

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14M-0097T

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.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
GRANTING MEGAPATH'S PETITION
FOR HIGHLY CONFIDENTIAL TREATMENT**

Mailed Date: June 18, 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 reports 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.

4. On April 8, 2014, MegaPath Corporation (MegaPath) filed a "Petition for Highly Confidential Protection" (first 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. On April 25, 2014, the ALJ denied Megapath's first Petition for failing to meet the mandatory requirements of Rule 1101 of the Rules of Practice and Procedure, 4 CCR 723-1. Decision No. R14-0432-I. The same Decision ordered that MegaPath's annual report would remain confidential for a period of 14 days to allow MegaPath an additional opportunity to file a motion for highly confidential protection which complies with Rule 1101, 4 CCR 723-1.

5. On June 3, 2014, MegaPath filed another "Petition for Highly Confidential Protection" (second Petition). This was filed well after the 14-day timeframe set out in Decision No. R14-0432-I.

6. MegaPath requests that pages 12 and 13 of its 2013 Annual Report receive highly confidential treatment. MegaPath argues that those portions of its Annual Report contain highly proprietary and confidential commercial information, the disclosure of which to competitors, or potential competitors, would be detrimental to MegaPath. As grounds, MegaPath states that its Annual Report contains the number and type of collocation arrangements at each wire center in the State of Colorado and that MegaPath protects this information as highly proprietary information both internally and externally. MegaPath argues that the location and type of collocation arrangements should be maintained as confidential because disclosure of such information to competitors can be used to its competitive and strategic detriment as indications of serving areas and limitations based on technologies. Moreover, MegaPath argues that if the

location of MegaPath's collocation arrangements are public, it would make MegaPath's closed network open to potential harm by outside hackers and other threats to the network and the disclosure of the information would make MegaPath's network more susceptible to outside threats, such as hacking and tampering with the network equipment.

7. MegaPath states that it does not provide any public information related to its collocation arrangements in any of the other 43 states in which it is a certificated competitive local exchange company. MegaPath states that it has been granted comparable protections from the Federal Communications Commission and numerous state regulatory commissions, including Illinois, Wisconsin, Oregon, and California, and that both federal and state commissions routinely grant a request for protection of this proprietary and confidential information with no specified duration for such protection.

8. The second Petition includes a proposed form of nondisclosure agreement, and an affidavit supporting the allegations in the second Petition. Also filed with the second Petition is the information MegaPath requests be protected, as well as a public version of its 2013 Annual Report.

9. The annual report at issue is presumed to be a public record under Rule 1100(n)(I), 4 CCR 723-1. Rule 1101, 4 CCR 723-1, provides the procedure and requirements for filing and seeking a document to be designated as highly confidential. Rule 1101(c) governs records which are presumed to be public under Rule 1100(n), 4 CCR 723-1. That Rule allows an entity or person who believes that otherwise public information should be maintained as confidential, to 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.

10. Under, Rule 1101(b), 4 CCR 723-1, a motion seeking highly confidential treatment:

- (I) shall include a detailed description and/or representative sample of the information for which highly confidential protection is sought;
- (II) shall state the specific relief requested and the grounds for seeking the relief;
- (III) shall advise all other parties of the request and the subject matter of the information at issue;
- (IV) shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission's rules for furnishing confidential information provides insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information;
- (V) shall be accompanied by a specific form of nondisclosure agreement requested;
- (VI) shall be accompanied by an affidavit containing the names of all persons with access to the information and the period of time for which the information must remain subject to highly confidential protection, if known; and
- (VII) shall include an exhibit, filed in accordance with the procedures established in paragraph (a), containing the information for which highly confidential protection is requested. Alternatively, the movant may show why providing the subject information would be overly burdensome, impractical, or too sensitive for disclosure.

11. MegaPath does not merely conclude that its information is proprietary and confidential; instead, MegaPath provides specific facts to support its arguments that the information is proprietary, competitively sensitive, trade secret, and confidential information.

12. The ALJ finds that MegaPath has met each of the above requirements and has shown good cause for highly confidential protection of the identified information. As a result,

the ALJ finds that MegaPath has established that the information, as identified in its second Petition and the filings made therewith, should receive highly confidential protection. Based on the foregoing, the ALJ will grant MegaPath's second Petition.

II. ORDER

A. It Is Ordered That:

1. The "Petition for Highly Confidential Protection" filed by MegaPath Corporation (MegaPath) is granted.
2. MegaPath's 2013 un-redacted annual report filed with the Commission shall be treated as highly confidential and shall not be publicly available.
3. The Commission's treatment of these documents does not impact how any other governmental entity treats the documents.
4. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge