

**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 Local Rate Floor filing  
with the North Dakota Public Service Commission  
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 the Local Rate Floor filing. The Company requests the information contained in the Company's Trade Secret Local Rate Floor filing which contains the "Confidential Copy" of the Company's filing 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 Local Rate Floor filing is a separate document, submitted in a sealed envelope marked Trade Secret - Private. Copies of the Company's Public versions of Local Rate Floor filing, with the Trade Secret Attachment column 6 excised have also been filed by Federal Express and electronically.

**THE CONFIDENTIAL FILING IS 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”<sup>1</sup> 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 the Trade Secret Local Rate Floor filing 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 Local Rate Floor filing 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.”<sup>2</sup> Accordingly, the Commission should consider the Company’s current Trade Secret Local Rate Floor filing column 6 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

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<sup>1</sup> N.D.C.C. § 44-04-18(1) (emphasis added).

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

2. Is the subject of efforts that are reasonable under the circumstances to maintain the secrecy of the information.<sup>3</sup>

Trade Secret Local Rate Floor filing column 6 meets 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 Local Rate Floor filing column 6 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. The Company would be substantially harmed if the information in Trade Secret Local Rate Floor filing column 6 was disclosed. Finally, the information in the confidential information has not previously been disclosed.

**IV. CONCLUSION**

The Company respectfully requests that Trade Secret Local Rate Floor filing column 6 be held confidential pursuant to N.D.C.C. § 44-04-18 *et seq.*

Dated: June 30, 2017

Respectfully submitted,

/s/ Tom Campbell

Tom Campbell  
Telecommunications Consultant

Enclosures