the period during which the submitting party asserts that material should not be available for public disclosure.**

The material must be kept confidential for an indefinite period. Confidential treatment must be afforded this information as long as it would provide a basis for AT&T Mobility's competitors to gain insight into its business operations. AT&T cannot

¹ *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

² *National Parks & Conservation Assoc. v. Morton*, 498 F.2d 765 D.C. Cir. (1974) ("*National Parks*").

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determine at this time any date on which the information would become “stale” for such a purpose.

Conclusion

For all the foregoing reasons AT&T requests that the Commission withhold from public disclosure pursuant to section 0.459 of the Commission’s Rules the outage information contained in Confidential Exhibits A through H. If the Commission is unable for any reason to keep this information confidential, AT&T respectfully requests that the Commission return the information to AT&T pursuant to section 0.459(e) of the Rules.

Sincerely,

/s/ Cathy Carpino
Cathy Carpino

Attachments

EXHIBIT J

North Dakota 2012 Filings (Annual Recertification)

This exhibit includes information to be filed with the Public Service Commission of North Dakota on or before 8/1/12 for calendar year 2011.

Specifically the exhibit includes the following pages or text:

- | | |
|------------|--|
| Page 2 | 54.313(a)(2) Federal Outages |
| Page 3 & 4 | 54.313(a)(3) Unfulfilled Service Extension Requests
U-SERs are certified in the Recertification Pleading |
| Page 4 | 54.313(a)(4) Complaints per 1000 handsets/subscribers
Complaints per 1000 are certified in the Recertification Pleading |
| Page 5 & 7 | 54.313(a)(5) Consumer Protection (i.e., CTIA Certification)
CTIA certification is certified in the Recertification Pleading |
| Page 6 & 7 | 54.313(a)(6) Emergency Preparedness Plans
Emergency Preparedness Plan is certified in the Recertification Pleading |

North Dakota 2012 Filings (Annual Recertification)

AT&T Mobility Network Outages In North Dakota Designated Area

Section 54.209(a)(2) of the Commission's Rules requires an ETC to annually report network outages within its Designated Area. The Rule specifically requires:

Detailed information on any outage, as that term is defined in 47 C.F.R. 4.5, of at least 30 minutes in duration for each service area in which an eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect (i) [a]t least ten percent of the end users served in a designated service area; or (ii) [a] 911 special facility, as defined in 47 C.F.R. 4.5(e). Specifically, the eligible telecommunications carrier's annual report must include information detailing: (A) [t]he date and time of onset of the outage; (B) [a] brief description of the outage and its resolution; (c) [t]he particular services affected; (D) [t]he geographic areas affected by the outage; (E) [s]teps taken to prevent a similar situation in the future; and (F) [t]he number of customers affected.

AT&T Mobility has provided as Exhibit B the qualified outages for 2011. The information provided is for the entire state of North Dakota, not just the Designated Area.

Exhibit B

North Dakota had no outages in calendar year 2011 that exceeded the reporting requirements.

North Dakota 2012 Filings (Annual Recertification)

C. AT&T Mobility's Unfulfilled Requests For Service

Section 54.313(a)(3) of the Commission's rules requires an ETC to report the number of requests for service from potential customers within the ETC's designated service area that were unfulfilled during the past year. The filing must also detail how the ETC attempted to provide service to those potential customers. In response to a request for service, consistent with the prior Commission rule that was in effect in 2011,³ AT&T Mobility takes the following steps:

³ See 47 C.F.R. § 54.202(a)(1)(2011).

North Dakota 2012 Filings (Annual Recertification)

AT&T Mobility's Unfulfilled Requests For Service

Section 54.209(a)(3) of the Commission's Rules require an ETC to annually report the number of requests for service from potential customers within the ETC's designated service area that were unfulfilled during the past year. The filing must also detail how the ETC attempted to provide service to those potential customers as set forth in Section 52.202(a)(1)(i). In response to a request for service,

AT&T Mobility takes the following steps:

- 1) AT&T Mobility will provide service on a timely basis to requesting customers within AT&T Mobility's service area where AT&T Mobility's network already passes the potential customer's premises;
- 2) If a customer cannot be served by AT&T Mobility's existing facilities, AT&T Mobility will provide service within a reasonable period of time, if service can be provided at reasonable cost by:
 - a) Modifying or replacing the requesting customer's equipment;
 - b) Deploying a roof-mounted antenna or other equipment;
 - c) Adjusting the nearest cell tower;
 - d) Adjusting network or customer facilities
 - e) Reselling services from another carrier's facilities to provide service; or
 - f) Employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

If, after these steps, the customer cannot be served, AT&T Mobility will notify the customer and provide the Commission with an annual report of how many requests for service could not be filled. In

2011 AT&T Mobility had zero (0) unfulfilled service extension request.

AT&T Mobility's Complaints Per 1,000 Handsets Or Lines

AT&T Mobility has identified the number of complaints received from the Public Service Commission of North Dakota, the Commission, the North Dakota Attorney General, and the Better Business Bureau (BBB), per 1,000 handsets during the 2011 calendar year as 0.4632 per 1,000 handsets. AT&T Mobility believes that this information best represents customer complaints, which is the requirement. Calls into customer care can be for a large variety of reasons and do not necessarily constitute a complaint, but could instead be an inquiry about service, a question about a bill or so forth. However, customers that send a letter to a state or federal agency, the BBB or an AT&T executive more often than not have a complaint and are not contacting the company with an inquiry.

North Dakota 2012 Filings

(Annual Recertification)

E. AT&T Mobility's Certification Regarding Applicable Service Quality Standards And Consumer Protection Rules

Section 54.313(a)(5) of the Commission's rules requires an ETC to certify it is complying with applicable service quality standards and consumer protection rules.

AT&T Mobility's compliance with the terms and conditions of the CTIA Consumer Code for Wireless Service meets this requirement. AT&T Mobility certifies that it has complied and will continue to comply with the principles set forth therein.

North Dakota 2012 Filings

(Annual Recertification)

F. AT&T Mobility's Certification Regarding Its Ability To Function In Emergency Situations

Section 54.313(a)(6) of the Commission's rules requires an ETC to certify an ability to function in emergency situations as set forth in section 54.202(a)(2) of the Commission's rules. The standards set forth in section 54.202(a)(2) include a reasonable amount of back-up power to ensure functionality without an external power source, an ability to reroute traffic around damaged facilities and a capability to manage traffic spikes resulting from emergency situations. AT&T Mobility has in place emergency operation procedures so that it can function in an emergency. Backup power is provided at switch locations and cell sites through a combination of batteries, portable and permanent generators. AT&T Mobility also has mobile switches and portable COWs (Cells on Wheels) that it can deploy in the event of an emergency. Based on the

foregoing, AT&T Mobility certifies it is able to function in emergency situations as set forth in section 54.202(a)(2).