

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**LTD Broadband LLC
Designated Eligible Carrier
Application**

Case No. PU-21-168

STAFF RESPONSE TO APPLICATION FOR PROTECTION OF INFORMATION

On August 10, 2021, LTD Broadband LLC (LTD), filed an application for a protective order under North Dakota Administrative Code Section 69-02-09 for protecting against public disclosure protected information as defined by North Dakota Century Code Section 44-04-18.4.

The information for which LTD seeks protection is financial records, cost estimate to put in fiber optic cable, and the timeline and specifics of the build out

LTD's application states that this information is confidential information because "if the information were released, competitors would be able to benefit from the information to the detriment of the Company and its customers. The confidential information is considered Commercial or Financial information, as it may provide an economic advantage in LTD's future contract negotiations as provided for in North Dakota Century Code Section 44-04-18.4(2)(a).

LTD further states that the cost estimate information is trade secret because it is information that "(1) Vendors and competitors would have an opportunity to obtain economic value from disclosure or use of the information; and (2) If publicly available, vendors could use the information to their advantage in contract negotiations, while competitors could use the information to leverage their positions in the marketplace to LTD's detriment," as provided for in North Dakota Century Code Section 44-04-18.4(2)(d).

As a result, LTD states that the information sought to be protected meets the definition of "trade secret" as set forth in North Dakota Century Code Section 47-25.1-01(4).

The information financial information and cost estimate could have economic value to potential vendors and suppliers who may desire to bid to provide supplies or services to LTD. In particular, potential suppliers would know what LTD has determined to be the cost range for certain components of its supply needs and consequently the cost range could potentially serve as a floor, below which no bidder would submit a bid price. Such a result could be harmful for LTD's customers.

The confidentiality of this information has been maintained by LTD. The information is not disclosed to the public or to persons other than employees or authorized agents who need to know the information to fulfill their responsibilities in connection with LTD's purchases and services, or to third persons pursuant to nondisclosure agreement to maintain the confidentiality of the information. LTD has requested that this information be treated as trade secret.

As to LTD's request to keep the timeline and specifics of the build out, Staff does not have enough information provided by LTD to determine how this information would cause substantial competitive injury to the company.

North Dakota Administrative Code Section 69-02-09-03 requires that the Commission staff examine the information and application and make a recommendation to the Commission.

Staff believes that the application satisfies the requirements of the North Dakota Century Code for protection of information for the financial records and cost estimate. Staff does not have enough information to determine if the timeline and specifics of the

build out would cause substantial competitive injury to LTD. Staff recommends denial of protected information at this time for the schedule and build out information unless additional information is provided by LTD showing substantial competitive disadvantage by disclosing the information. Staff also recommends that LTD file redacted public documents,

For reasons set forth above, Staff recommends that the Commission grant the application of LTD as to the financial information and the cost estimate to protect certain information filed in this case.

Dated this 17th day of September 2021.



Brian Johnson
Special Assistant Attorney General Bar ID 07397
North Dakota Public Service Commission
600 East Boulevard Avenue Dept. 408
Bismarck ND, 58505
701-328-2407

