

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE BY COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF a “Generic” Protective)
Order for the Tariff and Other Nondocketed) DOCKET NO. N99.10.244
Filings of AT&T Communications of the)
Mountain States, Inc.) ORDER NO. 6213

INTRODUCTION

On October 28, 1999, AT&T Communications (AT&T) filed a motion with the Montana Public Service Commission for a generic Protective Order to cover AT&T’s proprietary, confidential and trade secret information in nondocketed miscellaneous filings, various tariff filings, filings in response to information requests and similar filings for the next four years. The order is generic in that it is not specific to any formal docket.

Some information submitted by AT&T in conjunction with those filings listed above may reasonably be viewed as trade secret and is, therefore, protectible pursuant to § 69-3-105(2), MCA, which states, “The Commission may issue a protective order when necessary to preserve trade secrets, as defined in 30-14-402, required to carry out its regulatory function.” For the identified types of filings, granting AT&T’s request for a generic Protective Order is more efficient than hearing a request each time trade secrets become a concern. The Commission believes it is appropriate to issue the following Protective Order to continue to provide a procedure for balancing the public’s right to know against AT&T’s right to nondisclosure of confidential trade secret information. Therefore, AT&T’s Motion for a Protective Order exactly as requested is denied and this amended Protective Order is issued by the Commission. In issuing this order, the Commission is not deciding or expressing an opinion as to whether the information that might be claimed confidential is actually confidential. This order affords interested parties an opportunity to challenge a Proprietary designation.

PROTECTIVE ORDER

This Protective Order shall govern all proprietary, confidential and trade secret information submitted by AT&T in tariff filings, other nondocketed matters filings, filings in response to informal information requests and similar filings.

1. **Proprietary Information** All information, documents, studies, and other materials claimed to be a trade secret, proprietary, or confidential and submitted by AT&T in tariff and miscellaneous filings or at the request of the PSC or its Staff will be furnished in accordance with the terms of this Order and shall be treated by all persons allowed access to the information in accordance with this Order as constituting private, confidential, privileged commercial and financial information, or trade secret information (“Proprietary Information”) and shall neither be used nor disclosed except in accordance with this Order. All material claimed by AT&T to be Proprietary Information must be clearly marked with an appropriate designation and submitted on yellow paper.

2. **Terms of Disclosure to PSC and MCC** All Proprietary Information made available in accordance with this Order shall be given solely to counsel for the PSC and the Montana Consumer Counsel (MCC) or such other persons within the PSC or MCC as may properly be designated as recipients under the terms of this Order and shall not be used or disclosed except for: (a) the internal purposes of the PSC or MCC; (b) purposes of a proceeding before the PSC that is directly related to the purpose of, or request for, the submission of the Proprietary Information; or (c) as otherwise permitted by subsequent order of the PSC. A member of the PSC, PSC Staff, the MCC, and MCC Staff, when necessary in the performance of their duties, may have access to any Proprietary Information made available in accordance with this Order and shall be bound by its terms. Access to Proprietary Information may be authorized by counsel for the PSC or MCC (or counsel for other parties that may properly acquire access to

the information in accordance with the terms of this Order), solely for the purposes described above, to other persons identified as being their expert consultants.

3. Disclosure to Others – Petition Any member of the public or other interested party with proper standing may specially petition the PSC for access to Proprietary Information furnished in accordance with the terms of this Order. A petition must fully identify the petitioner, state the basis, need, and interest of the petitioner, and must demonstrate that the interest directly relates to the ratemaking, investigatory, or other regulatory function of the PSC. The petitioner shall give notice of the petition to AT&T, which shall have a 14 days to file an objection or response prior to the PSC's ruling. If the petition is granted by the PSC, the petitioner shall be given access to the Proprietary Information in accordance with the terms of this Order and shall be bound by its terms. Prior to disclosure, counsel for the petitioner shall submit a fully executed nondisclosure agreement (Exhibit "A") in the form attached to this Order. Any person designated as an expert consultant by a petitioner, and who is accorded access to Proprietary Information in accordance with the terms of this Order, may not be an officer, director, or employee (except legal counsel) of a party to the proceeding, or an officer, director, employee, or stockholder, or member of an association or corporation of which any such party is a member, subsidiary, or affiliate.

