

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Update
Surcharge Mechanisms to ensure Equity and
Transparency of Fees, Taxes and Surcharges
Assessed on Customers of
Telecommunications Services in California.

Rulemaking 21-03-002

**COMCAST PHONE OF CALIFORNIA, LLC (U-5698-C) MOTION TO FILE UNDER
SEAL SPECIFIC INFORMATION IN ITS COMMENTS ON STAFF REPORT AND
SCOPING MEMO AND RULING TO UPDATE THE SURCHARGE MECHANISMS
FOR PUBLIC PURPOSE PROGRAMS**

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July 28, 2021

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FOR PUBLIC PURPOSE PROGRAMS**

Pursuant to Rule 11.4 of the Commission’s Rules of Practice and Procedure (“Rules”), Comcast Phone of California, LLC (U-5698-C) (“Comcast”) respectfully submits this Motion to request that certain confidential information contained in the Comments of Comcast Phone of California, LLC on Staff Report and Scoping Memo and Ruling To Update the Surcharge Mechanisms for Public Purpose Programs (“Comments”) be filed under seal and to request that the Commission afford confidential treatment to this information for the reasons discussed below.

I. CONFIDENTIAL INFORMATION

Comcast has included under seal in the foregoing Comments information about its Public Purpose Programs (“PPP”) remittances between 2016-2020 (the “Confidential Information”). This information has been marked as confidential in the Comments.

Comcast respectfully requests that the Commission afford confidential treatment to the Confidential Information pursuant to the California Public Records Act (“CPRA”) and Pub. Util. Code § 583. General Order (“G.O.”) 66-D, § 3.2 requires information submitters seeking confidential treatment of non-public information outside of a formal proceeding to (i) designate information as confidential; (ii) specify the basis for confidential treatment under the CPRA or

Commission order; (iii) provide a declaration in support of confidential treatment; and (iv) provide contact information of those responsible to monitor and respond to Commission communications regarding the submitted information. The enclosed information is not otherwise publicly available, and this submission addresses all requirements set forth in G.O. 66-D to seek confidential treatment.

A. Designation of the Information as Confidential

In the Comments, Comcast marked the Confidential Information with headers and brackets indicating that it is confidential.

B. First Legal Basis for Confidential Treatment – Trade Secret

The CPRA protects against disclosure that is prohibited under state law, including the California Evidence Code, which is the only state law expressly spelled out in the code subsection.¹ The California Evidence Code protects against public disclosure of a “trade secret.”² A trade secret is defined in California law as:

information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.³

¹ Cal. Gov. Code § 6254(k) (“[T]his chapter does not require the disclosure of ... (k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, *provisions of the Evidence Code relating to privilege.*”) (emphasis added).

² Cal. Evid. Code § 1060 (protecting against disclosure of trade secrets). *See, e.g., Lion Raisins, Inc. v. USDA*, 354 F.3d 1072, 1080-81 (9th Cir. 2004) (where information collected by agency would allow competitor to “infer critical information about its competitors’ volume, market share, and marketing strategy,” agency appropriately refused to produce in response to Freedom of Information Act request).

³ Cal. Civ. Code § 3426.1(d).

The Confidential Information meets both elements of the definition of a trade secret, and the Commission has routinely granted requests for confidential treatment of comparable information.⁴

Disclosure of the Confidential Information would decrease Comcast's competitive advantage in the highly competitive communications marketplace. Specifically, nondisclosure of this information has independent economic value because disclosure of this information would benefit Comcast's competitors by giving them specific non-public information about Comcast's total PPP remittances on a year-by-year basis over a five-year period. In the normal course of business, Comcast makes significant efforts to guard and not disclose this confidential information.

Thus, the Confidential Information constitutes a trade secret because it (i) has independent economic value from its nondisclosure and (ii) is closely guarded by Comcast to maintain its secrecy. The CPRA directly protects against disclosure of trade secrets, and the Commission has previously ruled that trade secrets are entitled to confidential treatment.⁵

C. Second Legal Basis for Confidential Treatment – Balancing Test

Section 6255(a) of the CPRA protects against disclosure of information where “the public interest served by not disclosing the record clearly outweighs the public interest served by

⁴ See, e.g., D.14-12-037 (protecting as trade secret business methodologies and facility operation information), and D.16-12-013 (granting motion for confidential treatment of data used for revenue, rates, and cost forecasting, in part, on the basis of trade secret privilege).

