

STATE OF NORTH DAKOTA
BEFORE THE PUBLIC SERVICE COMMISSION

Brian P. Kalk
Randy Christmann
Julie Fedorchak

Chairman
Commissioner
Commissioner



In the Matter of the Annual Report to the North
Dakota Public Service Commission for Essential
Telecommunications Carrier Certification on
Behalf of Midstate Communications, Inc.

Case No.:

REQUEST TO PROTECT TRADE SECRET INFORMATION

INTRODUCTION

Midstate Communications, Inc. (the "Company") submits this Request to Protect Trade Secret and Confidential Information in conjunction with its filing of FCC Form 481 – High Cost and Low-Income Annual Report (FCC Form 481). The Company requests the information contained in Midstate Communications, Inc.'s Trade Secret FCC Form 481 which contains the "Confidential Copy" of the Company's 481 Form that has been filed with USAC and will be filed with the FCC, be treated as trade secret, proprietary, commercial and financial information protected from public disclosure pursuant to North Dakota Century Code § 44-04-18 *et seq.*

Consistent with North Dakota Administrative Code § 69-02-09-02, Trade Secret FCC Form 481 is a separate document, submitted in a sealed envelope marked Trade Secret - Private. Copies of the Company's Public versions of FCC Form 481, with the Trade Secret Attachment for Line 3026 excised have also been filed by Federal Express and electronically.

**THE CONFIDENTIAL EXHIBITS ARE AFFORDED TRADE SECRET PROTECTION
BY THE FCC AND UNDER NORTH DAKOTA LAW**

North Dakota's Open Records Law (N.D.C.C. § 44-04-18 *et seq.*) provides that "Except as otherwise specifically provided by law, all records of a public entity [such as the Commission]

are public records”¹ and therefore must be made available. The Open Records Law also contains a specific exception – Section 44-04-18.4(1) – which provides a safeguard for confidential information (the “Confidential Exception”). The information in Trade Secret FCC Form 481 falls within the “otherwise specifically provided by law” exception because its information is treated as confidential by the regulations and orders of the Federal Communications Commission (“FCC”). Moreover, the information in the Confidential Trade Secret FCC Form 481 falls within the statutorily-defined Confidential Exception.

A. The FCC Treats this Information as Confidential

The “term ‘law’ as used in [N.D.C.C. § 44-04-18(1)] includes federal statutes and applicable federal regulations, as well as state law.”² The information in Trade Secret FCC Form 481, Attachment for Line 3026, is stated to be confidential by the FCC under 47 C.F.R. §§ 0.457 and 0.459 and its orders.³ The Commission found previously found that the information in Badlands Cellular of North Dakota Limited Partnership’s Confidential Exhibits A-1, A-2, A-3, and C-1, which is materially similar to Secret FCC Form 481, Attachment for Line 3026, is protected under federal regulation.⁴ The Company has previously applied for Trade Secret

¹ N.D.C.C. § 44-04-18(1) (emphasis added).

² N.D. Op. Atty. Gen. L-32, 1998 WL 1058327 (Mar. 30, 1998).

³ See *In the Matter of Federal-State Joint Board on Universal Service, Petition of Cingular Wireless, LCC for Designation as an Eligible Telecommunications Carrier in the State of Georgia, Protective Order*, CC Docket No. 96-45, *Order*, DA 07-3627 (rel. Aug. 15, 2007) ¶ 1 (granting a protective order to keep service improvement plan information like that contained in Confidential Exhibits A-1, A-2, and A-3 confidential); see also *In the Matter of Federal-State Joint Board on Universal Service, Corr Wireless Communications, LLC Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, Protective Order*, CC Docket No. 96-45, *Order*, DA 07-3629 (rel. Aug. 15, 2007); *In the Matter of New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 04-188, 19 FCC Rcd. 16830 (rel. Aug. 19, 2004) (explaining why outage information similar to that contained in Confidential Exhibit C-1 is considered confidential for reasons of national security).

⁴ *Badlands Cellular of North Dakota Limited Partnership, 2007 High-Cost Universal Service Support Annual Report*, Case No. PU-07-587, *North Dakota RSA No. 3 Limited Partnership, 2007 High-Cost Universal Service Support Annual Report*, Case No. PU-07-588, *North Central RSA 2 of ND Limited Partnership, 2007 High-Cost Universal Service Support Annual Report*, Case No. PU-07-590, *North Dakota 5 - Kidder Limited Partnership*, Case No. PU-07-591; *Northwest Dakota Cellular of North Dakota Limited Partnership*, Case No. PU-07-592, *Bismarck MSA Limited Partnership*, Case No. PU-07-593, *Order Granting Trade Secret Protection* (rel. March 12, 2008) at 5.

treatment in Case Nos. PU-09-592, PU-10-548, PU-11-461, and PU-12-402. The Commission issued its Order Granting Trade Secret Protection with respect to Case Nos. PU-09-592, PU-10-548 and PU-11-461 on September 27, 2012. Accordingly, the Commission should consider the Company's current Trade Secret FCC Form 481, Attachment for Line 3026, to be confidential under the exception in N.D.C.C. § 44-04-18(1) for information "otherwise specifically provided by law" as non-public.

B. The Confidential Exhibits Fall within the Confidential Exception

The Confidential Exception to N.D.C.C. § 44-04-18.4(1) provides as follows:

(1) Trade secret, proprietary, commercial, and financial information is confidential if it is (2) of a privileged nature and (3) it has not been previously publicly disclosed. (Emphasis and numbering added.)

"Trade secret" is defined as follows:

Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, technical know how or process, that:

1. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that can obtain economic value from its disclosure or use; and
2. Is the subject of efforts that are reasonable under the circumstances to maintain the secrecy of the information.⁵

Trade Secret FCC Form 481, Attachment for Line 3026, meet each element of the Confidential Exception under North Dakota Statutes. First, they fall squarely within the definition of a "trade secret." If the Company's competitors obtained the information contained in Trade Secret FCC Form 481, Attachment for Line 3026, the competitors could obtain economic value from the disclosure. Given this potential, the Company closely safeguards the information by prohibiting employee disclosure and restricting access to the information.

⁵ N.D.C.C. § 44.04-18.4.

Second, the information in Trade Secret FCC Form 481, Attachment for Line 3026, is “of a privileged nature” because “disclosure of the information is likely ... to cause substantial harm to the competitive position of the person from whom the information was obtained.”⁶ The Company would be substantially harmed if the information in Trade Secret FCC Form 481, Attachment for Line 3026. Finally, the information in the Confidential Exhibits has not previously been disclosed.


⁶ See N.D. Op. Atty. Gen. L-77, 1998 WL 1058291 (June 17, 1998).

IV. CONCLUSION

The Company respectfully requests that Trade Secret FCC Form 481, Attachment for Line 3026, be held confidential pursuant to N.D.C.C. § 44-04-18 *et seq.*

Dated: October 14, 2013

Respectfully submitted,

A handwritten signature in black ink that reads "Tom W Campbell". The signature is written in a cursive style with a large, stylized initial 'T'.

Tom Campbell
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Enclosures
CC: All Parties of Record

Consultants on Behalf of Midstate
Communications, Inc.

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