4. Nondisclosure Agreement Prior to giving qualified persons access to Proprietary Information, counsel or staff for the PSC and MCC and counsel for any person or party seeking the Proprietary Information shall deliver a copy of this Order to the qualified person who shall agree in writing to comply with and be bound by this Order. Proprietary Information shall not be disclosed to any person who has not signed a nondisclosure agreement (Exhibit "A") in the form attached to this Order. The nondisclosure agreement shall require the person to whom disclosure is to be made to read a copy of this Order and certify in writing that he or she has read the Order

and agrees to be bound by its terms. The agreement shall contain the person's full name, permanent address, employer and name of the interested person or party with whom the person is associated. The agreement shall be delivered to counsel for AT&T and to the PSC.

5. Delivery of Documentation Where feasible, Proprietary Information will be marked as such and delivered directly to appropriate counsel. In the alternative, Proprietary Information may be made available for inspection and review by appropriate counsel, staff, and experts at a time and place mutually agreed to by AT&T and the parties and qualified interested persons, unless directed otherwise by the PSC.

6. Challenge to the Classification of Proprietary Information This order establishes a procedure for the expeditious handling of information that AT&T claims is Proprietary Information. It is not an agreement or ruling on the confidential, proprietary or trade secret nature of such information. Any party or interested person with proper standing, the MCC, or the PSC on its own motion, may challenge AT&T's claim at any time. The challenge, by petition or motion, must be served upon AT&T and parties, who may then file a response or objection within 14 days of service. The response may also include a request for a hearing or oral argument before the PSC, but must include grounds for such request.

(a) In the event that the parties are unable to agree that certain documents, data, information, studies, or other matters constitute Proprietary Information, the entity or person objecting to the claim shall submit the matter to the Commission for its review. When the Commission decides whether the challenged documents, data, information, studies or other matters constitute Proprietary Information, it shall enter an order resolving the issue.

(b) Any party or qualified interested person (as described above) may seek through appropriate pleading to have documents that have been designated as Proprietary Information in accordance with this Order removed from the protective requirements of this Order and placed in

the public record. If the confidential, proprietary or trade secret nature of this information is so challenged, resolution of the issue shall be made by a hearing examiner or the Commission after consideration of briefs or proceedings in camera, which shall be conducted under circumstances such that only those persons authorized to have access to the Proprietary Information shall be present. The record of the in camera hearing shall be marked "CONFIDENTIAL - SUBJECT TO A PROTECTIVE ORDER IN DOCKET NO." It shall be transcribed only upon agreement of all participating parties, or by order of the hearing examiner or the Commission. If transcribed, it shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order, unless and until released from the restrictions of this Order through agreement of the parties or in accordance with an order of a hearing examiner or the Commission. Any court reporter or person recording or transcribing the proceedings shall also be required to sign an Exhibit "A." In the event that a hearing examiner or the Commission should rule that any information should be removed from the protective requirements of this Order, the parties shall not disclose the information or use it in the public record for seven business days to give AT&T a reasonable opportunity to seek a stay or other appropriate relief in court.

7. Seal While in the custody of the PSC, the MCC, or any agency subject to public right-to-know provisions, materials subject to this Order shall be marked "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER IN DOCKET NO." and, due to its confidential, proprietary or trade secret nature, shall not be considered as records possessed or retained within the meaning of any open meeting or access to public record statutes.

8. Use in Pleadings, Briefs, and Other Documents Where reference to Proprietary Information is required in pleadings, briefs, argument or motions, it shall be by citation to title or other nonconfidential description. Any further use or substantive reference to Proprietary

Information shall be placed in a separate section of the pleading or brief and submitted to the Commission under seal. This sealed section shall be served only upon counsel (one copy each) who have signed an Exhibit "A." All the protections afforded in this Order apply to materials prepared and distributed in accordance with this paragraph.

