

FILE

SHOEMAKER & HOWARTH, LLP
ATTORNEYS - AT - LAW

Partners:
Kevin L. Shoemaker
Robert F. Howarth

471 East Broad Street, Suite 2001
Columbus, Ohio 43215
Telephone: (614) 469-0100
Fax: (614) 280-9675
www.midohiolaw.com

Of Counsel:
David A. Turano
Sean A. McCarter

May 21, 2012

RECEIVED-DOCKETING DIV
2012 MAY 21 PM 2:26

PUCO

Public Utilities Commission of Ohio
Attn: Barcy McNeal, Secretary
Docketing Division
180 E. Broad Street, 11th Floor
Columbus, Ohio 43215

**Re: Case No. 12-1587-TP-ACE
Preferred Long Distance, Inc.
(Application for Certificate)**

Secretary McNeal:

Enclosed and submitted for filing on behalf of Preferred Long Distance, Inc. please find the original and seven (7) copies of the following:

1. Telecommunications Filing Form;
2. Telecommunications Supplemental Application Form for Carrier Certification (with attached exhibits);
3. Telecommunications Retail Service Offering Form for Non-BLES Carriers (with attached tariff);
- ✓ 4. Motion for Protective Order (with confidential document submitted under seal); and
5. P.U.C.O. Tariff No. 2 (switched access services).

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.
Technician TD Date Processed 5-21-12

May 21, 2012

Page 2

Please acknowledge receipt by date-stamping and returning the additional copies of the submitted filings. Should there be any questions concerning the application and/or related attachments, please advise.

Sincerely,



David A. Turano

DAT/tlh

Enclosure

cc: Andrew Isar
 Keith Nussbaum

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Preferred Long Distance, Inc.)
to Provide Competitive) Case No. 12 - 1587 -TP- ACE
Local Exchange and Interexchange)
Telecommunications Services in the State of Ohio)

MOTION FOR A PROTECTIVE ORDER

The applicant, Preferred Long Distance, Inc. (“Preferred”), pursuant to Ohio Administrative Code (“OAC”) Rule 4901-1-24(D), hereby moves the Public Utilities Commission of Ohio (“Commission”) for a protective order to shield proprietary information from the public record and keep confidential the financial data and other proprietary information contained in Exhibit C to Preferred application for certification to provide competitive local exchange services in the State of Ohio. The Memorandum in Support below presents the reasons to grant this motion.

Consistent with the requirements of OAC Rule 4901-1-24(D), Preferred has filed under seal three (3) unredacted copies of the confidential exhibits that are the subject of this motion.

MEMORANDUM IN SUPPORT

OAC Rule 4901-1-24(D) provides that the Commission or certain designated employees may issue an order “which is necessary to protect the confidentiality of information contained in the 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.” Moreover, Ohio Revised Code (“R.C.”) Section 4928.06(F) specifically permits

the Commission to grant confidentiality to competitive information. Preferred asserts that the information being submitted in Exhibit C constitutes confidential and proprietary business information, as well as a trade secret; and as such, state law prohibits the release of the information.

R.C. 4901.12 and 4905.07 were amended in 1996 to facilitate the protection of trade secrets in Commission proceedings. By referencing R.C. 149.43 (Ohio's Public Records Law), the Commission-specific statutes incorporate the definition of "public records," as well as an exception to that definition that includes "[r]ecords 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. See R.C. 1333.61(D) and 1333.62. For this reason, records containing trade secrets are prohibited from public disclosure.

The definition of "trade secret" is set forth in R.C. 1333.61(D)

"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.

This definition clearly reflects the state policy favoring the protection of trade secrets such as the financial information which is the subject of this motion. For, as the Ohio Supreme Court recently explained:

by adopting the Uniform Trade Secrets Act, with the express purpose to make uniform the law with respect to their subject among states, the General Assembly has determined that public policy in Ohio, as in the

majority of other jurisdictions, favors the protection of trade secrets, whether memorized or reduced to some tangible form.

Al Minor & Associates, Inc. v. Martin, (2008) 117 Ohio St.3d 58.

Courts of other jurisdictions not only have held that a public utilities commission has the authority to protect trade secrets, but that trade secret statutes create a duty to protect them. See *New York Tel. Co. v. Pub. Serv. Comm. N.Y.*, 56 N.Y. 2d 213 (1982).

Furthermore, the Commission itself has recognized the need to protect trade secrets from public disclosure as consistent with its other statutory obligations:

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). The Commission previously has carried out its obligation to protect the trade secret status of information from utilities and other regulated entities in numerous proceedings. See, e.g., *Cleveland Electric Illuminating Co.*, Case No. 07-171-EL-BTX (Entry dated August 14, 2008); *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). For the Commission to do otherwise would be to negate the protections the General Assembly has granted to all businesses, including public utilities, through the Uniform Trade Secrets Act.

Expounding upon the “trade secret” definition above, the Ohio Supreme Court has delineated factors to be considered in analyzing a trade secret claim:

- (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.

State ex. rel. The Plain Dealer v. Ohio Dept. of Ins. (1997), 80 Ohio St.3d 513, 524-525. The Commission applies these factors in the context of applications for competitive services to conclude that certain financial exhibits constitute trade secrets.

Here, Preferred requests that the information designated as confidential (Exhibit C) of its certification application be protected from public disclosure. If released to the public, the information for which protection is sought (income statements and balance sheets, collectively "Financial Statements") would harm Preferred by providing competitors with proprietary financial data not commonly known by or available to the public and involving a very competitive service. Preferred has used its best efforts to keep and maintain such financial data confidential; and, to the best of its knowledge, current financial information has not been disclosed or released to the public. Preferred also redacted the confidential financial data information from Exhibit C to the certification application and generally treats the information as a trade secret.

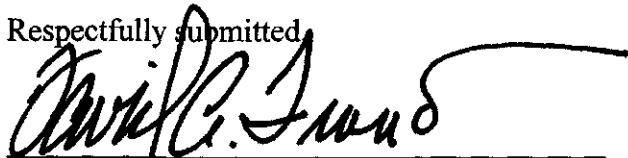
In the ordinary course of Preferred's business, this financial information is deemed confidential, is treated as proprietary and confidential by Preferred employees, and is not disclosed to anyone other than as part of a legal proceeding and, even then, only pursuant to a protective agreement. The Financial Statements also derive economic value from not being generally known to, and not being readily ascertainable (through proper means), by other persons, who can obtain economic value from their disclosure and use. Specifically, the information contained therein is extremely sensitive information that could be used by competitors to determine revenue and other information damaging to Preferred in the

marketplace. Disclosure of such information would be extremely detrimental and could be used by Preferred's competitors to materially affect Preferred's ability to compete effectively in the State of Ohio.

For these reasons, the information in Exhibit C to the certification application falls directly within the definition of a "trade secret," and should be protected from public disclosure. The Financial Statements should be used by the Commission solely to consider Preferred's Application for operating authority. There is no legitimate purpose or public interest to be served in disclosing the financial statements to Preferred's competitors or, indeed, to any person other than the appropriate staff members of the Commission.

For the foregoing reasons, Preferred requests that the designated Financial Statements be protected from public disclosure.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David A. Turano". It is written in a cursive style with a horizontal line through it.

David A. Turano
SHOEMAKER & HOWARTH, LLP
471 East Broad Street
Suite 2001
Columbus, OH 43215
Phone: (614) 469-0100
Facsimile: (614) 280-9675

Attorneys for
Preferred Long Distance, Inc.