

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's)	
Investigation into Intrastate Carrier Access)	Case No. 10-2387-TP-COI
Reform Pursuant to Sub. S.B. 162)	

MOTION FOR PROTECTIVE ORDER

The AT&T Entities¹, by their attorneys and pursuant to Section 4901-1-24(D) of the Commission's rules (O.A.C. § 4901-1-24(D)) move for a protective order keeping confidential the designated confidential and/or proprietary information being filed contemporaneously in their Supplemental Reply Comments. The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of Section 4901-1-24(D) of the Commission's rules, three unredacted copies of the confidential information which is the subject of this motion have been filed under seal.

Respectfully submitted,

The AT&T Entities

By: /s/ Mary Ryan Fenlon
Mary Ryan Fenlon (Counsel of Record)
Jon F. Kelly
150 E. Gay St. Rm. 4-A
Columbus, Ohio 43215

(614) 223-3302

Their Attorneys

¹ The AT&T Entities are The Ohio Bell Telephone Company d/b/ AT&T Ohio; AT&T Communications of Ohio, Inc; TCG Ohio; SBC Long Distance d/b/a AT&T Long Distance; SNET America, Inc. d/b/a AT&T Long Distance East; AT&T Corp. d/b/a AT&T Advanced Solutions; Cincinnati SMSA, L.P.; and New Cingular Wireless PCS, LLC d/b/a AT&T Mobility.

MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER

The AT&T Entities request that portions of their Supplemental Initial Comments be designated as confidential and be protected from public disclosure. The information for which protection is sought includes not only AT&T information but also other contributing carriers' information which is subject to respective protective agreements that AT&T has entered into with those carriers. The confidential information consists of: a) the contributing carriers' 2010 total intrastate retail telecommunications services revenues; b) the contributing carriers' 2010 uncollectible intrastate retail telecommunications revenues; c) the contributing carriers' 2010 total intrastate retail telecommunications revenues; and d) the contributing carriers' 2010 total Ohio access lines as of December 31, 2010. AT&T Ohio's access line counts, also included in the confidential filing, is information that is no longer required to be publicly filed in its Annual Report and should also be protected from public disclosure. The public release of this information would cause harm to the AT&T Entities and the contributing carriers.

Section 4901-1-24(D) of the Commission's rules 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 described above represents confidential sensitive business information and, therefore, should be protected from disclosure.

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 review the requested information in this case. 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. 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 Entities consider and have treated the information as a trade secret. In the ordinary course of business of the AT&T Entities, this information is stamped confidential, is treated as proprietary and confidential by AT&T Entities' 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 only pursuant to a protective agreement.

For the foregoing reasons, the AT&T Entities request that the designated information be protected from public disclosure.

Respectfully submitted,

The AT&T Entities

By: /s/ Mary Ryan Fenlon
Mary Ryan Fenlon (Counsel of Record)
Jon F. Kelly
150 E. Gay St. Rm. 4-A
Columbus, Ohio 43215

(614) 223-3302

Their Attorneys

10-2387.motion for protective order.7-15-11.docx

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail on the parties listed below on this 15th day of July, 2011.

/s/ Mary R. Fenlon

Mary R. Fenlon

Ohio Consumers' Counsel

Terry Etter
Office of the Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
etter@occ.state.oh.us

Cincinnati Bell

Douglas E. Hart
Cincinnati Bell Telephone Company LLC
441 Vine Street, Suite 4192
Cincinnati, OH 45202
dhart@douglasshart.com

Ohio Cable Telecommunications
Association

Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, OH 43215
smhoward@vorys.com

Benita A. Kahn
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street, P.O. Box 1008
Columbus, OH 43215-1008
bakahn@vorys.com

Verizon

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, OH 43215-3927
barthroyer@aol.com

David Haga, Assistant General Counsel
Verizon
1320 North Courthouse Road
Arlington, VA 22201
david.haga@verizon.com

Charles Carrathers
Verizon
600 Hidden Ridge HQE03H51
Irving, TX 75308
chuck.carrathers@verizon.com

CenturyLink

Zsuzsanna E. Benedek
CenturyLink
240 North Third Street, Suite 300
Harrisburg, PA 17101
sue.benedek@centurylink.com

Gary Baki
Century Link
50 West Broad Street, Suite 3600
Columbus, OH 43215
gary.s.baki@embarq.com

T-Mobile USA, Inc.

Garnet Hanly
T-Mobile USA, Inc.
401 Ninth Street, NW, Suite 550
Washington, DC 20004
Garnet.Hanly@T-Mobile.com

Access Point, Inc.

Kate Dutton
100 Crescent Green, Suite 109
Cary, NC 27518
kate.dutton@accesspointinc.com

ICORE

Gary M. Zingaretti
253 South Franklin Street
Wilkes-Barre, PA 18701
gzing@icoreinc.com

ONVOY, INC.

Mary T. Buley
300 South Highway 169, Suite 700
Minneapolis, MN 55426
mary.buley@onvoy.com

Technologies Management, Inc.

Laura McGrath
Technologies Management, Inc.
2600 Maitland Center Parkway
Maitland, FL 32751
lmcgrath@tminc.com

Impact Network Solutions, Inc.

Nancy L. Myers
Impact Network Solutions, Inc.
429 Trenton Avenue
Findlay, OH 45840
myersn@impactnetwork.com

First Communications, Inc.

Mary Cegelski
First Communications, Inc.
15278 Neo Parkway
Garfield Heights, OH 44128
MCEGELSKI@firstcomm.com

Frontier Communications

Rachel G. Winder
Ohio Government and Regulatory Affairs
17 South High Street, Suite 610
Columbus, OH 43215
Rachel.winder@ftr.com

Carolyn S. Flahive
Thompson Hine LLP
41 South High Street, Suite 1700
Columbus, OH 43215-6101
carolyn.flahive@thompsonhine.com

Kevin Saville, Associate General Counsel
Frontier Communications
2378 Wilshire Blvd.
Mound, MN 55364
Kevin.Saville@FTR.com

Windstream

Williams Adams
Bailey Cavalieri LLC
10 West Broad Street, Suite 2100
Columbus, OH 43215-3422
William.Adams@baileycavalieri.com

Small Local Exchange Carriers Group
Association

Norman J. Kenard
Regina L. Matz
Thomas, Long, Nielsen & Kennard
P.O. Box 9500
Harrisburg, PA 17108
rmatz@thomaslonglaw.com
nkennard@thomaslonglaw.com

The MACC Coalition

Thomas J. O'Brien
Bricker & Eckler, LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com

Public Utilities Commission

William Wright
Assistant Attorney General
Chief, Staff of the PUCO
180 E. Broad Street
Columbus, OH 43215
bill.wright@puc.state.oh.us

Sprint Nextel

Diane C. Browning, Counsel
State Regulatory Affairs
Sprint Nextel
6450 Sprint Parkway
Mailstop KSOPHN0314-3A459
Overland Park, KS 66251
diane.c.browning@sprint.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/15/2011 2:44:28 PM

in

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

Summary: Motion for Protective Order electronically filed by Ms. Mary K. Fenlon on behalf of AT&T Entities