9. Use in Commission Orders A hearing examiner or the Commission will attempt to refer to Proprietary Information only in a general or summary form, and to the greatest extent possible, will avoid reproduction of Proprietary Information in any decision or ruling. If it is necessary to discuss Proprietary Information in greater detail, it shall be placed in a separate section of an order, under seal. This sealed section shall be served only on counsel (one copy each) who have signed an Exhibit "A." Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission after signing an Exhibit "A."

10. Summary Of Proprietary Information In all instances when AT&T files material with the Commission, pursuant to this order, which AT&T considers to be Proprietary, AT&T shall prepare a brief non-proprietary written summary of the Proprietary information. In other instances, if deemed necessary by the Commission, AT&T shall prepare a written summary of the Proprietary Information referred to in a decision or order, for placement in the public record.

11. Segregation of Files All Proprietary Information filed with the Commission shall be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Order, unless the Proprietary Information is released from the restrictions of this Order through agreement of the parties, order of the Commission, or order of a court having competent jurisdiction. All written Proprietary Information coming into the possession of the MCC under this order may be retained in the MCC

office files, but shall be withheld from inspection by others, except for qualified MCC staff, unless released by permission of AT&T, order of the Commission, or order of a court.

12. Preservation of Confidentiality All persons who may be entitled to receive, or who are afforded access to any Proprietary Information by reason of this Order shall neither use nor disclose the Proprietary Information for purposes of business or competition, or any purpose other than those contemplated by this Order, and shall take reasonable precautions to keep the Proprietary Information secure in accordance with the purposes and intent of this Order.

13. Return Unless otherwise ordered, Proprietary Information for which a claim of confidentiality is made, and which is either subject to the protective requirements of this Order or is finally determined to be confidential, proprietary or a trade secret, shall be returned by all parties to counsel for AT&T within 30 days after final settlement or conclusion of the proceeding, including judicial review. This does not apply to the Commission or the MCC or their expert consultants. However, following completion of the proceeding or, if there is no proceeding, after the matter or issue giving rise to the request, for or the need to submit, the Proprietary Information has been resolved or is no longer an issue, AT&T may request that Proprietary Information be returned by the MCC and its expert consultants. Paper copies, microfiche or other medium approved by the PSC of all Proprietary Information that is made part of the record in any proceeding must remain in the possession of the PSC. The MCC may refuse to return Proprietary Information only if it is made part of a PSC record and may retain the information in the form necessary or appropriate by the MCC, subject to the terms of this Order.

14. Reservation of Rights The persons affected by the terms of this Protective Order retain the right to question, challenge, and object to the admissibility (in any proceeding before the PSC or other appropriate body) of any information furnished under the terms of this Protective Order, on the grounds of relevancy or materiality. This Order shall in no way

constitute any waiver of the rights of any interested party to contest any assertion or finding on the right of privacy, confidentiality or privilege, and to appeal any such determination of the Commission.

15. Applicability This Order shall apply only to information filed with the PSC in conjunction with miscellaneous tariff filings, other nondocketed filings, filings in response to informal information requests and similar filings, provided that such filings must include a specific request for proprietary treatment. This Order shall be effective for a period of four years beginning immediately unless the PSC orders otherwise. A new request may be submitted at the end of the four years if AT&T intends to seek an extension of the terms of this Order.

16. Amendment or Modification The Commission retains jurisdiction of this matter, and may alter or amend the provisions of this Order as it considers appropriate upon its own motion or the motion of a party or interested person after reasonable notice.

DONE AND DATED the 23rd day of November, 1999, by a vote of 5 – 0.

ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM

EXHIBIT "A"

I have reviewed AT&T's "Generic" Protective Order for tariff and other nondocketed filings and agree to be bound by its terms and conditions.

Signature

Typed or Printed Name

Employer or Firm

Business Address

Party

Date