

Wade C. Mann
400 East Broadway, Suite 600
P.O. Box 2798
Bismarck, ND 58502-2798
Voice 701.223.6585
Facsimile 701.222.4853
Email: wmann@crowleyfleck.com

August 5, 2013

Hand Delivered

Mr. Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480



**Re: Boomerang Wireless d/b/a enTouch Wireless
Case No. PU-13-203**

Dear Mr. Nitschke:

Please find enclosed for filing the original and seven copies of an application to protect information regarding "Exhibit 4-A" containing certain documentation to be provided in response to question four of the Commission's letter dated July 15, 2013.

Also enclosed but not to be filed is a sealed envelope containing a confidential version of the materials referenced above.

If you have any questions or need any additional information, please contact me at your earliest convenience. Thank you.

Sincerely,

CROWLEY FLECK PLLP

A handwritten signature in blue ink that reads "Wade C. Mann".

Wade C. Mann

WCM/ji
Enclosures

cc: Sara Cardwell
J. Andrew Gipson (via e-mail)

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

In the matter of the Application of)
Boomerang Wireless, LLC)
For Designation as an)
Eligible Telecommunications Carrier)

Case No. PU- 13-203

APPLICATION TO PROTECT INFORMATION

Applicant Boomerang Wireless, LLC (“Boomerang”) submits this application to protect from disclosure certain trade secret information being provided at the request of this Commission. Specifically, Boomerang wishes to protect a certain document provided as “Exhibit 4-A” in response to question 4 of 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 eligible for protection under this Commission’s rules for trade secret protection set forth in N.D.A.C. chap. 69-02-09 and therefore is entitled to protection from disclosure. Consistent with this Commission’s guidelines for an application to protect information, Boomerang has filed with this application a confidential version of the document in a sealed envelope labeled “TRADE SECRET – PRIVATE.” *See* N.D.A.C. § 69-02-09-02.

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. Trade secret information is exempt from disclosure under North Dakota’s open records law. *See* N.D.C.C. § 44-14-18.4. In recognition of that fact, this Commission’s regulations provide a process by which an applicant may request trade secret protection for its filings. *See* N.D.A.C. chap. 69-02-09. The Commission will protect information that qualifies for the definition of “trade secret” under N.D.C.C. § 47-25.1-01. *See* N.D.A.C. § 69-02-09-03. That definition provides:

"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.

N.D.C.C. § 47-25.1-01(4).

The document submitted with this application qualifies for trade secret protection under N.D.A.C. § 69-02-09. Below is an explanation of why the document satisfies each of the six requirements for protection set forth in N.D.A.C. § 69-02-09-01:¹

1. The document details Boomerang's internal protocol for identifying duplicate accounts.
2. The information derives actual independent economic value because it describes a proprietary process by which Boomerang very accurately identifies duplicate Lifeline accounts. The process permits Boomerang to comply with applicable laws and avoid fines while at the same time retaining Lifeline customers that

¹ Pursuant to N.D.A.C. § 69-02-09-01, an application for trade secret protection must include:

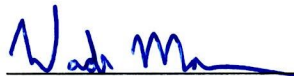
1. A general description of the nature of the information sought to be protected;
2. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons;
3. An explanation of why the information is not readily ascertainable by proper means by other persons;
4. A general description of the persons or entities that would obtain economic value from disclosure or use of the information;
5. A specific description of known competitors and competitors' goods and services that are pertinent to the tariff or rate filing; and
6. A description of the efforts used to maintain the secrecy of the information.

other companies with a less accurate process would likely feel compelled to drop from their Lifeline programs for fear of incurring fines.

3. The information in the document is not readily ascertainable by proper means by other persons because it consists of a protocol developed internally and maintained in a confidential manner by the company.
4. Boomerang's competitors in the Lifeline market would obtain economic value from disclosure or use the information, because their use of Boomerang's process would permit them to more accurately discern between duplicate and acceptable Lifeline accounts. In other words, Boomerang's proprietary process would permit competitors in the Lifeline market to retain customers that they would otherwise feel compelled to drop for risk of incurring fines or other penalties.
5. This is not a tariff or rate filing, so the requirement set forth in N.D.A.C. § 69-02-09-01(5) does not apply.
6. The documented process was created by Boomerang's regulatory and compliance department to chronicle the process developed and ensure consistency as another facet of the internal audit process. Accordingly, the process is kept within the compliance team secure files to be referenced by auditors when auditing. When reproduced by auditors for their own reference only, it is done in pdf format only. With the exception of the company audit team to perform their compliance function, the process is only distributed on a proprietary and confidential basis as necessary.

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

Dated this 5th day of August, 2013.



Wade C. Mann
ND Bar ID# 05871
Crowley Fleck PLLP
400 East Broadway, Suite 600
Bismarck, ND 58501
(701) 223-6585