

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
INVESTIGATION INTO INTRASTATE
CARRIER ACCESS REFORM PURSUANT TO
SUB. S.B. 162.

CASE NO. 10-2387-TP-COI

ENTRY

Entered in the Journal on December 19, 2017

{¶ 1} Pursuant to its Entry of February 23, 2011, the Commission directed all eligible incumbent local exchange companies (ILECs) to file on or before March 18, 2011, their respective data for the 2009 and 2010 calendar years in response to Appendix C of the Commission's Entry of November 3, 2010. Additionally, all contributing carriers were directed to file, by the same date, their respective data for the 2010 calendar year in response to Appendix D of the Commission's Entry of November 3, 2010. The eligible ILECs were also directed to file their responses to the questions set forth in the attachment to the Entry of February 23, 2011. A discovery process was established in order to provide interested entities with an opportunity to inquire relative to the company-specific data submitted in response to the Commission's entries.

{¶ 2} Pursuant to Entry of June 25, 2013, the attorney examiner determined that the following information requested in the Entry of November 3, 2010, Appendices C and D and the attachment to the Entry of February 23, 2011, contain trade secrets, the release of which is prohibited under state law:

- (a) November 3, 2010, Appendix C- (i) The total intrastate switched access revenues from all recurring switched access rate elements billed, including switched dedicated elements that are priced on a flat-rate basis, and (ii) The intrastate billed demand for each rate element.
- (b) November 3, 2010, Appendix D- (i) The contributing carrier's 2010 uncollectible intrastate retail telecommunications

revenues, (ii) The contributing carrier's 2010 total intrastate retail telecommunications revenues minus uncollectibles, and (iii) The contributing carriers' total Ohio access lines as of December 31, 2010.

- (c) February 23, 2011, Attachment- (i) The average mileage charges, if any, required to receive basic local exchange service (BLES), (ii) If the BLES rates vary by exchange access area/zones/bands, the ILEC shall provide the total number of access lines covered by each rate, and (iii) The total number of access lines as of December 31, 2010.

{¶ 3} On November 7, 2014, the Ohio Rural Broadband Association¹ (ORBA) filed a motion for an extension of the June 25, 2013 protective order.

{¶ 4} Also on November 7, 2014, Windstream Ohio, Inc., Windstream Western Reserve, Inc., Windstream Communications, Inc., Windstream NuVox Ohio, Inc., LDMI Telecommunications, Inc., McLeodUSA Telecommunications Services, LLC, Talk America, Inc., US LEC Communications LLC, Intellifiber Networks, Inc., Kentucky Data Link, Inc., Norlight, Inc., Norlight Telecommunications, Inc., and PAETEC

¹ ORBA consists of the following entities: Arcadia Telephone Company, Arthur Mutual Telephone Company, Ayersville Telephone Company, Bascom Mutual Telephone Company, Benton Ridge Telephone Company, Buckland Telephone Company, Champaign Telephone Company, Chillicothe Telephone Company, Columbus Grove Telephone Company, Conneaut Telephone Company, Continental Telephone Company, Doylestown Telephone Company, Farmers Mutual Telephone Company, Fort Jennings Telephone Company, Germantown Independent Telephone Company, Glandorf Telephone Company, Kalida Telephone Company Inc., Little Miami Communications Corporation, McClure Telephone Company, Middle Point Home Telephone Company, Minford Telephone Company, New Knoxville Telephone Company, Oakwood Telephone Company, Orwell Telephone Company, Ottoville Mutual Telephone Company, Pattersonville Telephone Company, Ridgeville Telephone Company, Sherwood Mutual Telephone Association, Sycamore Telephone Company, Telephone Service Company, Vanlue Telephone Company, Vaughnsville Telephone Company, and Wabash Mutual Telephone Company.

Communications, Inc. (collectively, the Windstream Entities) filed a motion for an extension of the June 25, 2013 protective order.

{¶ 5} On December 22, 2014, the Ohio Cable Telecommunications Association (OCTA); Time Warner Cable Information Services (including Insight Phone of Ohio, LLC) (jointly, TWCIS); Comcast Phone of Ohio, LLC (Comcast); and Armstrong Telecommunications, Inc. (Armstrong) (collectively, Joint Movants) filed a motion for a 24-month extension of the protective order relative to the following:

- (a) The March 18, 2011 respective confidential responses to Appendix D of the November 3, 2010 Entry submitted by Armstrong, TWCIS, and Comcast;
- (b) The May 13, 2011 confidential response of Insight Phone of Ohio, LLC to Appendix D of the November 3, 2010 Entry;
- (c) The July 1, 2011 confidential initial supplemental comments of OCTA; and
- (d) The July 15, 2011 confidential supplemental reply comments of OCTA.

