

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of American Broadband)
and Telecommunications Company Petition for)
Designation as a Low-Income Competitive Eligible) Case No. 12-1714-TP-UNC
Telecommunications Carrier.)

MOTION FOR EXTENSION OF PROTECTIVE ORDER

Pursuant to Ohio Administrative Code (“OAC”) Rule 4901-1-24(D), American Broadband and Telecommunications Company (“American Broadband” or “ABT”), moves for an extension of the protective order granted in the above captioned case. In its Entry adopted on August 23, 2012, the Commission granted ABT’s motion for a protective order concerning proprietary financial information that was filed as part of ABT’s Supplement to its Application. The August 23, 2012 Entry will expire on February 23, 2014. Under OAC Rule 4901-1-24(F), ABT seeks an 18-month extension of the protective order. The reasons underlying this motion are detailed in the attached Memorandum in Support.

This motion is being filed more than 45 days prior to the expiration of the protective order granted by the August 23, 2012 Entry.

Respectfully submitted on behalf of
AMERICAN BROADBAND AND
TELECOMMUNICATIONS COMPANY



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MEMORANDUM IN SUPPORT

ABT seeks an 18-month extension of the protective order previously granted in this case. The proprietary financial information filed and used in this case remains competitively sensitive despite the passage of time and deserves further protection under Ohio law as a trade secret. It has not lost its commercial relevance since the time it was first granted protection. 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.” ABT asserts that the protective order should be extended because the information constitutes confidential and proprietary business information as well as a trade secret, and as such, state law prohibits the release of the information.

ABT continues to treat the information as a trade secret. In the ordinary course of business of ABT, this information is deemed confidential, is treated as proprietary and confidential by ABT employees, and is not disclosed to anyone other than as part of a legal proceeding and, even then, only pursuant to a protective agreement. For these reasons, the information falls directly within the definition of “trade secret”—a definition that clearly reflects the state policy favoring the protection of trade secrets. Non-disclosure of the confidential information will not impair the purposes of Title 49. No purpose of Title 49 would be served by the public disclosure of the information.

Ohio Revised Code Sections (“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, patten, 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.

As the Ohio Supreme Court recently explained:

Among the substantial and conflicting policies at play *** are the protection of employers’ rights in their trade secrets *** versus the right of the individual to exploit his talents. However, 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.

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).

In addition, the continued protection of the information sought by ABT in this proceeding is consistent with the purposes of R.C. Chapter 4927 as it specifically relates to competitive telecommunications services. In R.C. 4927.02, the Ohio legislature specifically provided:

It is the policy of [Ohio] to:

...

- (4) Promote diversity and options in the supply of public telecommunications services and equipment throughout the state; [and]
- (5) Recognize the continuing emergence of a competitive telecommunications environment through flexible regulatory treatment of public telecommunications services where appropriate.

Through this enactment, the Ohio legislature declared its policy favoring diversity and competition in Ohio’s telecommunications industry.

ABT is a privately held company and given the competitive environment in which ABT operates, it is imperative that the Commission extend the protective treatment of ABT’s financial information, thereby precluding its competitors from gaining access to this sensitive information. Moreover, maintaining the confidentiality of this information will in no way prejudice ABT’s

competitors. As a result, extended protection of the confidential and proprietary information contained in this request is necessary to encourage and effectuate these statutory goals.

For the foregoing reasons, ABT requests that the protective order issued on August 23, 2012 be extended for 18 months.

Respectfully submitted on behalf of
AMERICAN BROADBAND AND
TELECOMMUNICATIONS COMPANY



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Summary: Motion of American Broadband and Telecommunications Company for Extension of Protective Order electronically filed by Teresa Orahod on behalf of Thomas O'Brien