



Sharon Mullin
Director
External Affairs

2003 Point Bluff
Austin, TX 78746
T: 512-330-1698
F: 832 213-0203
smullin@att.com

July 2, 2012

By Electronic Mail and Overnight Mail

David W. Danner
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

RE: FCC Annual ETC Report Filing - AT&T Mobility

Dear Mr. Danner:

Pursuant to 47 C.F.R. §54.313(i), attached please find a copy of the annual Eligible Telecommunications Carrier ("ETC") filing ("FCC Report") for New Cingular Wireless PCS, LLC and AT&T Mobility Wireless Operations Holdings, Inc. ("AT&T Mobility").

If there are any questions, please do not hesitate to contact me.

Sincerely,

Sharon Mullin
Sharon Mullin

Attachments

cc: Jing Liu



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Cathy Carpino
General Attorney

AT&T Services, Inc.
1120 20th Street, N.W.
Suite 1000
Washington, D.C. 20036

202.457.3046 Phone
202.457.3073 Fax
cathy.carpino@att.com E-mail

June 28, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: REQUEST FOR CONFIDENTIAL TREATMENT

Connect America Fund, WC Docket 10-90
**AT&T Mobility, LLC (SACs 619004; 409004; 479006; 269905;
319026; 539010; 639005; and 209012) Eligible Telecommunications
Carrier Annual Report and Certification in Compliance with 47
C.F.R. § 54.313(a)**

Pursuant to the Commission's decision in *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55 (FCC 98-184), released Aug. 4, 1998 ("*Confidential Information Order*") and in accordance with the Freedom of Information Act ("FOIA") and the Commission's Rules related to public information and inspection of records, e.g. 47 C.F.R. §§ 0.457 and 0.459, AT&T Inc. ("AT&T"), on behalf of itself and its affiliate AT&T Mobility LLC ("AT&T Mobility"), hereby submits this request for confidential treatment of certain information submitted to the Commission in its Eligible Telecommunications Carrier Annual Report and Certification in Compliance with 47 C.F.R. § 54.313(a) ("Annual Reporting Requirements for High-Cost Recipients"). See also *Wireline Competition Bureau Announces Filing Deadline of July 2, 2012, for Eligible Telecommunications Carriers to File Reports Pursuant to Section 54.313(a)(2) through (a)(6) and (h) of the Commission's Rules*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51, CC Docket Nos. 01-92, and 96-45; WT Docket No. 10-208, Public Notice, DA 12-729 (rel. May 8, 2012). This request applies to the outage reports included in Exhibits A through H submitted herewith to the Commission.

Statement pursuant to 47 C.F.R. § 0.459(b)

(1) Identification of the specific information for which confidential treatment is sought.

Included in Confidential Exhibits A through H is highly sensitive network outage information required by 47 C.F.R. § 54.313(a)(2). Commission Rule 54.313(a)(2) was modeled on the outage reporting requirements in 47 C.F.R. Part 4. When it adopted the Part 4 reporting requirements, the Commission found that such data present national security and competitive concerns and should be deemed confidential when filed with the Commission. *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, Report and Order and Further Notice of

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Proposed Rulemaking, FCC 04-188, ¶ 3 (rel. August 19, 2004) (“This data, though useful for the analysis of past and current outages in order to increase the reliability and security of telecommunications networks in the future, could be used by hostile parties to attack those networks, which are part of our Nation’s critical information infrastructure. The disclosure of outage reporting information to the public could present an unacceptable risk of more effective terrorist activity. We therefore will treat the information that will be provided as confidential.”) The outage information in Confidential Exhibits A through H is entitled to be treated as confidential for these same reasons.

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.

The information is being provided to the Commission in response to Commission Rule 47 C.F.R. § 54.313(a)(2) as well as the Commission’s *ETC Designation Order*, 20 FCC Rcd 6371 (2005) and *USF/ICC Transformation Order*, 26 FCC Rcd 17663 (2011).

(4) Explanation of the degree to which the information concerns a service that is subject to competition; and

The information being provided to the Commission is relevant to the various interstate and intrastate telecommunications services provided by AT&T Mobility in competition with other CMRS and wireline providers. Telecommunications, in particular, mobile telecommunications, is a highly competitive industry, and AT&T’s mobile services are subject to significant competition throughout the country. The presence of such competition and the likelihood of competitive injury threatened by release of the information provided to the Commission by AT&T should compel the Commission to withhold the information from public disclosure. *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987); *Frazer v. U.S. Forest Service*, 97 F.3d 367, 371 (9th Cir. 1996); *Gulf & Western Indus. v. U.S.*, 615 F.2d 527, 530 (D.C. Cir. 1979).

