

November 21, 2014



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

*Re: In the Matter of the Application of Blue Jay Wireless, LLC
for Designation as an Eligible Telecommunications Carrier
Case No. PU-14-720
Our File No. 15-693-001*

Dear Mr. Nitschke:

Enclosed for filing are the following two Applications:

1. Application to Protect Information (training materials); and
2. Application to Protect Information (financial documents).

On November 21, 2014, Blue Jay Wireless, LLC ("Blue Jay") submitted financial documents and training materials in a sealed envelope with its Applications to Protect Information. Blue Jay requests that the protected information be incorporated into the record, and that the protected information is used when evaluating Blue Jay's Application for Designation as an Eligible Telecommunications Carrier.

Also enclosed for filing are Blue Jay's Responses to The North Dakota Public Service Commission's Questions One through Six in Letter dated October 13, 2014; with Certification from David Wareikis.

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 cursive script that reads "Stephanie Dassinger". The signature is written in black ink and is positioned above the printed name.

Stephanie Dassinger

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Enc.

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

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

Case No. PU- 14-720

APPLICATION TO PROTECT INFORMATION

Applicant Blue Jay Wireless, LLC (“Blue Jay”) submits this application to protect from disclosure certain trade secret information being provided at the request of this Commission. Specifically, Blue Jay wishes to protect certain financial documents submitted in response to a request from Public Service Commission Staff member, Julie S. Prescott, asking for documentation demonstrating that Blue Jay is financially capable of providing Lifeline services on September 26, 2014. 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, Blue Jay 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 documents submitted with this application qualify for trade secret protection under N.D.A.C. § 69-02-09. Below is an explanation of why the January 31, 2014 Proforma Balance Sheet, the Profit and Loss YTD August 31, 2014, and the August 2014 Balance Sheet (collectively "Financial Documents") satisfy each of the six requirements for protection set forth in N.D.A.C. § 69-02-09-01:¹

1. The Financial Documents detail Blue Jay's financial status for 2013, and Blue Jay's financial status for 2014 Year to Date through August 31, 2014.
2. The information derives actual or potential independent economic value because disclosure might allow Blue Jay's competitors to better compete with it in the telecommunications market.

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.

3. The information in the document is not readily ascertainable by proper means by other persons because Blue Jay is a privately owned limited liability company. As a limited liability company, as opposed to a publicly traded company, Blue Jay's financial information is not subject to public disclosure pursuant to securities laws or regulations. Further, the Financial Documents are treated as confidential within the company.
4. Blue Jay's competitors in the telecommunications market would obtain economic value from disclosure or use of the information in the Financial Documents.
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 Financial Documents are treated as confidential documents within Blue Jay. Only those persons required to access the financial data, specifically the CEO and CFO, are provided with access to the Financial Documents. In addition, Blue Jay seeks to maintain the secrecy of the Financial Documents under applicable state laws and regulations wherever such protection is available.

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

Dated this 21st day of November, 2014.



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