

Staff to respond to AT&T's motion by September 27. Any party wishing to do so was ordered to reply to Staff's response by October 4. Staff filed its response on September 26, and AT&T and U.S. Cellular replied on October 4.

AT&T contends that the information contained in the appendices is similar to information that U.S. Cellular filed, or reclassified, as public information earlier in this case. According to AT&T, U.S. Cellular has not explained why the information in the appendices should be accorded a higher level of protection. AT&T argues that the information should not be treated as highly confidential and should instead be classified as proprietary.

In its response, U.S. Cellular argues that the information contained in the appendices to its compliance filing is much more extensive than the limited information it disclosed earlier in this case. It contends that public disclosure of these materials would "reveal confidential details pertaining to U.S. Cellular's network infrastructure, customer base, marketing strategies and the company's competitive position in the Missouri telecommunications marketplace." U.S. Cellular argues that this information meets the Commission's definition of highly confidential information and should be protected as such.

Staff's response to AT&T's motion suggests that U.S. Cellular's description of the material in the appendices as "marketing analysis or other market-specific information relating to services offered in competition with others," would meet the definition of Highly Confidential information found in the Commission's standard protective order. For that reason, Staff suggests that AT&T's motion to reclassify the information should be denied.

The Commission's standard protective order, which was issued in this case on August 12, 2005, distinguishes between highly confidential information and proprietary information, and provides different levels of protection for the two categories of information.

Paragraph A of the protective order defines proprietary information as “Information concerning trade secrets, as well as confidential or private technical, financial and business information.” Highly confidential information is defined as:

Information concerning (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; strategies employed, to be employed, or under consideration in contract negotiations.

Both highly confidential and proprietary information is protected from disclosure to the public by the protective order. But the protective order establishes different levels of restriction on the availability and use of that information by the parties.

In particular, paragraph C of the protective order provides that highly confidential information may be disclosed only to a party’s attorney and outside experts retained for the purposes of the case. Employees, officers, or directors of a party may not be designated as an outside expert and therefore may not view highly confidential information. The use of proprietary information is less restricted. Under paragraph D of the protective order, proprietary information may be disclosed to a party’s attorney, to outside experts, and to employees of a party “who are working as consultants to such attorney or intend to file testimony in these proceedings.” For this case, that means that if U.S. Cellular’s information remains classified as highly confidential, that information could not be reviewed and evaluated by employees of AT&T or the other parties.

AT&T is not asking that U.S. Cellular’s appendices be reclassified as public information. Rather, it is asking that the information be reclassified as proprietary rather than highly confidential. The Commission’s decision regarding AT&T’s motion must then

turn on the distinction between the protective order's definitions of highly confidential and proprietary information.

The information in the appendices that U.S. Cellular would like to protect as highly confidential is described as follows:

Appendix 1 – List of Proposed Sites with Approximate Start and Completion Dates;

Appendix 2 – List of Wire Centers to Receive Improved Coverage or Capacity;

Appendix 4 – Map of Existing Coverage over ILEC Wire Center Boundaries; and

Appendix 5 – Map of Proposed Cell Sites and Coverage over ILEC Wire Center Boundaries.

Appendix 3 is a spreadsheet detailing the costs of proposed network improvements. It is also marked as highly confidential, but AT&T does not ask that it be reclassified.

The information in appendices 1, 2, 4, and 5 is not a “marketing analyses or other market-specific information relating to services offered in competition with others” such as would qualify it for increased protection as highly confidential information. Nor does it fall within any other category of information defined by the protective order as qualifying for highly confidential designation. Appendix 1 is simply a list of proposed cell tower sites and approximate start and completion dates. Appendix 2 relates those proposed sites to the wire centers that would receive improved coverage. Appendices 4 and 5 are maps of Missouri showing general information about the impact the new cell sites would have on U.S. Cellular's existing coverage. The challenged information could reveal, in a general way, information about U.S. Cellular's future plans to increase its competition in certain areas of the state and for that reason should be protected from disclosure to the general public. However, the information is best described as “information concerning trade

secrets, as well as confidential or private technical, financial and business information.” As such, it falls within the protective order’s definition of proprietary information. Under that definition, it will be protected from complete disclosure to the public and potential competitors, but will still be made available for use by the witnesses offered by the other parties to this case.

AT&T’s motion will be granted and appendices 1, 2, 4, and 5 to U.S. Cellular’s compliance filing will be reclassified from highly confidential to proprietary. This order will be given a ten-day effective date to give U.S. Cellular an opportunity to request reconsideration before the reclassification is made effective.

IT IS ORDERED THAT:

1. AT&T Missouri’s Motion to Reclassify Certain Confidentially Marked Information of U.S. Cellular from “HC” to “P” is granted.

2. On October 23, 2006, the Commission’s Data Center shall reclassify appendices 1, 2, 4, and 5 to U.S. Cellular’s August 11, 2006 compliance filing from Highly Confidential to Proprietary.

3. This order shall become effective on October 23, 2006.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray and Appling, CC., concur
Gaw, C., dissents
Clayton, C., absent

Woodruff, Deputy Chief Regulatory Law Judge