

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 14M-0097T

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IN THE MATTER OF THE FILING OF ANNUAL REPORTS IN ACCORDANCE WITH  
RULE 2006, 4 CCR 723-2, 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.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MELODY MIRBABA  
GRANTING MOTIONS FOR EXTENSION  
AND DENYING PETITION FOR  
HIGHLY CONFIDENTIAL TREATMENT**

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Mailed Date: April 25, 2014

**I. STATEMENT, FINDINGS, AND CONCLUSIONS**

1. On February 5, 2014, the Commission opened this proceeding by minute order for the filing and administration of the 2013 annual report required to be filed by the affected telecom carriers pursuant to Rule 2006 of the Rules Regulating Telecommunications Providers, Services and Products, 4 *Code of Colorado Regulations* (CCR) 723, Part 2. That same day, the Commission referred this proceeding to an administrative law judge (ALJ).

2. On February 7, 2014, the Commission Director sent a letter to all affected carriers reminding them of their obligation under Rule 2006, 4 CCR 723-2, to file their 2013 annual reports with the Commission by April 30, 2014.

3. This is an administrative, not adjudicative, proceeding before the Commission. The entities making filings in this proceeding are participants, not parties, to this proceeding.

See Rule 1200 and Rule 1307, 4 CCR 723-1 of the Commission's Rules of Practice and Procedure.

**A. Request for Highly Confidential Protection**

4. On April 8, 2014, MegaPath Corporation (MegaPath) filed a "Petition for Highly Confidential Protection" (Petition) seeking highly confidential protection for its 2013 annual report, which was first filed on March 14, 2014 as confidential and again filed on April 21, 2014 as confidential. As grounds for the Petition, MegaPath states that its annual report contains highly proprietary and confidential commercial and financial information, the disclosure of which to competitors or potential competitors would be detrimental to MegaPath. MegaPath cites § 24-72-204(3)(a)(IV), C.R.S., as grounds to treat the records as confidential. That statute exempts as a public record documents containing confidential commercial and financial information. MegaPath also states that it has sought and received comparable protections from the Federal Communications Commission and numerous state regulatory commissions, including Illinois, Wisconsin, Oregon, and California. MegaPath seeks the highly confidential protection for a period of not less than two years.

5. The annual reports required to be filed in this proceeding are presumed public records under Rule 1100(n)(I), 4 CCR 723-1. In Rule 1101, 4 CCR 723-1, the Commission set forth in great detail the procedure and requirements for filing and seeking a document to be designated as highly confidential. Rule 1101(c) specifically states that if a person believes that information presumed to be open for public inspection as contained in Rule 1100(n), that person should file a motion requesting highly confidential protection in accordance with Rule 1101(b), 4 CCR 723-1. The party requesting highly confidential protection carries the burden of proof to establish the need for highly confidential protection. Rule 1101(d), 4 CCR 723-1.

6. The ALJ finds that MegaPath has failed to meet the requirements of Rule 1101, 4 CCR 723-1 for highly confidential designation. For example, MegaPath designated the entire annual report as highly confidential, rather than identifying the specific portions of the report that truly are highly confidential. MegaPath made the conclusion that the information is confidential commercial and financial information the disclosure of which to competitors or potential competitors would be detrimental to MegaPath, but failed to provide a factual basis for this conclusion. Moreover, MegaPath failed to tie the specific portions of the annual report to any potential harm that may be caused by disclosure of such information. MegaPath failed to address the detailed list requirements set forth in Rule 1101(b), 4 CCR 723-1.

7. MegaPath should review the requirements of Rule 1101, 4 CCR 723-1, and if it still wishes to have highly confidential protection, it should file a Motion that complies with that Rule, and should amend its annual report filing to comply with that rule.<sup>1</sup> MegaPath should pay special attention to requirements in Rule 1101(b), 4 CCR 723-1. The ALJ will preserve the status quo of the confidentiality of MegaPath's annual report to provide MegaPath with additional time to come into compliance with Rule 1101, 4 CCR 723-1. However, if MegaPath does not make a motion that complies with Rule 1101 within the designated time-frame, the annual report MegaPath has filed will no longer be afforded confidential status and will be made available to the public.