(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.

(5) Explanation of how disclosure of the information could result in substantial competitive harm.

Exemption 4 requires a federal agency to withhold from public disclosure confidential or privileged commercial and financial information of a person unless there is an overriding public interest requiring disclosure, and the Commission has a longstanding policy of protecting the confidential commercial information of its regulatees under FOIA Exemption 4.

Two lines of cases have evolved for determining whether agency records fall within Exemption 4. Under *Critical Mass*, commercial information that is voluntarily submitted

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to the Commission must be withheld from public disclosure if such information is not customarily disclosed to the public by the submitter.¹ For materials not subject to *Critical Mass, National Parks* establishes a two part test for determining if information qualifies for withholding under Exemption 4.² The first prong asks whether disclosing the information would impair the government's ability to obtain necessary information in the future. The second prong asks whether the competitive position of the person from whom the information was obtained would be impaired or substantially harmed. If the information meets the requirements of either prong, it is exempted from disclosure under Exemption 4. Whether under *Critical Mass* or *National Parks*, the information provided by AT&T falls within Exemption 4.

The information being provided to the Commission in response to the Commission's rules is not customarily released to the public, is maintained on a confidential basis, and is not ordinarily disclosed to parties outside the company. Disclosure of this information would subject AT&T to substantial competitive harm.

Competitors could use the confidential information to assist in targeting their service offerings and enhancing their competitive positions, to the detriment of the competitive position of AT&T Mobility. *See, e.g., GC Micro Corp. v. Defense Logistics Agency*, 33 F.3d 1109 (9th Cir. 1994).

- (6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure; and**
- (7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.**

This information has been maintained on a confidential basis within AT&T and would not ordinarily be disclosed to parties outside the company. Company practices instruct employees not to disclose such information outside the company and restrict such access to this information pursuant to a nondisclosure agreement.

- (8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure.**

The material must be kept confidential for an indefinite period. Confidential treatment must be afforded this information as long as it would provide a basis for AT&T Mobility's competitors to gain insight into its business operations. AT&T cannot

¹ *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

² *National Parks & Conservation Assoc. v. Morton*, 498 F.2d 765 D.C. Cir. (1974) ("*National Parks*").

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determine at this time any date on which the information would become “stale” for such a purpose.

Conclusion

For all the foregoing reasons AT&T requests that the Commission withhold from public disclosure pursuant to section 0.459 of the Commission’s Rules the outage information contained in Confidential Exhibits A through H. If the Commission is unable for any reason to keep this information confidential, AT&T respectfully requests that the Commission return the information to AT&T pursuant to section 0.459(e) of the Rules.

Sincerely,

/s/ Cathy Carpino
Cathy Carpino

Attachments

EXHIBIT L

Washington 2012 Filings (Annual Recertification)

This exhibit includes information to be filed with the Washington Utilities and Transportation Commission on or before 9/1/12 covering calendar year 2011.

Specifically the exhibit includes the following pages or text:

- Note: AT&T does submit outage information to the Washington Commission. However, the 2011 WA Outages Report will not be completed by 7/2/12. The WA Outage Report differs from the Section 54.313(a)(2) requirements. Therefore, AT&T will submit an addendum to this filing with 30 days (8/2/12) that will include the WA Outage Report.
- Page 2 54.313(a)(3) Unfulfilled Service Extension Requests
U-SERs are attached as Exhibit D to the Annual Recertification
- Page 3 54.313(a)(4) Complaints per 1000 handsets/subscribers
Complaints per 1000 are attached as Exhibit E to the Annual Recertification
- Page 4 54.313(a)(5) Consumer Protection (i.e., CTIA Certification)
- Page 5 54.313(a)(6) Emergency Preparedness Plans

Washington 2012 Filings

(Annual Recertification)

3. Report on failure to provide service (WAC 480-123-070(3))

AT&T Mobility's report on the number of requests for service that were unfulfilled for calendar year 2011 is included as Exhibit D. The exhibit also describes in detail how AT&T Mobility attempted to provide service to those customers. AT&T Mobility has employed the standard adopted by the Federal Communication Commission ("FCC") in 47 C.F.R. §54.202(a)(1)(B) for evaluating requests for service.

