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August 20, 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), on July 2, 2012, AT&T Mobility filed a copy its Federal Communications Commission ("FCC") 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") with the Washington Utilities and Transportation Commission ("Commission"). The July 2, 2012 FCC Report did not contain detailed outage information as the outage reporting requirement in Washington differs from the FCC's requirement set forth in 47 CFR 54.313(a)(2), and the Washington outage information was not available until the end of July. On July 30, 2012, AT&T Mobility supplemented its FCC Report with the detailed outage information. As the detailed outage information in the FCC Report is the same information contained in Exhibit C of AT&T Mobility's Annual ETC Eligible Telecommunications Report and Future Annual Plan filed with the Commission on July 30, 2012, AT&T Mobility is only filing the redacted version of the filing made at the FCC.

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

Sincerely,

Sharon Mullin
Sharon Mullin

Attachments

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Cathy Carpino
General Attorney

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July 30, 2012

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

**Re: AT&T Mobility's Annual Eligible Telecommunications Carrier Reports,
Connect America Fund, WC Docket No. 10-90**

Dear Ms. Dortch:

In accordance with the Wireline Competition and Wireless Telecommunications Bureaus' February 3, 2012, Order¹ and the Wireline Competition Bureau's May 8, 2012 Public Notice,² AT&T Inc. (AT&T), on behalf of its AT&T Mobility state-designated eligible telecommunications carrier affiliate in Washington state, hereby submits detailed outage information that is due at the Washington Utilities and Transportation Commission on July 31, 2012. The manner in which AT&T Mobility is required to track and report outage information to the Washington Commission differs from the Commission's requirements set forth in section 54.313(a)(2) of its rules and is time consuming. Consequently, AT&T was unable to compile this information by the Commission's July 2 deadline. In our June 28, 2012 filing, which was subsequently re-filed on July 3, we informed the Commission that we would supplement the Washington state information by providing the outage data by August 2, 2012. See AT&T Mobility's Annual Eligible Telecommunications Carrier Reports, WC Docket No. 10-90, Exh. L at 1 (filed July 3, 2012).

We request confidential treatment of the enclosed network outage report. Please do not hesitate to contact me with any questions.

Sincerely,

/s/ Cathy Carpino
Cathy Carpino

Attachments

¹ *Connect America Fund*, WC Docket No. 10-90, *et al.*, Order, DA 12-147, ¶ 10 (rel. Feb. 3, 2012).

² *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, *et al.*, Public Notice, DA 12-279 (rel. May 8, 2012).



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July 30, 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 (SAC 529910) 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 Confidential Exhibit C.

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 Exhibit C 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 Proposed Rulemaking, FCC 04-188, ¶ 3 (rel. August 19, 2004) ("This data, though useful

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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 Exhibit C 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); *Frazee 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 to the Commission must be withheld from public disclosure if such information is not

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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 Exhibit C. 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

Attachment

EXHIBIT C

REDACTED

CONFIDENTIAL OUTAGE REPORT

Your submission has been accepted

ECFS Filing Receipt - Confirmation number: 2012730774764

Proceeding

Name	Subject
10-90	In the Matter of Connect America Fund A National Broadband Plan for Our Future High-Cost Universal Service Support. .

Contact Info

Name of Filer: AT&T
Email Address: th5467@att.com
Attorney/Author Name: Cathy Carpino

Address

Address For: Filer
Address Line 1: 1120 20th Street, NW
Address Line 2: Suite 1000
City: Washington
State: DISTRICT OF COLUMBIA
Zip: 20036

Details

Small Business Impact: NO
Type of Filing: SUBMISSION OF REPORT

Document(s)

File Name	Custom Description	Size
7-30-12 Confidentiality Request for WA outage info - redacted completed.PDF		188 KB

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