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June 16, 2023

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Room TW-B204F
Washington, DC 20554

Dear Ms. Dortch:

Re: Nevada Bell Telephone Company (NBTC) Confidential Documents; Tariff F.C.C. No. 1,
Transmittal No. 339 Request for Confidential Treatment

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 Commission's rules related to the Freedom of Information Act, 47 C.F.R. §§ 0.457 and 0.459, NBTC requests confidential treatment of certain data filed in conjunction with its 2023 Annual Filing filed on June 16, 2023.

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

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

NBTC requests that the pages marked "Confidential" in the attached document be treated on a confidential basis under Exemption 4 of the Freedom of Information Act.

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

NBTC Tariff F.C.C. No. 1, Transmittal No. 339

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

The information provided by NBTC displays access service revenues and quantities which NBTC considers to be confidential business information, and such disclosure would cause NBTC competitive harm.

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

NBTC's tariffed services are subject to significant competition from other LECs, cable companies, and wireless and satellite carriers. Telecommunications is a highly competitive industry, and the presence of such competition and the likelihood of competitive injury threatened by release of the information provided to the Commission by NBTC 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).

(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 regulates under FOIA Exemption 4.

"[W]here commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of Exemption 4." *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2363 (2019). The documents and information submitted to the Enforcement Bureau by NBTC in the above-referenced proceeding is not customarily released to the public, is maintained on a confidential basis, and is not ordinarily disclosed to third parties. Under *Argus Leader*, the United States Supreme Court held that no competitive harm need be shown.

Nevertheless, disclosure of NBTC's confidential commercial information would, in fact, cause competitive harm to NBTC. As described in response to Factor 4, NBTC's tariffed services are subject to significant competition. Competitors could use the confidential commercial information to assist in targeting their service offerings and more effectively interacting with new or potential customers, thus enhancing their competitive positions to the detriment of the competitive position of NBTC. *See, e.g., GC Micro Corp. v. Defense Logistics Agency*, 33 F.3d 1109 (9th Cir. 1994). The protective procedures established by the Commission and other governmental agencies recognize the need to keep such information confidential to the maximum extent possible. The Commission has provided the assurances that it is "sensitive to ensuring that the fulfillment of its regulatory responsibilities does not result in the unnecessary disclosure of information that might put its regulatees at a competitive disadvantage." *Confidential Information Order* at ¶ 8.

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure; and

This information has been maintained on a confidential basis and would not ordinarily be disclosed to parties outside the company.

(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 and would not ordinarily be disclosed to parties outside the company.

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

NBTC cannot determine at this time any date on which this information would become “stale” for such a purpose. The NBTC revenues and quantities information should be withheld from public disclosure indefinitely as its commercial value to competitors is not likely to diminish.

(9) Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

Under applicable Commission and Court rulings, the subject material must be kept free from public disclosure. Exemption 4 of the Freedom of Information Act shields information which is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. See Washington Post Co. v. U.S. Department of Health and Human Services, 690 F. 2d 252 (D.C. Cir. 1982). The attached information clearly satisfies the first two elements of that test. With respect to the third element of that test, information is considered to be “confidential” if it is “both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy. . . .” *Argus Leader*, 139 S. Ct. 2366. For the reasons stated above, disclosure of the subject information would plainly satisfy that part of the test.

The Commission has specifically held that disclosure of data gathered by the Commission under its audit authority would be likely to impair the government’s future ability to obtain such data, notwithstanding the statutory authority to compel production. See In the Matter of Martha H. Platt On Request for Inspection of Records, FOIA Control Nos. 90-63 (October 3, 1990).

The Commission has recognized that competitive harm can result from the disclosure of confidential business information that gives competitors insight into a company’s costs, pricing plans, market strategies, and customer identities. See In re Pan American Satellite Corporation, FOIA Control Nos. 85-219, 86-38, 86-41, (May 2, 1986).¹

Protective Order Requested

NBTC acknowledges that the Bureau is directed by the Commission’s Confidential Information Order, at paras. 35-42, to routinely employ the standard protective order detailed in the Confidential Information Order for materials submitted under a request for confidential treatment unless complete confidentiality is requested. If any person (other than an agency employee working directly on the

¹ Further, the Commission has ruled that not only should such data be protected, but also that information that explains and analyzes in detail such information must be protected to ensure the competitively sensitive information cannot be determined. *Allnet Communications Services, Inc. Freedom of Information Act Request*, FOIA Control No. 92-149, Memorandum Opinion and Order (released August 17, 1993) at p. 5. The Commission’s decision was upheld in a memorandum opinion of the U.S. Court of Appeals for the D.C. Circuit, which affirmed a U.S. District Court decision protecting the information. Allnet Communications Services, Inc. v. FCC, Case No. 92-5351 (memorandum opinion issued May 27, 1994, D.C. Cir.).

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matter in connection with which these documents are submitted) requests an inspection or requests a copy of the documents or any portion of them, please provide me sufficient advance notice prior to any such disclosure to allow NBTC to pursue appropriate remedies to preserve the confidentiality of the information. NBTC is also submitting a redacted public version.

Should you have any questions please contact me on (202) 457-2253. Thank you for your attention to this matter.

Very truly yours,

/s/Brett Farley

Brett Farley

Attachments