

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23M-0007T

IN THE MATTER OF THE FILING OF 2022 ANNUAL REPORTS IN ACCORDANCE WITH RULE 4 CCR 723-2-2006 BY CARRIERS HOLDING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY OR A LETTER OF REGISTRATION TO PROVIDE TELECOMMUNICATIONS SERVICES IN THE STATE OF COLORADO OR REGISTERED TO RESELL INTRASTATE TOLL SERVICE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
CONDITIONALLY GRANTING
MOTION FOR HIGHLY CONFIDENTIAL PROTECTION**

Mailed Date: April 24, 2023

I. STATEMENT AND SUMMARY

1. This Decision conditionally grants AT&T Corp.'s and Teleport Communications America, LLC's (collectively, AT&T), joint Motion Seeking Highly Confidential Protection for Certain Information (Motion) filed on April 12, 2023. Those conditions include filing unredacted copies of the relevant documents as highly confidential and public versions of the relevant documents consistent with the requirements in Rule 1101(a)(I), of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 by the established deadline. If AT&T fails to make these filings by the established deadline, the highly confidential protection granted by this Decision will automatically expire, and the relevant documents will not receive highly confidential protection. In addition, the highly confidential protection afforded to the relevant records does not apply to the Public Utilities Commissioners, Public Utilities Commission (Commission) Staff, Commission counsel, or Commission Administrative Law Judges (ALJs).

II. PROCEDURAL HISTORY

2. On January 3, 2023, the Commission opened the above-captioned repository Proceeding for those subject to Rule 2006 of the Rules Regulating Telecommunications Services and Providers of Telecommunications Services, 4 CCR 723-2 to file the 2022 Annual Reports (Reports) under Rule 2006.

3. On January 25, 2023, the Commission referred this Proceeding to an Administrative Law Judge (ALJ) by minute entry for the disposition of all pleadings and motions.

4. On February 17, 2023, the Commission noticed the above-captioned proceeding and sent a letter over Interim Director G. Harris Adams' signature reminding the affected carriers of their obligation to file Reports in this Proceeding.

5. On April 12, 2023, AT&T filed the Motion.

III. RELEVANT LAW, FINDINGS, ANALYSIS, AND CONCLUSIONS

A. Relevant Law

6. Rule 2006(a) provides that carriers required by the Department of Revenue to file an annual DR525 form (Report) must file the same with the Commission on or before May 15 each year.¹

7. Annual reports filed per a Commission Rule are considered public records.² But, a party may seek highly confidential designation of a filing that is presumed public by following the procedures in 1101, 4 CCR 723-1.³ The moving party has the burden of proof to establish that a

¹ Rule 2006(a), 4 CCR 723-2.

² Rule 1100(b)(I), of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

³ See Rules 1101(b) and (c), 4 CCR 723-1.

document should receive highly confidential protection.⁴ A motion seeking highly confidential protection must:

- include a detailed description or representative sample of the information for which highly confidential protection is sought;
- state the specific relief requested and the grounds for relief;
- advise all other parties of the request and the subject matter of the information at issue;
- establish that the information for which highly confidential protection is sought is highly confidential, that the protection afforded by the Commission's rules for confidential information is insufficient to protect the highly confidential information, and that highly confidential protection will afford sufficient protection;
- include a specific form of nondisclosure agreement;
- include an affidavit containing the names of all persons with access to the information and the period of time for which the information should remain subject to highly confidential protection; and
- include an exhibit, filed in accordance with the procedures established in Rule 1101(a), containing the information for which highly confidential protection is requested, or alternatively, show why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.⁵

8. Rule 1101(a) requires a party submitting information claimed to be highly confidential to include a statement on the first page of document containing information claimed to be highly confidential that says "NOTICE OF CONFIDENTIALITY: A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL."⁶ The first page must also list each document filed under seal, each page number of each document on which highly confidential information is contained, and must include a description of the nature of the information claimed to be highly

⁴ Rule 1101(d), 4 CCR 723-1.

⁵ Rule 1101(b)(I) to (VII), 4 CCR 723-1.

⁶ Rule 1101(a)(I), 4 CCR 723-1.

confidential.⁷ Essentially, this is the required publicly available filing for a document which a party or participant believes confidential or highly confidential protection should be granted.⁸

B. Findings, Analysis, and Conclusions

9. Because this is an administrative Proceeding (and not an adjudicative one), the ALJ waives the remaining response time to the Motion.⁹

10. The Motion seeks highly confidential protection for AT&T's gross revenues in Colorado as reported in its Reports (its DR525 Forms). As grounds, AT&T states that this information is valuable, competitively sensitive, proprietary in nature, and a trade secret.¹⁰ AT&T asserts that under Colorado law, a trade secret includes confidential business or financial information or other information relating to any business or profession which is secret and of value, and that the owner of the information must have taken measures to prevent the secret from becoming available to persons other than those selected by the owner for access.¹¹ AT&T argues that state-specific gross revenues are "trade secret" information, for which it has historically sought and obtained protections against public disclosure.¹² Indeed, AT&T points out that going back to 2013, it has sought and received similar protection from the Commission.¹³ In addition, the Federal Communications Commission has consistently agreed that such information is confidential, holding that revenue information is the kind of "competitively sensitive material subject to withholding" and is not appropriate for public disclosure.¹⁴

⁷ *Id.*

⁸ *Id.*

⁹ See Rules 1200, 1307, and 1401(b) 4 CCR 723-1.

