

Decision No. R23-0310-I

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: May 12, 2023

I. STATEMENT AND SUMMARY

1. This Decision conditionally grants RCLEC, Inc.'s (RCLEC) Motion Requesting Highly Confidential Protection of Information filed on May 3, 2023 (Motion). These conditions include filing a nondisclosure agreement, a revised affidavit, and both unredacted copies of the relevant documents as highly confidential and redacted public copies 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 RCLEC 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, Commission Administrative Law Judges (ALJs), and the Office of the Utility Consumer Advocate, who may access the documents.

II. PROCEDURAL HISTORY

2. On January 3, 2023, the Commission opened the above-captioned repository Proceeding for those subject to Rules 2006 and 2187 of the Rules Regulating Telecommunications Services and Providers of Telecommunication Services, 4 CCR 723-2 to file 2022 Annual Reports (Reports) under Rule 2187(g)(IX), and DR525 Forms (DR525 Forms or Forms) 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 letters over Interim Director G. Harris Adams' signature reminding the affected carriers of their obligation to file Reports and Forms in this Proceeding.

5. On May 3, 2023, RCLEC 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 must file the same with the Commission on or before May 15 each year.¹ Such filings are generally considered public records once filed with the Commission.² But, a party may seek highly confidential protection for a filing that is presumed public by following the

¹ Rule 2006(a), 4 CCR 723-2.

² Rule 1100(b)(I), 4 CCR 723-1.

procedures in Rule 1101.³ The moving party has the burden of proof to establish that a 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

7. Rule 1101(a) requires a party submitting information claimed to be highly confidential to include a statement on the first page of the 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 confidential.⁷ Essentially, this is the required publicly available filing for a document

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

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.

⁷ *Id.*

which a party or participant believes confidential or highly confidential protection should be afforded.⁸

8. And, under Rule 1101(h), a party seeking highly confidential protection must also file an unredacted version of the document for which it seeks protection under seal.⁹

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.¹⁰

10. The Motion seeks highly confidential protection for RCLEC's gross revenues in Colorado as reported in its 2022 Form. As grounds, RCLEC states that the Form contains highly proprietary and confidential commercial information, the disclosure of which to competitors or potential competitors would be detrimental to RCLEC.¹¹ RCLEC also asserts that it considers information regarding revenues proprietary, confidential, and non-public financial, commercial, and business information, not subject to public inspection or public availability.¹²

11. RCLEC attached to the Motion an Affidavit of Rachel Petty (Affidavit) stating that RCLEC derives independent economic value from the unavailability of its network and financial information, and therefore closely guards its information to ensure it does not become publicly disclosed.¹³ RCLEC states that it takes reasonable steps to protect the information from disclosure through internal employee policies, digital and physical security, and by filing the documents under seal, that RCLEC derives economic value from maintaining its information secret, and that public

⁸ *Id.*

⁹ *See* Rule 1101(h), 4 CCR 723-1.

¹⁰ *See* Rules 1200, 1307, and 1401(b) 4 CCR 723-1.

¹¹ Motion at 1.

¹² *Id.*

¹³ Affidavit at 1.

disclosure of RELEC's revenue and expense information would have adverse competitive consequences for RCLEC.¹⁴

12. RCLEC states that the Commission's Rules presume that the Form, once filed with the Commission, is available for public inspection by any person at any reasonable time and that, if a party believes that the information should not be open for public inspection, the party may file a motion requesting highly confidential protection.¹⁵

13. Finally, RCLEC states that the confidential information being provided is for the use of the Commission and the Office of the Consumer Counsel (the OCC) in exercising its governmental functions.¹⁶ RCLEC requests that an order for confidential protection permit only the Commission, the Office of the Consumer Counsel, and their respective staff, access to the proprietary and confidential information.¹⁷

14. The OCC's name was changed to the Office of the Utility Consumer Advocate (the UCA) in 2022. As such, the ALJ construes RCLEC's reference to the OCC to be a reference to the UCA.

15. Based on the above, the Motion and the Affidavit, the ALJ finds that RCLEC provides sufficient grounds to afford highly confidential protection for the relevant information.¹⁸ That said, RCLEC's filings fail to meet several Commission requirements for highly confidential protection, which RCLEC must address as a condition precedent to receiving highly confidential protection.

¹⁴ *Id.* at 1-2.

¹⁵ *Motion* at 1-2 citing Rule 1100(n)(I) and 1101(b), 4 CCR 723-1.

¹⁶ *Motion* at 2.

¹⁷ *Id.*

¹⁸ *See infra*, ¶¶ 10-13.

16. First, RCLEC failed to include with its Motion a specific form of nondisclosure agreement, as required by Rule 1101(b)(V), 4 CCR 723-1.¹⁹ Second, the Affidavit states that the relevant information is only disclosed with RCLEC to its counsel, board of directors, and employees directly involved with its financial operations or those with “a need to know.”²⁰ This does not comply with Rule 1101(b)(VI), 4 CCR 723-1, which requires the affidavit to include “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.”

17. Third, RCLEC failed to provide a copy of its unredacted Form under seal following the procedures in Rule 1101(a), 4 CCR 723-1 or otherwise explain why doing so would be overly burdensome, impractical, or too sensitive, as required by Rule 1101(b)(VII), 4 CCR 723-1. Finally, RCLEC did not submit a public version of the Form that complies with the requirements in Rule 1101(a)(I), 4 CCR 723-1.

18. The ALJ will allow RCLEC to correct these errors through filings made by the deadline established below. Provided that RCLEC makes the required filings, the highly confidential protection granted by this Decision will remain in place. Otherwise, such protection will automatically expire on or by the deadline by which RCLEC is required to make the referenced filings.

19. In addition, the highly confidential protection that this Decision affords does not apply to the Commissioners, Commission counsel, Commission Staff, Commission ALJs or the UCA and its staff who require access to the unredacted Form.

¹⁹ Other than Commission staff, those given access to the highly confidential information (per this Decision) typically sign the nondisclosure agreement required by Rule 1101(b)(V), 4 CCR 723-1. See Rule 1100(i), 4 CCR 723-1 (requiring Commission staff to annually execute a nondisclosure agreement).

²⁰ Affidavit at 1.

IV. ORDER

A. It Is Ordered That:

1. The remaining response time to the Motion Requesting Highly Confidential Protection of Information filed on May 3, 2023, by RCLEC, Inc. (RCLEC) (Motion) is waived.

2. The Motion is conditionally granted as set forth below.

3. Consistent with the above discussion, on or by the close of business **on May 22, 2023**, RCLEC must file: a specific form of proposed nondisclosure agreement as required by Rule 1101(b)(V), 4 *Code of Colorado Regulations* (CCR) 723-1; a revised affidavit which complies with the requirements in Rule 1101(b)(VI), 4 CCR 723-1 as explained above; an unredacted copy of its 2022 Form DR525 (Form) under seal (as highly confidential) following the procedures in Rule 1101(a), 4 CCR 723-1; and a public and unredacted copy of its Form consistent with the requirements in Rule 1101(a)(I), 4 CCR 723-1.

4. If RCLEC fails to make the above filings by the established deadline, the highly confidential protection granted by this Decision will automatically expire, and its Form will not receive highly confidential protection.

5. The highly confidential protection afforded by this Decision does not apply to the Public Utilities Commissioners, Public Utilities Commission (Commission) Staff, Commission counsel, Commission Administrative Law Judges, or the Office of the Utility Consumer Advocate.

6. The 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 that reads 'Rebecca E. White'.

Rebecca E. White,
Director