

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Annual Filing)
Requirements for 2016 Pertaining to the) Case No. 16-1115-TP-COI
Provisioning of High-Cost Universal Service)

In the Matter of the Annual Filing)
Requirements for 2016 Pertaining to the) Case No. 16-1116-TP-COI
Provisioning of Lifeline Universal Service)

MOTION FOR PROTECTIVE ORDER OF
CENTURYTEL OF OHIO, INC. AND UNITED TELEPHONE COMPANY OF OHIO

CenturyTel of Ohio, Inc. d/b/a CenturyLink and United Telephone Company of Ohio d/b/a CenturyLink (collectively "CenturyLink"), by counsel and pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, move for a protective order keeping confidential the designated confidential and/or proprietary information contained in the sealed filing accompanying this motion. The reasons underlying this motion are detailed in the attached Memorandum in Support.

RECEIVED

JUN 30 2016

DOCKETING DIVISION
Public Utilities Commission of Ohio

Respectfully submitted,

Christen M. Blend

Christen M. Blend (0086881)
Porter Wright Morris & Arthur, LLP
41 South High Street, 30th Floor
Columbus, OH 43215
Telephone: (614) 227-2086
Fax: (614) 227-2100
Email: cblend@porterwright.com

Counsel for CenturyTel of Ohio, Inc. d/b/a
CenturyLink and United Telephone Company
of Ohio d/b/a CenturyLink

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.

COLUMBUS/181408SV1

Technician SM Date Processed JUL 01 2016

**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

CenturyLink requests that the information designated as confidential and/or proprietary in the accompanying filings (along with any and all copies, including electronic copies) be protected from public disclosure. The confidential information includes: (1) broadband pricing information, (2) CAF II capital expense data, and (3) outage information filed confidentially with the Federal Communications Commission ("FCC") in compliance with 47 C.F.R. §54.313(a)(2) as part of CenturyLink's FCC Form 481 filing. The broadband pricing information, CAF II capital expense data and outage information constitute CenturyLink's confidential trade secret information and are deserving of protection. Public disclosure of this information would provide competitors with information that they could use to analyze CenturyLink's operations and target areas for market entry or market strategies targeted to specific geographic areas, and thereby obtain an unfair competitive advantage. A redacted version of the documents have been filed on the public record showing the non-confidential information.

Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Public Utilities Commission of Ohio ("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, federal and state law prohibits the release of the information which is the subject of this motion. Moreover, the non-disclosure of the information will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill its statutory obligations. 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)(v). 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. 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 (8th Dist. 1983), the Eighth District Court of Appeals, citing *Koch Engineering Co. v. Faulconer*, 210 U.S.P.Q. 854, 861 (Kansas 1980), 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 that is the subject of this motion, CenturyLink considers and has treated the information as a trade secret. In the ordinary course of business of CenturyLink, this information is treated as proprietary and confidential by CenturyLink employees, and is not disclosed to anyone except in a Commission proceeding and/or pursuant to staff data request. During the course of discovery, information of this type has generally been provided to other parties only pursuant to an appropriate protective agreement.

For the foregoing reasons, CenturyLink requests that the designated information be protected from public disclosure.

Respectfully submitted,

Christen M. Blend

Christen M. Blend (0086881)

Porter Wright Morris & Arthur, LLP

41 South High Street, 29th Floor

Columbus, OH 43215

Telephone: (614) 227-2086

Fax: (614) 227-2100

Email: cblend@porterwright.com

Counsel for CenturyTel of Ohio, Inc. d/b/a
CenturyLink and United Telephone Company
of Ohio d/b/a CenturyLink