

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

New Cingular Wireless PSC, LLC
2011 High-Cost Universal Service Support
Annual Report

Case No. PU-11-533

New Cingular Wireless PSC, LLC
2012 High-Cost Universal Service Support
Annual Report

Case No. PU-12-504

ORDER GRANTING TRADE SECRET PROTECTION

October 24, 2012

On August 1, 2011, the attorney for the captioned company filed an application for trade secret protection in the Case No. PU-11-533 under North Dakota Administrative Code Ch. 69-02-09, asking the Commission to protect against public disclosure certain information filed in compliance with the Commission's requirements regarding the company's annual Eligible Telecommunications Company report filing. On July 30, 2012, the attorney for the captioned company filed a similar application for trade secret protection in Case No. PU-12-504.

On October 23, 2012, North Dakota Public Service Commission Staff filed and served its response to the requests, recommending the Commission approve the requests.

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 for protection of information.

The 2011 application asks the Commission to protect the following information disclosure:

1. The estimated amount of high-cost support the company anticipates it will receive in 2012 and a description of how that support will be used for the provision, maintenance or upgrading of the company's facilities and services.

The 2012 application asks the Commission to protect:

1. The company's progress report on its previously filed service improvement plan for 2011 and a revised service improvement plan for 2012 and 2013 based on projected funding.
2. A map depicting cell sites added in 2011 and planned for 2012.

The applications state that the information sought to be protected derives independent economic value from not being generally known to other persons, and restricting disclosure is necessary to prevent substantial harm to the company and maintain each company's competitive position. Further, the companies assert that the information is not readily ascertainable by other means and they take precautions to limit disclosure. Finally, the companies assert that the information they seek to protect is protected by the Federal Communications Commission (FCC) under federal rules.

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).

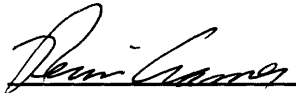
Further, the financial information provided to the Commission is considered confidential by the FCC under 47 C.F.R. §§ 0.0457 and 0.0459. The FCC also considers information in outage reports to be highly sensitive and protects the information from public dissemination in the Freedom from Information 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.

Order


The Commission orders:

1. The 2011 application of New Cingular Wireless PSC, LLC, identified in the respective captioned case for protection of information is GRANTED;
2. The 2012 application of New Cingular Wireless PSC, LLC, identified in the respective captioned case for protection of information is GRANTED.

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