

BEFORE THE STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



In the Matter of the Application of)
Total Call Mobile, Inc.)
for Limited Designation as an Eligible)
Telecommunications Carrier)
_____)

Case No. PU-12-820

APPLICATION TO PROTECT INFORMATION

Applicant Total Call Mobile, Inc. (“TCM” or the “Company”) submits this application to protect from disclosure certain confidential information being provided at the request of this Commission. Specifically, TCM wishes to protect portions of its response to the Commission's request for additional information made in a letter dated July 15, 2013 (the “Request for Additional Information”). The limited information for which protection is sought is exempt from N.D.C.C. Section 44-04-18 and therefore is entitled to protection from disclosure. Consistent with this Commission's guidelines for an application to protect information, TCM has filed with this application an unredacted version of its responses to the Request for Additional Information in a sealed envelope labeled “COMMERCIAL INFORMATION AND INVESTIGATORY WORK PRODUCT - PRIVATE.” *See* N.D.A.C. § 69-02-09-02. This unredacted version identifies certain portions of TCM’s Responses to Data Request #1 as confidential.

Question #4 of the Request for Additional Information requests that TCM “describe the specific procedures TCM has in place to prevent waste, fraud and abuse in the Lifeline program...” TCM’s response to Question #4 provides insight into the Company’s business structure and strategies. The response also contains legal, commercial, customer and/or other information that TCM considers confidential. Any misuse or the unpermitted disclosure of the confidential information may infringe upon TCM’s proprietary rights or expose TCM to undue harm and unfair competitive disadvantages. In particular, TCM’s competitors would be able to rely on TCM’s confidential information submitted in the

response to determine whether and how they would compete to provide service to Lifeline-eligible customers. The disclosure of TCM's confidential information would provide existing and potential competitors with an unfair and undeserved competitive advantage by allowing them to have access to information that TCM does not make available to the public.

Under North Dakota's open records law, "all records of a public entity are public records" unless an exception applies. N.D.C.C. § 44-04-18. As explained below, the information for which TCM seeks protection qualifies for one or more exceptions to disclosure.

First, all of the information sought to be protected qualifies as "commercial information" exempt from disclosure. Under the open records law, such information "is confidential if it is of a privileged nature and it has not been previously publicly disclosed." N.D.C.C. § 44-04-18.4(1). Protected "commercial information" is specifically defined as

information pertaining to buying or selling of goods and services that has not been previously publicly disclosed and that if the information were to be disclosed would impair the public entity's future ability to obtain necessary information or would cause substantial competitive injury to the person from which the information was obtained.

N.D.C.C. § 44-04-18.4(2)(a).

Here, all of the information sought to be protected pertains to TCM's "buying or selling of goods and services." As is evident from the material that has been confidentially filed, the information relates to TCM's business strategies and training procedures detailing various aspects of how TCM has in the past and will in the future provide its products and services. To the best of TCM's knowledge, the information "has not been previously publicly disclosed." If this information were disclosed, it would "impair the [Commission's] future ability to obtain necessary information." Requiring a company to publicly disclose confidential business information, would have a chilling effect on applicants' willingness to share information with the Commission in the future. Applicants may fear disclosing what the company considers sensitive business information from a competitive or public relations perspective.

Accordingly, TCM respectfully requests that the Commission grant its application to protect information, allow the relevant information to be filed as redacted, and enter an appropriate protective order limiting disclosure of the information.

RESPECTFULLY SUBMITTED: November 27, 2013



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