

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Bismarck MSA Limited Partnership 2012 High-Cost Universal Service Support Annual Report	Case No. PU-12-518
North Central RSA 2 of North Dakota 2012 High-Cost Universal Service Support Annual Report	Case No. PU-12-519
Northwest Dakota Cellular of North Dakota 2012 High-Cost Universal Service Support Annual Report	Case No. PU-12-520
North Dakota RSA No. 3 Limited Partnership 2012 High-Cost Universal Service Support Annual Report	Case No. PU-12-521
Badlands Cellular of North Dakota 2012 High-Cost Universal Service Support Annual Report	Case No. PU-12-522
North Dakota 5 - Kidder Limited Partnership 2012 High-Cost Universal Service Support Annual Report	Case No. PU-12-523

ORDER GRANTING TRADE SECRET PROTECTION

On July 26, 2012, the attorney for each company indicated in the captioned cases filed an application for each company for trade secret protection under North Dakota Administrative Code Ch. 69-02-09, asking the Commission to protect against public disclosure certain information filed by each company in compliance with the Commission's requirements regarding each company's annual Eligible Telecommunications Company report filing.

On November 5, 2012, North Dakota Public Service Commission Staff filed and served its response to the request, recommending the Commission approve the request.

On November 6, 2012, North Dakota Public Service Commission Staff filed and served its corrected response to the request, recommending the Commission approve the request.

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 of the captioned companies for protection of information.

In the applications, the companies ask the Commission to protect the following information from disclosure:

1. Specific 2011 construction and upgrade projects undertaken by each company to expand or improve service (not requested in Case No. PU-12-518);
2. Each company's 2011 and projected 2012 and 2013 network and operating expenses (only projections for 2012 are in Case No. PU-12-518);
3. Specific construction, upgrade and maintenance projects planned for 2012 (not requested in Case No. PU-12-518);
4. Specific construction, maintenance or upgrade projects planned by each company for 2013 (not requested in Case No. PU-12-518).
5. Outage information for each company's 2011 outages over 30 minutes, including geographic area, start and end times, description, resolution and services affected.

The companies state that the information they seek to protect is protected by the Federal Communications Commission (FCC) under federal rules. The companies also state that the information sought to be protected derives independent economic value from not being generally known to other persons, and disclosure could cause substantial harm to each company. Further, the companies assert that the information has not been previously disclosed.

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. The outage information is protected under federal regulation.

Order

The Commission orders:

1. The 2012 application of Bismarck MSA Limited Partnership, North Central RSA 2 of North Dakota, Northwest Dakota Cellular of North Dakota, North Dakota RSA No. 3 Limited Partnership, Badlands Cellular of North Dakota, and North Dakota 5 - Kidder Limited Partnership in the respective captioned cases for protection of information is GRANTED;

PUBLIC SERVICE COMMISSION



**Kevin Cramer
Commissioner**



**Brian P. Kalk
Chairman**



**Bonny M. Fetch
Commissioner**