

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24M-0007T

IN THE MATTER OF THE FILING OF 2023 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
G. HARRIS ADAMS
CONDITIONALLY GRANTING TELEPORT'S MOTION
SEEKING HIGHLY CONFIDENTIAL PROTECTION FOR
CERTAIN INFORMATION**

Mailed Date: April 26, 2024

I. STATEMENT

1. On January 1, 2024, the Colorado Public Utilities Commission (Commission) opened the above-captioned proceeding as a repository proceeding for the filing of the 2023 annual reports required to be filed by the affected telecom carriers pursuant to Rule 2006 of the Rules Regulating Telecommunications Services and Providers of Telecommunications Services, 4 *Code of Colorado Regulations* (CCR) 723-2.

2. On January 31, 2024, the Commission referred this proceeding to an Administrative Law Judge (ALJ) by minute entry, for the disposition of all pleadings and motions filed.

3. On February 15, 2024, Teleport Communications America, LLC (Teleport) filed its Motion Seeking Highly Confidential Protection for Certain Information.

II. RELEVANT LAW, FINDINGS, ANALYSIS, AND CONCLUSIONS

A. Relevant Law

4. 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

5. 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 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

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.

⁴ Rule 1101(d), 4 CCR 723-1.

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

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

B. Findings, Analysis, and Conclusions

7. The Motion seeks highly confidential protection for Teleport’s gross revenues in Colorado as reported in its Reports (its DR525 Forms). As grounds, Teleport states that this information is valuable, competitively sensitive, proprietary in nature, and a trade secret.⁹ Teleport 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.¹⁰ Teleport argues that state-specific gross revenues are “trade secret” information, for which it has historically sought and obtained protections against public disclosure.¹¹ Indeed, Teleport points out that going back

⁶ Rule 1101(a)(I), 4 CCR 723-1.

⁷ *Id.*

⁸ *Id.*

⁹ Motion at 2.

¹⁰ *Id.*, citing § 7-74-102(4), C.R.S.

¹¹ *Id.*

to 2013, it has sought and received similar protection from the Commission.¹² 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.¹³

8. Teleport 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.¹⁴ Teleport 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.¹⁵

9. With the Motion, Teleport submitted a proposed form of nondisclosure agreement (Exhibit A)¹⁶, 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), and the information Teleport requests to be protected (Exhibit C). The Motion includes a public version of its 2023 Annual Report.¹⁷

10. Based on the above, the Motion and attachments, the ALJ finds that the Motion provides sufficient grounds to afford highly confidential protection for the specified information.¹⁸

¹² *Id.*, fn. 1.

¹³ *Id.* at 1, citing *In the Matter of Consumer Law Group*, 28 FCC Rcd. 684, 685, ¶ 3 (2013).

¹⁴ *Id.* at 2-3, citing Rule 1100(n)(I) and 1101(c), 4 CCR 723-1.

¹⁵ *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 Teleport’s reference to the OCC to be a reference to the UCA.

¹⁶ *Id.* at 7. The ALJ notes that the Exhibit A, Nondisclosure Agreement appears to contain a typographical error. As such, the ALJ construes Teleport’s Exhibit A, Nondisclosure Agreement regarding the 2022 annual reports to be a reference to the 2023 annual reports.

¹⁷ These Reports were attached to the Motion and filed as individual filings in both confidential and public versions.

¹⁸ *See infra*, ¶¶ 7-9.

Based upon good cause shown, the Motion will be granted, conditioned upon an exception that the highly confidential protection does not apply to the Commissioners, Commission counsel, Commission Staff or Commission ALJs. Teleport 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 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.

III. ORDER

A. It is Ordered That:

1. The Motion Seeking Highly Confidential Protection for Certain Information (Motion) filed on February 15, 2024, by Teleport Communications America, LLC (Teleport) is conditionally granted.
2. Teleport's Exhibit A, Nondisclosure Agreement is accepted as modified to reflect its 2023 annual reports.
3. Teleport's 2023 unredacted annual reports filed with the Commission shall be treated as highly confidential and shall not be publicly available from the Commission.
4. 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.

5. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director