

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Filing)
Requirements for 2014 Pertaining)
to the Provisioning of High Cost)
Universal Service)

Case No. 14-1115-TP-COI

**MOTION FOR PROTECTIVE ORDER, MOTION FOR STAY, AND REQUEST FOR
EXPEDITED RELIEF OF MIDDLE POINT HOME TELEPHONE COMPANY AND
TELEPHONE SERVICE COMPANY**

Frank P. Darr (0025469)
(Counsel of Record)
Scott E. Elisar (0081877)
Matthew R. Pritchard (0088070)
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
fdarr@mwncmh.com
(willing to accept service by e-mail)
selisar@mwncmh.com
(willing to accept service by e-mail)
mpritchard@mwncmh.com
(willing to accept service by e-mail)

AUGUST 23, 2016

**Attorneys for Middle Point Home Telephone
Company and Telephone Service Company**

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Filing)	
Requirements for 2014 Pertaining)	Case No. 14-1115-TP-COI
to the Provisioning of High Cost)	
Universal Service)	

**MOTION FOR PROTECTIVE ORDER, MOTION FOR STAY, AND REQUEST FOR
EXPEDITED RELIEF OF MIDDLE POINT HOME TELEPHONE COMPANY AND
TELEPHONE SERVICE COMPANY**

Middle Point Home Telephone Company and Telephone Service Company (“Companies”) move for a protective order of information filed under seal on June 30, 2014. Additionally, the Companies move for an order staying an order directing the docketing division to release that same information as set out in an Entry dated August 19, 2016. The Companies further request expedited relief.

The reasons supporting these Motions and the Request for Expedited Relief are set out in the accompanying Memorandum in Support.

Respectfully submitted,

/s/ Frank P. Darr

Frank P. Darr (0025469)
(Counsel of Record)
Scott E. Elisar (0081877)
Matthew R. Pritchard (0088070)
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
fdarr@mwncmh.com
(willing to accept service by e-mail)
selisar@mwncmh.com
(willing to accept service by e-mail)

mpritchard@mwncmh.com
(willing to accept service by e-mail)

**Attorneys for Middle Point Home Telephone
Company and Telephone Service Company**

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Filing)
Requirements for 2014 Pertaining)
to the Provisioning of High Cost)
Universal Service) Case No. 14-1115-TP-COI

**MEMORANDUM IN SUPPORT OF THE MOTIONS OF MIDDLE POINT HOME
TELEPHONE COMPANY AND TELEPHONE SERVICE COMPANY**

I. INTRODUCTION

On August 19, 2016, an Entry in this matter found that the Motions for a Protective Order (“Motions” or “Motions for Protective Order”) filed by Middle Point Home Telephone Company and Telephone Service Company (“Companies”) were moot and directed the docketing division to disclose to the public the information that the Companies had filed under seal on June 30, 2014. Entry at 2 (Aug. 19, 2016). In response to that Entry, the Companies move for a Protective Order of the information that was previously filed under seal on June 30, 2014. Additionally, the Companies seek a stay of the order directing the docketing division to disclose the operational and financial information of the Companies because a stay is in the public interest. The Companies request an expedited ruling on the Motions.

II. STATEMENT OF FACTS

In an Entry dated May 28, 2014, the Commission directed telephone companies to file copies of their FCC Form 481 filings for 2014 by July 1, 2014. Entry (May 28, 2014). In compliance with the attorney examiner’s Entry, the Companies filed redacted versions of the FCC Form 481 filing, unredacted versions of the FCC Form 481 information under {C50754: }

seal, and motions seeking a protective order of the confidential information contained in the sealed filings on June 30, 2014. Contemporaneously, other Ohio telephone companies also filed their information in compliance with the Commission's Entry.

In the Motions for a Protective Order, the Companies demonstrated that their filings contained confidential business information including balance sheets, income statements, statements of cash flow, and service outage reporting forms that the attorney examiner has determined state law prevented the Commission from disclosing. *In the Matter of the Annual Filing Requirements for 2013 Pertaining to the Provisioning of High Cost Universal Service*, Case No. 13-1115-TP-COI, Entry (Aug. 4, 2014) ("2013 Universal Service Case"). As explained in the Memorandum in Support of the Motions for a Protective Order, the information filed under seal is competitively sensitive and highly proprietary business and financial information falling within the statutory characterization of a trade secret.¹ Public disclosure of the information would jeopardize the Companies' business position and their ability to compete. *Id.*, Memorandum in Support at 2. The Companies' properly filed Motions for a Protective Order were not opposed. There was no ruling on the motions until August 19, 2016.

