

Decision No. R24-0312-I

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
WAIVING RESPONSE TIME AND CONDITIONALLY
GRANTING RCLEC'S MOTION REQUESTING HIGHLY
CONFIDENTIAL PROTECTION OF INFORMATION**

Mailed Date: May 7, 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 April 29, 2024, RCLEC, Inc. (RCLEC) filed its Motion Requesting Highly Confidential Protection of Information and supporting Exhibits.

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 or Form) 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

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.

requested, or alternatively, show why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.⁵

6. 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 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

7. 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

8. Because this is an administrative Proceeding (and not an adjudicative one), the ALJ waives the remaining response time to the Motion.¹⁰

9. The Motion seeks highly confidential protection for RCLEC’s gross revenues in Colorado as reported in its Reports (its DR525 Forms). 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 asserts that it

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

⁶ Rule 1101(a)(I), 4 CCR 723-1.

⁷ *Id.*

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.

considers information regarding revenues proprietary, confidential, and non-public financial, commercial, and business information, not subject to public inspection or public availability.¹²

10. RCLEC's Exhibit B Affidavit of Rachel Petty states that it 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 disclosure of RCLEC's revenue and expense information would have adverse competitive consequences for RCLEC.¹⁴

11. 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

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

13. With the Motion, RCLEC submitted Exhibit A Nondisclosure agreement (Exhibit A), an affidavit identifying those who have access to the highly confidential information

¹² *Id.*

¹³ Exhibit B at 1.

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.*

and asks that highly confidential protection be afforded for as long as the Commission maintains the Reports (Exhibit B), and the information RCLEC requests to be protected (Exhibit C). RCLEC also filed a public version of its 2023 Annual Report.

14. Based on the above, the Motion and Exhibits, the ALJ finds that the Motion provides sufficient grounds to afford highly confidential protection for the specified information.¹⁸ 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. RCLEC 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 remaining response time to the Motion Requesting Highly Confidential Protection of Information (Motion) filed on April 29, 2024, by RCLEC Inc. (RCLEC) is waived.
2. The Motion is conditionally granted as set forth below.

¹⁸ See *infra*, ¶¶ 7-11.

3. RCLEC'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.

(SEAL)



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