Exhibit D

Requests for Service

For all requests for service that AT&T Mobility received through its Service Extension Process, outlined below, AT&T Mobility only had 0 request that went unfulfilled.

Address of request: N/A

Description of attempt to provide service: AT&T Mobility first determined that the customer was in an ETC designated area and then followed the following steps to determine whether it could reasonably provide service to the customer.

1. Modifying or replacing customer equipment: N/A
2. Adjusting other network or customer equipment: N/A
3. Adjusting nearest cell site: N/A
4. Reselling another carrier's service: N/A
5. Constructing a repeater or extender: N/A
6. Construct a cell site: N/A

Washington 2012 Filings

(Annual Recertification)

4. Report on complaints per 1,000 handset/lines (WAC 480-123-070(4))

AT&T Mobility's report with separate totals for the numbers of complaints from customers in Washington made to the FCC and the consumer protection division of the office of the attorney general of Washington is attached hereto as Exhibit E. This exhibit also generally describes the nature of the complaint and AT&T Mobility's efforts to resolve the matter.

It should be noted that due to system limitations the information provided in this report is for the entire state of Washington and not just the areas in which AT&T Mobility is designated as an ETC.

Exhibit E

Section 54.209(a)(4) of the Commission's Rules require an ETC to annually report the number of complaints per 1,000 handsets or lines.

AT&T Mobility has identified the number of complaints received from the Public Service Commission of Washington, the Commission, the Washington Attorney General, and the Better Business Bureau (BBB), per 1,000 handsets during the 2011 calendar year as 0.2584 per 1,000 handsets. AT&T Mobility believes that this information best represents customer complaints, which is the requirement. Calls into customer care can be for a large variety of reasons and do not necessarily constitute a complaint, but could instead be an inquiry about service, a question about a bill or so forth. However, customers that send a letter a state or federal agency, the BBB or an AT&T executive more often than not have a complaint and are not contacting the company with an inquiry. The information provided is for the entire state of Washington and is not limited to the Designated Area.

Washington 2012 Filings

(Annual Recertification)

5. Compliance with applicable service quality standards (WAC 480-123-070(5))

For wireless carriers the rule requires a commitment to comply with the Cellular Telecommunications and Internet Association's ("CTIA") Consumer Code for Wireless Service ("Code"). On an annual basis AT&T Mobility completes a certification process with CTIA. For 2011, AT&T certified to CTIA that it had adopted the principals, disclosures and practices set

forth in the CTIA Code.

Washington 2012 Filings

(Annual Recertification)

6. Certification of the ability to function in emergency situations (WAC 480-123-070(6))

To comply with this requirement an ETC must certify that it has adhered to the requirements in WAC 480-123-030(1)(g). WAC 480-123-030(1)(g) requires wireless providers that are ETCs to have “four hours of back up battery power at each cell site, back up generators at each microwave hub, and at least five hours back up battery power and back up generators at each switch.”

AT&T Mobility complies with the backup power requirement for its switches and microwave hubs within its ETC designated area. With respect to the requirement regarding four hours of battery backup at all cell sites, on February 15, 2007, the Commission issued Order 01 (Docket UT-063060) which required that by February 15, 2009 AT&T Mobility have four hours of backup power at its priority and coverage cell sites within its ETC designated area using a reliable alternate power sources (battery, fixed generators or fuel cells). On March 6, 2009, AT&T Mobility submitted a Compliance Report and Request for Limited Extension of Partial Exemption (“Back-up Power Report”)⁴ which showed that all but three of its priority and coverage cell sites had been augmented to comply with the 4-hour backup power requirement. In that same filing, AT&T Mobility requested a one year extension for the three priority and coverage cell sites that due to various reasons were not able to be upgraded by February 15, 2009. In Order 02, Ordering Paragraph 4, the Commission granted AT&T Mobility a one-year extension for these three cell sites⁵ and the upgrades were completed.

On August 3, 2009, AT&T Mobility filed with the Commission a Request for Clarification or in the Alternate an Extension for Compliance with the 4-hour back-up power requirement for its non-priority sites. The Commission in Order 02 (Docket UT-063060) decided that all of AT&T Mobility’s cell sites within its ETC designated area must meet the 4-hour back-up power requirement; however, the Commission granted AT&T Mobility until July 1, 2012 to meet this requirement for its non-priority sites, subject to certain conditions. One condition was that AT&T Mobility must include a compliance status report on back-up power upgrades in its annual ETC filing with the Commission.