{¶ 6} Pursuant to the Entry of March 23, 2015, the motions for extension of the protective orders were granted for an additional 24 months.

{¶ 7} Between February 2, 2017 and February 6, 2017, ORBA, the Windstream Entities, Champaign Telephone Company (Champaign Telephone), and OCTA filed motions for the extension of the protective orders granted pursuant to the Entry of March 23, 2015. In support of their motions, ORBA, the Windstream Entities, and Champaign Telephone submit that the information remains competitively sensitive trade secret information. In support of its motion, OCTA states that its unredacted submissions

contain carrier-specific information that is subject to protective agreements between OCTA and other carriers, and is derived from the data submitted under seal by those carriers in response to Staff's data requests included in the November 3, 2010, and February 23, 2011 Entries in this proceeding.

{¶ 8} On November 18, 2011, the Federal Communications Commission (FCC) adopted a transitional intercarrier compensation restructuring framework for intrastate and interstate telecommunications traffic exchanged with a local exchange carrier. During the first phase of its intercarrier compensation restructuring, the FCC directed that for price cap carriers, rate-of-return carriers, and certain competitive local exchange carriers (CLECs) with intrastate terminating switched end office and transport rates, dedicated transport rates, and reciprocal compensation rates that are above the carrier's interstate access rates, the respective intrastate rates had to be reduced by 50 percent of the differential between the rate and the carrier's interstate access rates by July 1, 2012.

{¶ 9} In order to allow for the timely review and implementation of the requisite reductions, the Commission, pursuant to its Entry of February 29, 2012, directed all affected ILECs to file, in this docket, the appropriate application on or before March 21, 2012, and all affected CLECs to file the appropriate application on or before April 4, 2012.

{¶ 10} Between March 20, 2012, and June 26, 2012, a number of companies filed the requisite access reduction calculations.

{¶ 11} Between April 9, 2012 and September 11, 2012, most of the companies also filed motions for protective order, pursuant to Ohio Adm.Code 4901-1-24(D), requesting that portions of the access reduction calculations be kept under seal. Specifically, the motions sought to protect the intrastate demand units and related derived revenues.

{¶ 12} Pursuant to the Entry of October 10, 2014, the motions for protective treatment were granted for a period of 24 months.

{¶ 13} Between August 16, 2016, and August 22, 2016, ORBA, Windstream Entities, Champaign Telephone, and AT&T Ohio each filed a motion to extend the protective treatment.

{¶ 14} In support of their motions, the movants state that the material continues to remain competitively sensitive trade secret information and public disclosure would impair their ability to compete in the marketplace.

{¶ 15} 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 Title 49 of the Revised Code. 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. 396, 399, 732 N.E.2d 373 (2000).

{¶ 16} Similarly, Ohio Adm.Code 4901-1-24 allows the Commission 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 nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”

{¶ 17} Ohio law defines a trade secret as “information * * * 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).

{¶ 18} The attorney examiner has reviewed the information which is the subject of the motions for an extension of the protective orders, as well as the assertions set forth in the supporting memoranda. 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,² the attorney examiner finds that the motions for an extension of the protective order should be granted. In making this decision, the attorney examiner finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code.

{¶ 19} Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. Therefore, confidential treatment shall be afforded for a period ending 24 months from the date of this Entry (i.e., December 19, 2019). Until that date, the Docketing Division should continue to maintain, under seal, the information addressed in these motions.

{¶ 20} 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 which includes a detailed discussion regarding the continued need for protection notwithstanding the age of the specific information which is the subject of the motion. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to the movants.

² See *State ex-rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That the motions for extension of the protective orders be granted consistent with Paragraph 18. It is, further,

{¶ 23} ORDERED, That the Commission's docketing division continue to maintain the proprietary information under seal for a period of 24 months from the date of this Entry. It is, further,

{¶ 24} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Jay Agranoff

By: Jay S. Agranoff
Attorney Examiner

JRJ/sc

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Case No(s). 10-2387-TP-COI

Summary: Attorney Examiner Entry granting motions for extension of the protective orders consistent with Paragraph 18 and directing the Commission's docketing division to continue to maintain the proprietary information under seal for a period of 24 months from the date of this Entry. - electronically filed by Sandra Coffey on behalf of Jay Agranoff, Attorney Examiner, Public Utilities Commission of Ohio