

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of RCLEC,)
Inc. to Provide Resold and Facilities Based) Case No. 14-1165-TP-ACE
Local Exchange and Competitive)
Telecommunications Services in Ohio.)

ENTRY

The attorney examiner finds:

- (1) On June 30, 2014, RCLEC, Inc. (RCLEC) filed an application seeking authority to provide resold and facilities based local exchange and competitive telecommunications services in Ohio. On the same day, RCLEC filed a motion for a protective order, pursuant to Ohio Adm.Code 4901-1-24(D), requesting that certain financial exhibits filed under seal with its certification application, namely exhibits D-2 and D-3, be kept under seal.
- (2) In support of its motion for a protective order, RCLEC explains that exhibits D-2 and D-3 of its certification application contain competitively sensitive and highly proprietary business financial information that is not generally known or available to the general public. Therefore, RCLEC requests that the information found in these two exhibits be treated as confidential.
- (3) R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purposes of R.C. Title 49. R.C. 149.43 specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).
- (4) Similarly, Ohio Adm.Code 4901-1-24(D) allows an attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information, including where the information is deemed * * * to constitute a

trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”

- (5) Ohio law defines a trade secret as “information * * * that satisfies both of the following: (a) 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. (b) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” R.C. 1333.61(D). The Supreme Court of Ohio has established a six-factor test to be used in analyzing a claim that information is a trade secret under that section. *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-25, 687 N.E.2d 661 (1997).
- (6) Further, Ohio Adm.Code 4901-1-24(D)(1) provides that all documents submitted pursuant to Ohio Adm.Code 4901-1-24(D) should be filed with only such information redacted as is essential to prevent disclosure of the allegedly confidential information.
- (7) The attorney examiner has examined the information covered by the motion for a protective order filed by RCLEC, as well as the assertions set forth in the supportive memorandum. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court, the attorney examiner finds that the information contained in exhibits D-2 and D-3 of RCLEC’s certification application constitute trade secret information. Release of these documents is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of R.C. Title 49. Finally, the attorney examiner concludes that these documents could not be reasonably redacted to remove the confidential information contained therein. Accordingly, the attorney examiner finds that RCLEC’s motion for a protective order is reasonable with regard to the redacted information contained in the aforementioned exhibits and should be granted.

- (8) Confidential treatment shall be afforded for a period ending 24 months from the date of this Entry or until December 28, 2017. Until that date, the Commission's Docketing Division should maintain under seal, exhibits D-2 and D-3 of RCLEC's certification application, filed on June 30, 2014.
- (8) Ohio Adm.Code 4901-1-24(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If RCLEC wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to RCLEC.

It is, therefore,

ORDERED, That, consistent with this Entry, the motion for protective order filed by RCLEC be granted, with regard to the information contained in exhibits D-2 and D-3, filed under seal on June 30, 2014, as part of RCLEC's certification application. It is, further,

ORDERED, That the Commission's Docketing Division maintain, under seal, the unredacted exhibits D-2 and D-3, which were filed under seal on June 30, 2014, for a period of 24 months, ending December 28, 2017. It is, further,

ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Daniel E. Fullin

By: Daniel E. Fullin
Attorney Examiner

JRJ/dah

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in

Case No(s). 14-1165-TP-ACE

Summary: Attorney Examiner Entry ordering that, consistent with this Entry, the motion for protective order filed by RCLEC be granted, with regard to the information contained in exhibits D-2 and D-3, filed under seal on June 30, 2014, as part of RCLEC's certification application; and that the Commission's Docketing Division maintain, under seal, the unredacted exhibits D-2 and D-3, which were filed under seal on June 30, 2014, for a period of 24 months, ending December 28, 2017 - electronically filed by Debra Hight on behalf of Daniel E. Fullin, Attorney Examiner.