

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Midstate Communications / North Dakota Telephone Co.
Local Exchange
Public Convenience & necessity**

Case No. PU-15-615

**Midstate Communications / North Dakota Telephone Co.
Designated Eligible Carrier
Application**

Case No. PU-15-616

STAFF RESPONSE TO THE REQUEST FOR TRADE SECRET PROTECTION

On 31 July 2015, North Dakota Telephone Company ("NDTC" or "Company") filed an application for Trade Secret Protection under North Dakota Administrative Code Chapter 69-02-09 for protection against public disclosure of trade secret information as defined by North Dakota Century Code Section 47-25.1-01(4).

The Company seeks to protect proprietary financial information contained in Attachment 8 of the Joint Application of North Dakota Telephone Company and Midstate Communications for Certificate of Public Convenience and Necessity and Eligible Telecommunications Carrier Designation. Company states that the financial information is highly sensitive and could have economic value to potential competitors. Company further states that public disclosure could place NDTC at a competitive disadvantage in a competitive telecommunications marketplace. The confidentiality of the financial information has been maintained by the Company and is not readily available by proper means to competitors or to the general public.

The Company states that Competitive Local Exchange Carriers could use the financial information against NDTC's interests. NDTC states that the information is not disclosed to the public or to persons, other than employees or authorized agents of the

Company who need to know the information to fulfill their responsibilities, or to third persons pursuant to an agreement to maintain the confidentiality of the information.


North Dakota Administrative Code Section 69-02-09-03 requires that the Commission Staff examine the information and applications and make a recommendation to the Commission. Staff has reviewed the request of NDTC for protection of information.

Trade secret, proprietary, commercial, and financial information is confidential if it is of a privileged nature and it has not been previously publicly disclosed. North Dakota Century Code Section 44-04-18.4(1). Commercial and financial information can be protected from disclosure if the information has not been previously publicly disclosed and that if the information were to be disclosed would impair the Commission's future ability to obtain necessary information or would cause substantial competitive injury. North Dakota Century Code Sections 44-04-18.4(2)(a) and 44-04-18.4(2)(b). Proprietary information includes: "Technical, financial, or marketing records that are received by the Commission which are owned or controlled by the submitting person as private, and the disclosure of which would cause harm to the Company's business." North Dakota Century Code Section 44-04-18.4(2)(c). A trade secret is information that 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 is the subject of reasonable efforts to maintain its secrecy. North Dakota Century Code Sections 44-04-18.4(2)(d), 47-25.1-01(4).

Staff believes that North Dakota Telephone Company's application satisfies the requirements of the North Dakota Century Code and North Dakota Administrative Code Section 69-02-09-01 for protection of the information subject to this request. The Commission's process provides a means for interested parties to review protected documents upon signing a nondisclosure agreement.

For reasons set forth above, Staff recommends that the Commission grant the application of North Dakota Telephone Company to protect certain filed information in these cases.

Dated this 24 day of November, 2015



John M. Schuh
Staff Attorney
North Dakota Public Service Commission