

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 AT&T'S MOTION FOR HIGHLY
CONFIDENTIAL TREATMENT**

Mailed Date: May 23, 2014

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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 telecommunications 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. Motion for Highly Confidential Protection

1. AT&T's Arguments.

4. On April 30, 2014, AT&T Corp. and Teleport Communications America LLC (collectively AT&T) filed a single "Motion Seeking Highly Confidential Protection for Certain Information" (Motion). The Motion seeks highly confidential protection for portions of its 2013 annual report (report). Two copies of the report were attached to the Motion, that is, a public redacted report and an un-redacted highly confidential report. As grounds for the Motion, AT&T argues in detail that the identified data is confidential business information, proprietary, competitively sensitive, trade secret, and confidential financial information. The Motion provides an explanation for how each category of information sought to be protected qualifies as proprietary, competitively sensitive, trade secret, and confidential information. The ALJ will not repeat those arguments here. AT&T also argues that, consistent with § 7-74-102(4), C.R.S., it has consistently sought to protect its confidential information from becoming available to persons other than those selected by AT&T to have access for limited purposes. AT&T further argues that the Federal Communications Commission (FCC) has accepted AT&T's similar confidential filings and held that revenue information is sensitive information subject to

withholding from public disclosure, citing *In the Matter of Consumer Law Group*, 28 FCC Rcd. 684, 685 ¶3 (2013).

5. On May 8, 2014, AT&T filed a “Supplemental Motion Seeking Highly Confidential Protection for Certain Information” (Supplemental Motion). The Supplemental Motion is intended to supplement the above-referenced Motion to include a request that certain information in the DR-0525 form (DR form) filed by AT&T with the Supplemental Motion also receive highly confidential protection. AT&T states that due to an internal administrative error, it neglected to include the DR form with its attachments to the original Motion. AT&T argues that, for the reasons set forth in its Motion, the DR form should be treated as highly confidential. AT&T states that it has historically sought protection of this information from public disclosure. AT&T filed two copies of the DR form, a public and redacted copy and a highly confidential and un-redacted copy contemporaneously with the Supplemental Motion.

6. AT&T does not merely conclude that its information is proprietary and confidential; instead, AT&T provides specific facts to support its arguments that the information is proprietary, competitively sensitive, trade secret, and confidential financial information.

2. Commission Rules.

7. The annual report at issue is presumed to be a public record under Rule 1100(n)(I), of the Rules of Practice and Procedure, 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. Specifically, when an entity or person believes that information presumed to be open for public inspection as stated 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.

8. 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.

9. The ALJ finds that AT&T 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 AT&T has established that the information, as identified in its Motion, Supplemental Motion, redacted 2013 annual report and DR form should receive highly confidential protection. Based on the foregoing, the ALJ will grant AT&T's Motion and Supplemental Motion.

II. ORDER

A. It Is Ordered That:

1. The “Motion Seeking Highly Confidential Protection for Certain Information” and “Supplemental Motion Seeking Highly Confidential Protection for Certain Information” filed by AT&T Corp. and Teleport Communications America LLC (collectively AT&T) are granted.

2. AT&T’s un-redacted 2013 annual report and un-redacted DR-0525 report filed with the Commission shall be treated as highly confidential and shall not be publicly available. The Commission’s treatment of these documents does not impact how any other governmental entity treats the documents.

3. This 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 "Doug Dean".

Doug Dean,
Director