

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE ANNUAL FILING
REQUIREMENTS FOR 2016 PERTAINING
TO THE PROVISIONING OF LIFELINE
UNIVERSAL SERVICE.

CASE NO. 16-1116-TP-COI

ENTRY

Entered in the Journal on December 19, 2019

{¶ 1} Pursuant to the Entry of May 11, 2016, all eligible telecommunications carriers (ETCs), to the extent applicable, were directed to file with the Federal Communications Commission (FCC) a report by July 1, 2016, consistent with 47 C.F.R. 54.422. Additionally, all ETCs were directed to docket in this case all responses provided to the FCC.

{¶ 2} Beginning on June 14, 2016, through September 28, 2016, ETCs filed information consistent with the Entry of May 11, 2016. A number of responding companies, including Middle Point Home Telephone Company (Middle Point) and Telephone Service Company (Telephone Service) submitted redacted filings accompanied by motions for protective treatment of certain information included with the FCC Form 481 and the 5-Year Build-out Progress Report.

{¶ 3} Pursuant to the December 19, 2017 Entry, the motions for protective treatment were granted for a period of 24 months.

{¶ 4} On October 29, 2019, Middle Point and Telephone Service (collectively, “Companies”) each filed a motion to extend the current protective treatment. In support of their motions, the companies note that pursuant to Ohio Adm.Code 4901-1-24, an order for protective treatment may be extended upon a demonstration that the material remains confidential business and financial information and that its release is prohibited by state law.

{¶ 5} According to Middle Point and Telephone Service, the materials addressed in the motion consist of the financial statement of Hanson Communications, Inc. (Hanson), a small privately-owned company that owns both Middle Point and Telephone Service. Due

to its private ownership, Hanson's financial statements are not publicly filed, and the business plans of Middle Point and Telephone Service are not shared publicly. Further, Middle Point and Telephone Service contend that the information subject to the protective order retains its status as a trade secret inasmuch as the information would be useful to competitors in the telecommunications markets served by Middle Point and Telephone Service regarding the financial status of the companies and their future investment plans. Finally, Middle Point and Telephone Service contend that the nondisclosure of the information will not impair the purpose of Title 49 of the Revised Code as the Commission and its Staff will have full access to the information.

{¶ 6} 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).

{¶ 7} 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."

{¶ 8} 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).

{¶ 9} The attorney examiner has reviewed the arguments presented, and the information included in the motions for protective treatment. 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,¹ the attorney examiner finds that the subject operational and financial information constitutes trade secret information. Its release is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Finally, the attorney examiner concludes that these documents could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner determines that the motions for protective treatment should be granted due to the proprietary nature of the relevant information. The protective orders should be extended for a period of twenty-four months from the date of this Entry.

{¶ 10} 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, 2021). Until that date, the Docketing Division should continue to maintain, under seal, the information addressed in theses motions.

{¶ 11} Although a party may, pursuant to Ohio Adm.Code 4901-1-24, seek an extension of a protective order, the requesting entity must demonstrate the need for the specific time frame requested. Following the end of the aforementioned two-year period, the companies are directed to perform an evaluation in order to determine whether the protected information continues to require protective treatment.

¹ 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).

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That the motions for extension of the protective orders be granted and the Docketing Division maintain the designated information under seal in accordance with Paragraphs 9 and 10. It is, further,

{¶ 14} 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/kck

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Case No(s). 16-1116-TP-COI

Summary: Attorney Examiner Entry motions for extension of the protective orders be granted and the Docketing Division maintain the designated information under seal. electronically filed by Mrs. Kelli C King on behalf of Jay S. Agranoff, Attorney Examiner, Public Utilities Commission of Ohio