On June 16, 2016, several of the telephone companies that had received protective orders on August 4, 2014 in the 2013 Universal Service Case sought an extension of their protective orders because the information remained competitively sensitive and deserved continuing protection. 2013 Universal Service Case, Motion to Continue Protective Order (June 16, 2016). That motion to continue the protective orders was not opposed.

¹ R.C. 1333.61(D).

On August 19, 2016, an Attorney Examiner Entry was issued that granted the June 16, 2016 motion to continue the protective orders of the requesting telephone companies in the 2013 Universal Service Case. Based on the Attorney Examiner's review of the operational and financial information, the Attorney Examiner found that the information constitutes a trade secret, that the information's release is prohibited by law, and that nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. 2013 Universal Service Case, Entry at 2 (Aug. 19, 2016).

Also on August 19, 2016, an Entry was issued in this case. Entry (Aug. 19, 2016). In the Entry, the Attorney Examiner found that all pending motions for protective orders including the Companies' were moot. According to the Entry, the information that the Companies sought to have remain confidential "has remained under seal for a 24-month period of time. Additionally, no request for the extension of protective treatment has been filed." *Id.* at 2. Having found that the Companies' Motions were moot, the Attorney Examiner directed the docketing division to release the information previously filed under seal seven days from the date of the Entry. *Id.*

III. ARGUMENT IN SUPPORT OF THE MOTIONS FOR PROTECTIVE ORDER

As the Companies explained in their June 30, 2014 Motions, Ohio law recognizes the need to protect information that is confidential in nature. Accordingly, the General Assembly granted the Commission statutory authority to exempt certain documents from disclosure.² Pursuant to this statutory grant of authority, the Commission promulgated Rule 4901-1-24, OAC. Rule 4901-1-24(D), OAC, provides for the issuance of an order

² See R.C. 4901.12 and 4905.07.

that is necessary to protect the confidentiality of information contained in documents filed at the Commission to the extent that state and federal law prohibit the release of such information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

Trade secrets protected by state law are not considered public records and are therefore exempt from public disclosure.³ A trade secret is defined by Section 1333.61(D), Revised Code, as follows:

"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) (emphasis added).

The Companies' June 30, 2014 filings contain information that is competitively sensitive and highly proprietary business and financial information falling within the statutory characterization of a trade secret.⁴ Public disclosure of the information would jeopardize the Companies' business position and their ability to compete. Further, the Commission and its Staff will have full access to the confidential information in order to

³ R.C. 149.43(A)(1)(v); *State ex rel. The Plain Dealer v. Ohio Dept. of Insurance*, 80 Ohio St. 3d 513, 530 (1997).

⁴ R.C. 1333.61(D).
{C50754: }

complete its review process. Because the Companies' information constitutes a trade secret, the Commission is prohibited from disclosing it.

The August 19, 2016 Entry found that the Companies' Motions for a Protective Order were moot because 24 months had passed since the Motions were filed and the Companies had not sought to renew their motions. Entry at 2. The passage of time, however, has not changed the status of the information: that information remains confidential and critical to the business of the Companies. Further, as the Entry in the 2013 Universal Service Case indicated in regard to several other companies' motions to extend protective orders, the passage of time has not reduced the importance of this information. Additionally, as these Motions demonstrate, failure to extend the protection afforded under Commission rules to the Companies will work an undue harm that is not in the public interest. Accordingly, as a solution to the current situation, the Companies request a protective order of their trade secrets that were filed under seal on June 30, 2014.

The Companies also request that the Motions for a Protective Order be granted on an expedited basis. There has not been any opposition to the Companies' prior Motions for a Protective Order, and an expedited decision is necessary to protect the information from disclosure.

IV. THE COMMISSION SHOULD STAY THE ORDER DIRECTING THE RELEASE OF THE INFORMATION FILED UNDER SEAL

After finding that the Companies' Motions for a Protective Order were moot, the August 19, 2016 Entry directs the docketing division of the Commission to release the information filed under seal seven days from the date of the Entry. August 19, 2016 Entry at 2. In the Orders, the second ordering paragraph then states "[t]hat the information filed

under seal from June 20, 2014 to August 15, 2014, be released to the public seven days from the date of this Entry.” *Id.* at 3.

A stay of the release of the information filed under seal on June 30, 2014 should be ordered as a matter of sound public policy and to prevent irreparable injury.

Under Commission practice, the Commission will issue a stay if it finds that there has been a strong showing that a moving party is likely to prevail on the merits, the party seeking the stay shows that it will suffer irreparable harm if the stay is not granted, that the stay will not cause substantial harm to other parties, and that the stay is otherwise in the public interest. *In the Matter of the Commission’s Investigation into the Modification of Intrastate Access Charges, Case No. 00-127-TP-COI*, Entry on Rehearing at 5 (Feb. 20, 2003).

