

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Wide Voice, LLC for a Certificate of Public Convenience and Necessity to Provide Telecommunications Services in Ohio.) Case No. 14-1472-TP-ACE)

ENTRY

The attorney examiner finds:

- (1) On August 21, 2014, Wide Voice, LLC (Wide Voice) filed an application seeking authority to provide facilities-based and resold local exchange and interexchange services throughout the state of Ohio. On August 22, 2014, Wide Voice filed a motion for a protective order, pursuant to Ohio Adm.Code 4901-1-24(D), requesting that Exhibit 9 of its certification application, filed under seal on August 22, 2014, be kept under seal. Exhibit 9, as filed on August 22, 2014, contains the applicant's income statement and balance sheet as of December 31, 2013.
- (2) On July 1, 2015, Wide Voice filed, under seal, an updated version of Exhibit 9 to its certification application, containing the applicant's income statement and balance sheet as of December 31, 2014, along with an amended motion for protective order, by which it seeks to protect the confidentiality of Exhibit 9 to its certification application, both as originally filed under seal on August 22, 2014, and as amended by filing made under seal on July 1, 2015.
- (3) In support of its motion for a protective order, as amended, Wide Voice explains that the unredacted version of Exhibit 9 of its certification application, both as originally filed under seal on August 22, 2014, and as amended by the later sealed filing dated July 1, 2015, contains competitively sensitive and highly proprietary business financial information that is not generally known or available to the general public. Therefore, Wide Voice requests that the information found in said exhibit, both as originally filed and as later amended, be treated as confidential.
- (4) 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

R.C. Title 49. 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.3d 396, 399, 732 N.E.2d 373 (2000).

- (5) Similarly, Ohio Adm.Code 4901-1-24(D) allows an attorney examiner 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 non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”
- (6) Ohio law defines a trade secret as “information * * * that satisfies both of the following: (a) 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. (b) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” R.C. 1333.61(D). The Supreme Court of Ohio has established a six-factor test to be used in analyzing a claim that information is a trade secret under that section. *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-25, 687 N.E.2d 661 (1997).
- (7) Further, Ohio Adm.Code 4901-1-24(D)(1) provides that all documents submitted pursuant to Ohio Adm.Code 4901-1-24(D) should be filed with only such information redacted as is essential to prevent disclosure of the allegedly confidential information.
- (8) The attorney examiner has examined the information covered by the original and amended motion for a protective order filed by Wide Voice, as well as the assertions set forth in the supportive memorandum. 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, the attorney examiner finds that the information contained in Exhibit 9 of Wide Voice’s certification application

constitutes trade secret information. Release of these documents contained in the exhibit is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of R.C. Title 49. Finally, the attorney examiner concludes that these documents could not be reasonably redacted to remove the confidential information contained therein. Accordingly, the attorney examiner finds that Wide Voice's motion for a protective order, both as originally filed and as amended, is reasonable with regard to the redacted information contained in the aforementioned exhibit and should be granted.

- (9) Confidential treatment shall be afforded for a period ending 24 months from the date of this Entry or until November 6, 2017. Until that date, the Commission's Docketing Division should maintain under seal Exhibit 9 of Wide Voice's certification application, both as originally filed under seal on August 22, 2014, and as amended and filed under seal on July 1, 2015.
- (10) Ohio Adm.Code 4901-1-24(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If Wide Voice wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to Wide Voice.

It is, therefore,

ORDERED, That, consistent with this Entry, Wide Voice's motion for protective order, as amended, be granted, with regard to the information contained in Exhibit 9 of Wide Voice's certification application, both as originally filed under seal on August 22, 2014, and as amended and filed under seal on July 1, 2015. It is, further,

ORDERED, That for a period of 24 months, ending November 6, 2017, the Commission's Docketing Division maintain, under seal, the unredacted versions of Exhibit 9 of Wide Voice's certification application, which were filed under seal on August 22, 2014, and on July 1, 2015. It is, further,

ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Daniel E. Fullin

By: Daniel E. Fullin
Attorney Examiner

JRJ/dah

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in

Case No(s). 14-1472-TP-ACE

Summary: Attorney Examiner Entry ordering that for a period of 24 months, ending November 6, 2017, the Commission's Docketing Division maintain, under seal, the unredacted versions of Exhibit 9 of Wide Voice's certification application, which were filed under seal on August 22, 2014, and on July 1, 2015 - electronically filed by Debra Hight on behalf of Daniel E. Fullin, Attorney Examiner.