BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of )

Venture Management Holdings, Ltd., )

)

Complainant, )

)

v. ) Case No. 06-1162-TP-CSS

)

AT&T Ohio, )

)

Respondent. )

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MOTION FOR EXTENSION OF PROTECTIVE ORDER

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AT&T Ohio[[1]](#footnote-1), by its attorneys, and pursuant to O.A.C. § 4901-1-24(F), moves for an extension of the protective order granted in the captioned case. In its Opinion and Order adopted on August 15, 2007 the Commission granted the protective order requested by the Complainant that addressed AT&T Ohio's confidential information that had been provided to the Complainant in discovery and became part of the record in the case as Complainant's Exhibit 7A. The order also granted the requested protection from public disclosure as to Respondent's Exhibit 3. The protective order relates to Company-specific cost information contained in the Custom Work Order ("CWO") bill support document and to trade secret business practices set forth in the Company's Operating Practice 46, related to CWOs. Most recently, an extension of the protective order was granted in an Entry adopted on July 16, 2010. However, that Entry treated the requested extension retroactively and concluded that the extended period of protection will expire on August 14, 2010. Under O.A.C. § 4901-1-24(F), AT&T seeks an additional 18-month extension of the protective orders for an unlimited period of time. The reasons underlying this motion are detailed in the attached Memorandum in Support.

Because of the short time frame provided in the July 16, 2010 Entry, this motion could not be filed more than 45 days prior to the expiration of the order adopted in that Entry. A waiver of that requirement is therefore justified under the circumstances, and is hereby requested.

Respectfully submitted,

AT&T Ohio

\_\_\_\_\_\_/s/ Jon F. Kelly\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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MEMORANDUM IN SUPPORT OF MOTION FOR

EXTENSION OF PROTECTIVE ORDER

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AT&T Ohio seeks an additional 18-month extension of the protective order previously granted in this case. The AT&T Ohio proprietary information filed and used in this case is competitively sensitive cost and billing information that is deserving of further protection under Ohio law as a trade secret. The CWO bill support contains detailed cost information of the kind that is ordinarily protected from public disclosure in Commission proceedings. It contains confidential cost information such as labor rates and corporate overhead costs that should be excluded from public disclosure. While some of the numbers used in the complaint case are outdated, much of the cost support information and the methodology are still current and are trade secret information. The Company's Operating Practice 46 is a detailed internal Company manual on the creation of CWOs and other internal processes that includes trade secret information. Similarly, while some portions of the Operating Practice 46 have been updated, most of the information, as well as the format and structure of the document, are trade secrets.

AT&T Ohio seeks continued protection of the information filed under seal in this case for an additional 18 months under the Commission's rule. The CWO billing process is still in place and Operating Practice 46 is still in force. The information that is the subject of this motion should therefore be considered as confidential and/or proprietary and should be further protected from public disclosure. O.A.C. § 4901-1-24(D) provides that the Commission or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. As set forth herein, the information at issue here represents confidential business information and, therefore, should be protected from disclosure.

Non-disclosure of the identified confidential information will not impair the purposes of Title 49. While this case has concluded, the Commission and its Staff have full access to the information in order to review it, if necessary. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

The Commission is of the opinion that the "public records" statute must also be read in pari materia with Section 1333.31, Revised Code ("trade secrets" statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re General Telephone Co., Case No. 81-383-TP-AIR (Entry, February 17, 1982). Likewise, the Commission has facilitated the protection of trade secrets in its rules (O.A.C. § 4901-1-24(A)(7)).

The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act:

"Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

(1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

R. C. § 1333.61(D). This definition clearly reflects the state policy favoring the protection of trade secrets such as the information which is the subject of this motion.

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of a public utility, the trade secret statute creates a duty to protect them. New York Tel. Co. v. Pub. Serv. Comm. N.Y., 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses, including public utilities, through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in numerous proceedings. See, e.g., Elyria Tel. Co., Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); Ohio Bell Tel. Co., Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); Columbia Gas of Ohio, Inc., Case No. 90-17-GA-GCR (Entry, August 17, 1990).

In 1996, the Ohio General Assembly amended R. C. §§ 4901.12 and 4905.07 in order to facilitate the protection of trade secrets in the Commission's possession. The General Assembly carved out an exception to the general rule in favor of the public disclosure of information in the Commission's possession. By referencing R. C. § 149.43, the Commission-specific statutes now incorporate the provision of that statute that excepts from the definition of "public record" records the release of which is prohibited by state or federal law. R. C. § 149.43(A)(1). In turn, state law prohibits the release of information meeting the definition of a trade secret. R. C. §§ 1333.61(D) and 1333.62. The amended statutes also reference the purposes of Title 49 of the Revised Code. The protection of trade secret information from public disclosure is consistent with the purposes of Title 49 because the Commission and its Staff have access to the information; in many cases, the parties to a case may have access under an appropriate protective agreement. Such a protective agreement is in place in this case. The protection of trade secret information as requested herein will not impair the Commission's regulatory responsibilities.

In Pyromatics, Inc. v. Petruziello, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983), the Court of Appeals, citing Koch Engineering Co. v. Faulconer, 210 U.S.P.Q. 854, 861 (Kansas 1980), has delineated factors to be considered in recognizing a trade secret:

(1) The extent to which the information is known outside the business, (2) the extent to which it is known to those inside the business, i.e., by the employees, (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information, (4) the savings effected and the value to the holder in having the information as against competitors, (5) the amount of effort or money expended in obtaining and developing the information, and (6) the amount of time and expense it would take for others to acquire and duplicate the information.

For all of the information which is the subject of this motion, AT&T considers and has treated the information as a trade secret. In the ordinary course of business of AT&T Ohio, this information is stamped confidential, is treated as proprietary and confidential by AT&T Ohio employees, and is not disclosed to anyone except in a Commission proceeding and/or pursuant to staff data request. During the course of discovery, this information was provided only pursuant to a protective agreement.

For the foregoing reasons, AT&T Ohio requests that the protective order issued in this case be extended for an additional 18 months.

Respectfully submitted,

AT&T Ohio

\_\_\_\_\_\_\_\_\_/s/ Jon F. Kelly\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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06-1162.motion protective order extension

1. The Ohio Bell Telephone Company uses the name AT&T Ohio. [↑](#footnote-ref-1)