

**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 Senate Bill 162.)	

AMENDED MOTION FOR A PROTECTIVE ORDER

Now comes **tw telecom of ohio llc** ("TWT") pursuant to Ohio Administrative Code ("OAC") Rule 4901-1-24(D), and amends its Motion for a Protective Order filed with the Public Utilities Commission of Ohio ("Commission") on April 11, 2012, seeking to shield proprietary information from the public disclosure its computations for TWT transitional intrastate access rates as requested by the Commission's February 29, 2012 Entry. This Amended Motion for Protective Order seeks to include within the reach of its Motion earlier filed on April 11, 2012, TWT's *revised* computations for its transitional intrastate access rated filed under seal on May 31, 2012.

MEMORANDUM IN SUPPORT

OAC Rule 4901-1-24(D) provides that the Commission or certain designated Commission 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 Section (“R.C.”) 4928.06(F) specifically permits the Commission to grant confidentiality to competitive 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. 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 state 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, this 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).

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 competitive retail natural gas broker/aggregator applications to conclude that certain financial exhibits constitute trade secrets.

For the reasons stated above, TWT requests its supporting computations for its transitional intrastate access rates, as revised, be kept confidential as filed on April 11, 2012 and May 31, 2012.

Respectfully submitted on behalf of
tw telecom of ohio llc.



Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215
Telephone: (614) 227-2335
Facsimile: (614) 227-2390
E-Mail: tobrien@bricker.com

CERTIFICATE OF SERVICE

The undersigned hereby acknowledges that a copy of the foregoing was served by electronic mail this 4th day of June 2012.



Thomas J. O'Brien

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

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

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

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

Suzanna 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

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

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

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

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

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

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

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

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

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

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

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

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/4/2012 1:30:12 PM

in

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

Summary: Motion for a Protective Order electronically filed by Teresa Orahod on behalf of
tw telecom of ohio llc