

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA**



In the matter of the Application of)
Telrite Corporation d/b/a Life Wireless)
For Designation as an)
Eligible Telecommunications Carrier)

Case No. PU-13-51

APPLICATION TO PROTECT INFORMATION

Applicant Telrite Corporation d/b/a Life Wireless (“Telrite”) submits this application to protect from disclosure certain confidential information being provided at the request of this Commission. Specifically, Telrite wishes to protect portions of its response to the Commission’s request for additional information made in a letter dated July 3, 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, Telrite 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 Telrite’s responses to questions one and six as confidential.

Question one of the Request for Additional Information requests that Telrite “[p]rovide all Lifeline audits and reviews . . . the Universal Service Administrative Company (USAC) . . . has conducted on Telrites’s Lifeline program since the beginning of 2011.” In response to question one, Telrite intends to provide but wishes to protect the results of certain in-depth data validations (IDV) and Payment Quality Assurance (PQA) reviews conducted by the USAC.

Question six of the Request for Additional Information inquires whether “Telrite’s lifeline program has been the subject of any state or federal investigations” and requests that Telrite provide information regarding the outcome of such investigations. Telrite likewise wishes to protect portions of its response to this question.

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 Telrite 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 Telrite’s “buying or selling of goods and services.” As is evident from the material that has been confidentially filed, the information relates to audits and investigations detailing various aspects of how Telrite has in the past and will in the future provide its products and services. To the best of Telrite’s knowledge, the information “has not been previously publicly disclosed.”¹ If this information were disclosed, it would “impair the [Commission’s] future ability to obtain necessary information.” Requiring a

¹ Concerning the USAC PQA audit results provided in response to question one, it appears that the USAC reports aggregate data rather than individual results to the FCC. The USAC states that it “aggregate[s] results of individual assessments and calculate[s] estimated rates of improper payments for each program. USAC [then] deliver[s] these estimates to the Federal Communications Commission (FCC)” PQA Program FAQs, <http://www.usac.org/about/about/program-integrity/pqa-faqs.aspx>.

company to publicly disclose audit results and details of ongoing federal investigations, which have been treated as confidential at the federal level, would have a chilling effect on applicants' willingness to share information with the Commission in the future. Applicants may fear negatively impacting the audit or investigation, antagonizing the investigating agency, or disclosing what the company considers sensitive business information from a competitive or public relations perspective.


In addition, as to question six of the Request for Additional Information, the portion of Telrite's response marked as "confidential" qualifies as active investigatory work product. "Active investigatory work product is exempt" from North Dakota's open records law. N.D.C.C. § 44-04-19.1(3). "'Investigatory work product' means records obtained, compiled, or prepared by a public entity in an effort to monitor and enforce compliance with the law or an order." N.D.C.C. § 44-04-19.1(7). Telrite intends to disclose information pertaining to one or more ongoing investigations by a federal regulatory agency. To the best of Telrite's knowledge, the information for which Telrite requests protection is being treated confidentially by that federal agency and has not been publicly disclosed.

Consistent with the applicable exemption, this information constitutes a record "obtained, compiled, or prepared by a public entity in an effort to monitor and enforce compliance with the law." N.D.C.C. § 44-04-19.1(7). The information provided by Telrite summarizes records "obtained, compiled, or prepared" by the federal agency in the course of ongoing investigations that seek to "monitor and enforce compliance with the law." The information will also be "obtained" by this Commission with the purpose to "monitor and enforce compliance with the law." Therefore, designated portions of Telrite's response to question six are exempt from the open records law under section 44-04-19.1(3). The Commission should not put itself in a

position to potentially disrupt ongoing federal investigations by prematurely forcing public disclosures about the manner and findings of the investigations.

Accordingly, Telrite 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.

Dated this 16th day of July, 2013.



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