¹⁰ Motion at 1.

¹¹ *Id.* at 2, citing § 7-74-102(4), C.R.S.

¹² *Id.*

¹³ *Id.*, fn. 1.

¹⁴ *Id.* at 1, citing *In the Matter of Consumer Law Group*, 28 FCC Rcd. 684, 685, ¶ 3 (2013).

11. AT&T argues that confidential protection is insufficient because the Commission's Rules presume that annual reports are available for public inspection and provide that a claim of confidentiality does not overcome this presumption of public availability.¹⁵ AT&T states that it has provided a copy of the Motion to Commission Staff and the Office of the Consumer Counsel and is unaware of any other interested party that should be advised of its Motion.¹⁶

12. With the Motion, AT&T submitted a proposed form of nondisclosure agreement (Exhibit A), and an affidavit identifying those who have access to the highly confidential information and asks that highly confidential protection be afforded as long as the Commission maintains the Reports (Exhibit B). AT&T also filed public versions of the Reports with its Motion; those Reports are redacted to exclude annual gross operating revenue information.¹⁷ AT&T states that unredacted versions of the Reports are provided as Exhibit C to the Motion but Exhibit C does not include unredacted Reports (or anything else).¹⁸

13. Based on the above, the Motion and attachments, the ALJ finds that the Motion provides sufficient grounds to afford highly confidential protection for the relevant information.¹⁹ As such, the ALJ finds and concludes that the Motion should be granted, except that the highly confidential protection does not apply to the Commissioners, Commission counsel, Commission Staff or Commission ALJs. AT&T did not provide any grounds as to why the Commissioners, Commission counsel, Commission ALJs, and Commission Staff should not have access to the relevant information, particularly in light of Rule 1100(i), 4 CCR 723-1, which requires such

¹⁵ *Id.* at 3 citing Rule 1100(n)(I) and 1101(c), 4 CCR 723-1.

¹⁶ *Id.* The ALJ notes that the Office of Consumer Counsel's (the OCC) name was changed to the Office of the Utility Consumer Advocate (the UCA) in 2022. As such, the ALJ construes AT&T's reference to the OCC to be a reference to the UCA.

¹⁷ These Reports were filed with the Motion as one document. The forms are not identified as exhibits and are the first two pages of the pdf document filed as the Motion.

¹⁸ Exhibit C to Motion.

¹⁹ See *infra*, ¶¶ 10-13.

persons to annually execute a nondisclosure agreement that includes a provision that such persons will treat information to which highly confidential protection has been afforded consistent with the decision granting such protection. Excluding their access may subvert the purpose of Rule 2006(a), 4 CCR 723-2. As such, the ALJ concludes there is no grounds to prevent such persons from having access to the information designated highly confidential by this Decision.

14. In addition, AT&T's Motion, attachments, and Reports fail to meet several Commission Rule requirements for highly confidential protection, which AT&T must address as a condition precedent to receiving highly confidential protection.

15. First, AT&T failed to provide a copy of the unredacted Reports or otherwise explain why doing so would be overly burdensome, impractical, or too sensitive, as required by Rule 1101(a)(VII), 4 CCR 723-1. Because this appears to be an inadvertent error,²⁰ the ALJ will allow AT&T to correct this error (rather than deny the Motion). AT&T must file unredacted copies of the Reports as highly confidential by the deadline established below.

16. Second, while AT&T filed public (redacted) versions of the reports, its filing fails to comply with the requirements in Rule 1101(a)(I), 4 CCR 723-1, as explained in ¶ 7 above. As such, AT&T must also file public versions of the reports consistent with the requirements in Rule 1101(a)(I), 4 CCR 723-1 by the deadline established below.

²⁰ The ALJ surmises that this was an inadvertent error because the Motion states that the documents are included as Exhibit C, but Exhibit C does not include the referenced reports. See Exhibit C to Motion.

IV. **ORDER**

A. It Is Ordered That:

1. The Motion Seeking Highly Confidential Protection for Certain Information (Motion) filed on April 12, 2023, by AT&T Corp. and Teleport Communications America, LLC (collectively AT&T) is conditionally granted. **On or by the close of business on May 3, 2023**, AT&T must file: unredacted copies of its 2022 Annual Reports (Forms DR525) as highly confidential; and public versions of its 2022 Annual Reports (Forms DR525) consistent with the requirements in Rule 1101(a)(I), of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

2. If AT&T fails to make the above filings by the established deadline, the highly confidential protection granted by this Decision will automatically expire, and the 2022 Annual Reports (Forms DR525) will not receive highly confidential protection.

3. The highly confidential protection afforded by this Decision does not apply to the Public Utilities Commissioners, Public Utilities Commission (Commission) Staff, Commission counsel, or Commission ALJs.

4. The remaining response time to the Motion is waived.

5. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director