⁵ Moreover, the U.S. Supreme Court recently clarified that a movant need not prove “substantial competitive harm” to receive confidential treatment of commercial or financial information under analogous provisions of the federal Freedom of Information Act (“FOIA”). *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019). Instead, “where 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 [FOIA].” *Id.* Comcast clearly has met that standard here.

disclosure.”⁶ Here, Comcast is voluntarily providing the Confidential Information to the Commission on a confidential basis in response to a specific question in the Scoping Memo. The information will assist the Commission to establish a better record and to inform its decision-making process regarding possible surcharge changes. Comcast is not aware of any significant public interest benefit that would derive from public disclosure of the Confidential Information. On the other hand, public disclosure of the Confidential Information would *harm* the public interest by reducing the benefits derived from a competitive communications marketplace. Thus, the public interest served by not disclosing the Confidential Information clearly outweighs the public interest served by its disclosure.

D. Declaration

The request for confidential treatment is supported by the attached declaration of John A. Gutierrez, Comcast’s Senior Director – Government Affairs.

E. Contact Information

Questions about Comcast’s request for confidential treatment should be directed to Thaila K. Sundaresan at 415-276-6521 or thailasundaresan@dwt.com.

II. CONCLUSION

For these reasons, Comcast respectfully requests confidential treatment of the Confidential Information and that the Commission protect this information from release to persons and parties outside of the Commission.

⁶ Cal. Gov. Code § 6255(a); *see also Michaelis, Montanari & Johnson v. Super. Ct.*, 38 Cal. 4th 1065, 1073 (2006) (ruling that, under Section 6255, proposals for lease of hangar facility at public airport were exempt from disclosure during negotiation period to ensure benefits of competition which “assure the best social, environmental, and economic result for the public”).

Respectfully submitted,

By: /s/ Suzanne Toller

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For Comcast Phone of California, LLC

Dated: July 28, 2021


DECLARATION OF JOHN A. GUTIERREZ

I, John A. Gutierrez, hereby declare as follows:

1. I am Senior Director – Government Affairs for Comcast Phone of California, LLC (“Comcast”).
2. The information stated herein has been derived from my work with Comcast.
3. I have been delegated the authority to proffer this Declaration by Brian A. Rankin, Vice President, Senior Deputy General Counsel of Comcast, an officer of Comcast.
4. Comcast is submitting information about its total Public Purpose Programs (“PPP”) remittances on a year-by-year basis between 2016-2020 (the “Confidential Information”) in its comments on the Staff Report and Scoping Memo and Ruling (“Comments”). Comcast requests confidential treatment for this information, and it has been marked as confidential in the Comments.
5. Trade Secret. Disclosure of the Confidential Information would decrease Comcast’s competitive advantage in the highly competitive communications marketplace. Specifically, nondisclosure of this information has independent economic value because disclosure of this information would benefit Comcast’s competitors by giving them specific non-public information about Comcast’s total PPP remittances between 2016-2020. In the normal course of business, Comcast makes significant efforts to guard and not disclose this confidential information.
6. Balancing Test. Comcast is voluntarily providing the Confidential Information to the Commission on a confidential basis in response to a specific question in the Scoping Memo to assist the Commission to establish a better record and to inform its decision-making process regarding possible surcharge changes. Comcast is not aware of any significant public interest benefit that would be derived from the public disclosure of its total PPP remittances between 2016-2020. On the other hand, as explained above, public disclosure of the Confidential Information would *harm* the public interest by reducing the benefits derived from a competitive communications marketplace.

I declare under penalty of perjury under the laws of the state of California that, to the best of my knowledge, the foregoing is true and correct.

Executed on July 28, 2021 in Livermore, California.


John A. Gutierrez

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Rulemaking 21-03-002

[PROPOSED] ORDER GRANTING COMCAST PHONE OF CALIFORNIA, LLC (U-5698-C) MOTION TO FILE COMMENTS AND DECLARATION OF JOHN A. GUTIERREZ UNDER SEAL

On July 28, 2021, Comcast Phone of California, LLC (U-5698-C) (“Comcast”) respectfully submits this Motion to request that the attached confidential version of the Comments of Comcast Phone of California, LLC on Staff Report and Scoping Memo and Ruling (“Comments”) be filed under seal and to request that the Commission protect this information from release to persons and parties outside of the Commission. The information included in the Comments contains confidential and highly sensitive information about Comcast’s remittances to the Commission’s Public Purpose Programs over a five year-period from 2016-2020. This information has been marked confidential in the Comments.

No opposition to this Motion has been submitted and the time for submission of such opposition has expired. No hearing on the Motion is necessary.

Good cause having been shown, and no opposition to the Motion having been submitted,
IT IS HEREBY RULED that:

1. Comcast’s Motion to file under seal and afford confidential treatment to the confidential version of the Comments is granted.

2. The identified information shall be received under seal, shall remain under seal, and shall not be made accessible to the public or disclosed to anyone other than Commission staff, except upon further order or ruling of the Commission.

Dated _____, 2021 at San Francisco, California.

Administrative Law Judge