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<sup>1</sup> The ALJ notes that MegaPath filed an amended report on April 21, 2014 which complies with more requirements of Rule 1101 than its original annual report filing; however, the filing still does not comply with the requirements of that Rule (*e.g.*, caption should be marked highly confidential, but is marked confidential, and does not include a description of the information, *see* Rule 1101(a)).

**B. Motions Seeking an Extension of Time to File Annual Reports**

8. To date, 13 carriers have filed “Motion[s] of Extension of Time to File Annual Report[s]” (Motions). Specifically, on April 21, 2014, ANPI LLC, ANPI Business, LLC, Intellex Inc., Common Point LLC, Impact Telecom Inc., IXC Holdings, Inc., Mosaic Networkx LLC, and Futurum Communications Corporation, doing business as Forethought, filed separate Motions through the Commission’s electronic filing system seeking to extend their deadlines to file their 2013 annual reports. And, on April 22, 2014 Victory Telecom, Inc., Operator Service Company LLC, Network Innovations, Inc., Global Connection Inc. of America, and Telecommunications Communications Services, Inc., e-filed separate Motions with the Commission’s e-filing system also seeking to extend their deadlines to file their 2013 annual reports.

9. Five of the thirteen motions were incorrectly e-filed as annual reports rather than motions. The ALJ warns the filing party<sup>2</sup> to ensure it is choosing the correct document type when e-filing. Otherwise, a filing seeking relief may be represented in the e-filing system as not seeking relief; the result is the filing may not be acted upon (*e.g.*, designating a motion as an annual report).

10. As grounds for extensions of time, the Motions state that the carriers require additional time to gather the necessary information to prepare and file their annual reports. The carriers all seek an extension to file their reports to May 30, 2014.

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<sup>2</sup> Ms. Judith Riley signed all of the referenced motions. Ms. Riley should ensure that no further filings she is responsible for making are incorrectly identified when electronically filing with the Commission.

11. As this is not a contested proceeding, the ALJ will waive the response time typically applicable to motions before the Commission pursuant to Rules of Practice and Procedure, Rule 1400(b), 4 CCR 723-1.

12. The ALJ finds that the carriers listed above have demonstrated good cause for their respective requests for additional time to comply with the annual report filing requirement. The ALJ will extend the filing deadline for these carriers up to and including May 30, 2014.

13. However, the extensions granted do not extend or otherwise impact the April 30, 2014 deadline to file a copy of the Colorado Department of Revenue Form DR 0525.

## **II. ORDER**

### **A. It Is Ordered That:**

1. MegaPath Corporation's (MegaPath) "Petition for Highly Confidential Protection" is denied. The current status of MegaPath's annual report filing as confidential shall remain in place for a period of 14 days after the mail date for this Decision to allow MegaPath an opportunity to file a motion for highly confidential protection which complies with Rule 1101 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations*, 723-1. So long as MegaPath files such a motion within that time-period, the status of the annual report shall remain confidential, until the Administrative Law Judge rules on any such motion filed. If MegaPath fails to file such a motion within the prescribed time-frame, its annual report shall no longer be designated as confidential and shall be publicly available.

2. The response time to the Motions of Extension of Time to File Annual Reports (Motions for Extension) referenced in ¶ 8 above is waived.

3. The Motions for Extension filed by the following carriers on the dates listed in ¶ 8 above are granted: ANPI LLC, ANPI Business, LLC, Inteltrace Inc., Common Point LLC, Impact Telecom Inc., IXC Holdings, Inc., Mosaic Networx LLC, Futurum Communications Corporation, doing business as Forethought, Victory Telecom, Inc., Operator Service Company LLC, Network Innovations, Inc., Global Connection Inc. of America, and Telecommunications Communications Services, Inc.

4. Each of the carriers listed in Ordering Paragraph No. 3 shall file their respective annual reports by 5:00 p.m. on May 30, 2014.

5. The extensions granted do not extend or otherwise impact the April 30, 2014 deadline to file a copy of the Colorado Department of Revenue Form DR 0525.

6. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

Doug Dean,  
Director