

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NORTH DAKOTA

New Cingular Wireless PCS, LLC  
ETC Annual Report

Re: Filing required pursuant to  
§ 69-09-05-12.1

**APPLICATION FOR TRADE SECRET PROTECTION  
BY NEW CINGULAR WIRELESS PCS, LLC**

Pursuant to ND Rules 69-02-09 Trade Secret Procedures, NDCC § 44-04-18.4, New Cingular Wireless PCS, LLC applies for trade secret protection for the following documents filed as part of New Cingular Wireless PCS, LLC Communication Annual Eligible Telecommunication Carriers Use of Federal Universal Support Certification.

New Cingular Wireless PCS, LLC requests confidential treatment for the following information, which is filed in a separate, sealed envelope.

**Confidential Exhibit A-1:** is New Cingular's progress report on the previously filed Service Improvement Plan filed by New Cingular Wireless for calendar year 2011, along with a slightly revised Service Improvement Plan for calendar years 2012 and 2013 based on the amount of federal ETC funding that New Cingular is currently projecting that it will receive. The Service Improvement Plan is subject to change over time for various reasons, including, but not limited to, changes in consumer demand and projected costs, projected universal service support amounts and the amount of universal service support actually received, and delays to projects caused by zoning/permitting, weather, lease negotiations, and the back-order of equipment.

**Confidential Exhibit A-2:** consists of a map depicting cell sites added in 2011 and coverage as of the end of that year and also depicting planned cell site locations for calendar year 2012.

Confidential Exhibits A-1 and A-2 are being filed separately with a request for confidential treatment pursuant to North Dakota Century Code Section 44-04-18.4, 47-25.1 and NDAC Section 69-02-09-01.

The above information is in the nature of trade secrets and exempt from public disclosure under Chapter 69-02-09 of the North Dakota Administrative Code.

New Cingular Wireless PCS, LLC states that it would cause economic hardship to New Cingular Wireless PCS, LLC if the information is disclosed to New Cingular Wireless PCS, LLC's competitors and would adversely affect the use of universal service funds.

Exhibits A-1 and A-2, contain proprietary business and technical information that are entitled to protection as trade secrets because the information satisfies the requirements of the Administrative Rule.

The information derives independent economic value from its secrecy or a competitive advantage is derived from its secrecy. New Cingular Wireless PCS, LLC states that maintaining the information as secret is necessary for New Cingular Wireless PCS, LLC to maintain the

competitive advantage of its competitors not knowing New Cingular Wireless PCS, LLC's current network capabilities and/or network improvement work. Because this information goes to the heart of the Company's business planning and competitive strategy, its public disclosure would be economically damaging to New Cingular Wireless PCS, LLC and economically advantageous to its competitors, other wireless carriers offering service in North Dakota. The Company does not generally disclose publicly this type of information and takes reasonable steps to maintain its secrecy.

These confidential reports are not readily ascertainable by proper means. The confidential information is not available in any public sources, and cannot be legally obtained from New Cingular Wireless PCS, LLC without an adequate showing of a legal mandate or need for appropriate use of New Cingular Wireless PCS, LLC's business.

New Cingular Wireless PCS, LLC maintains the information as secret by refusing to disclose the information outside the Company or to those employees who do not need to have access to the information. Within the Company, those who have been trained to use the proprietary software that enables New Cingular Wireless PCS, LLC to compete the analysis are held to the highest ethical standards.

N.D.C.C. § 47-25.1-01 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

The definition of "trade secret" under N.D.C.C. § 44-04-18.4, which is almost identical to N.D.C.C. § 47-25.1-01, reads as follows:

"Trade secrets and commercial and financial information are confidential if of a privileged nature and...it has not been previously [publically disclosed]."

N.D.C.C. § 44-04-18(1), allows a state agency to provide confidentiality protection of information if the information is specifically protected under federal regulation.

N.D. Admin. Code § 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 trade secret under the definition of trade secret in North Dakota Century Code section 47-25.1-01."

The confidential information is relevant because, under N.D. Admin. Code § 69-09-05-12.1(1), and 69-09-05-12.1(2) designated eligible telecommunications carriers must provide the information in Exhibit A to the Commission in an annual report to show that the company is in compliance with its obligations as an eligible telecommunications carrier.

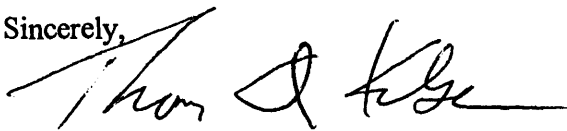
The information provided in Confidential Exhibits A-1 and A-2 are considered confidential by the FCC under its rules. Under 47 C.F.R. § 0.457(d) trade secrets and commercial or financial information obtained from any person and privileged or confidential materials not routinely available for public inspection are treated as confidential by the FCC, and a request for protection is not required. In addition, a request for protection of confidential information may

be submitted to the FCC under 47 C.F.R. §0.459. The FCC has acted to routinely grant protective orders pursuant to FCC Rules 0.457 and 0.459 in order to accord confidential treatment to financial information about cell site expenditures and operating expenses set forth in wireless ETCs' build-out plans filed with the FCC.

In an Order dated March 12, 2008, the Commission found that the same type of information contained in Confidential Exhibit A was trade secret information that should be protected in case PU-07-595. The information provided in Confidential Exhibit A is considered confidential by the FCC under 47 C.F.R. §§ 0.457 and 0.459. 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.

New Cingular Wireless PCS, LLC asks that its application requesting trade secret protection for Confidential Exhibits A-1 and A-2 be granted.

Sincerely,



Thomas D. Kelsch  
Counsel for New Cingular Wireless PCS, LLC Communications  
THOMAS D. KELSCH  
State Bar ID No. 03918  
KELSCH, KELSCH, RUFF & KRANDA  
103 Collins Avenue, P.O. Box 1266  
Mandan, ND 58554-7266  
Tel. No. (701) 663-9818