Based on this four-part test, the Commission should grant a stay. First, the Companies have made a strong showing that the Motions for a Protective Order should be granted. Second, release of the information will cause irreparable harm to the Companies. Once the information is disclosed, it cannot be recaptured. Third, if the stay is granted, no other party will be injured. In fact, during the course of this proceeding, no one has opposed any motion seeking a protective order. Finally, the public interest supports granting the Motions. As a matter of state law, trade secrets are afforded protection because they, by definition, have economic value. That value will be lost by the release of the information. Given the strong justification for granting a stay and the lack of any countervailing reason for release of the information, the Commission should order a stay of the order directing the docketing division to release the trade secrets of the Companies on August 26, 2016.

Further, the Companies request that the stay be granted on an expedited basis. There has not been any opposition to the Companies' June 30, 2014 Motions for a Protective Order, and an expedited decision is necessary to protect the information from disclosure.

V. CONCLUSION

For the reasons stated above, the Commission should grant the Companies' Motions for a Protective Order. Further, the Commission should direct the docketing division to maintain the confidentiality of the sealed information.

Respectfully submitted,

/s/ Frank P. Darr

Frank P. Darr (0025469)

(Counsel of Record)

Scott E. Elisar (0081877)

Matthew R. Pritchard (0088070)

McNees Wallace & Nurick LLC

21 East State Street, 17th Floor

Columbus, OH 43215

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

fdarr@mwncmh.com

(willing to accept service by e-mail)

selisar@mwncmh.com

(willing to accept service by e-mail)

mpritchard@mwncmh.com

(willing to accept service by e-mail)

**Attorneys for Middle Point Home Telephone
Company and Telephone Service Company**

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Motion for Protective Order, Motion for Stay, and Request for Expedited Relief of Middle Point Home Telephone Company and Telephone Service Company* was sent by, or on behalf of, the undersigned counsel for the Companies to the following parties of record this 23rd day of August, 2016, *via* electronic transmission.

/s/ Frank P. Darr

Frank P. Darr

Lance Steinhart
Lance J.M. Steinhart, P.C.
1725 Windward Concourse, Suite 150
Alpharetta, GA 30005
info@telecomcounsel.com

Christen M. Blend
Porter Wright Morris & Arthur, LLP
41 South High Street, 30th Floor
Columbus, OH 43215
cblend@porterwright.com

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

Vesta R. Miller
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215
vesta.miller@puc.stateoh.us

Roxanne K. Hacker
Interstate Telcom Consulting, Inc.
130 Birch Avenue West
Hector, MN 55342
roxih@interstatetelcom.com

Michele L. Noble
Squire Patton Boggs LLP
41 South High Street, Suite 2000
Columbus, OH 43215
michele.noble@squirepb.com

Eileen M. Bodamer
BCLLC
415 Heppwhite Drive
Johns Creek, GA 30022
eileen@bodamer.com

Josh S. Motzer
CenturyLink
17 South High Street, Suite 610
Columbus, OH 43215
josh.motzer@centurylink.com

Cassandra Cole
Frontier Communications
1300 Columbus Sanduky Road N.
Marion, OH 43302
cassandra.cole@ftr.com

William A. Adams, Counsel of Record
BAILEY CAVALIERI LLC
10 West Broad Street, Suite 2100
Columbus, OH 43215-3422
william.adams@baileycavalieri.com

Patricia L. Rupich
Cincinnati Bell
221 E. Fourth Street, 103-1280
Cincinnati, OH 45202
pat.rupich@cinbell.com

Kym D. Rupeiks
The Pinnacle Group Inc.
167 Tampa Avenue E., # 712
Venice, FL 34285
pinnacle@blissnet.com

Jeff A. Blevins
The Chillicothe Telephone Company
68 East Main Street
Chillicothe, OH 45601
Jeff.blevins@horizontel.com

David A. Ferris
The Ferris Law Group LLC
6797 North High Street, Suite 214
Worthington, OH 43085
dferris@ferrislawgroup.com

Lisa Hanscom
Total Call Mobile, Inc.
1411 W. 190th Street, Suite 700
Gardena, CA 90248
lisah@totalcallusa.com

Craig Neeld
Technologies Management, Inc.
2600 Maitland Center Parkway,
Suite 300
Maitland, FL 32751
cneeld@tminc.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/23/2016 4:44:45 PM

in

Case No(s). 14-1115-TP-COI

Summary: Motion Motion for Protective Order, Motion for Stay, and Request for Expedited Relief of Middle Point Home Telephone Company and Telephone Service Company electronically filed by Ms. Vicki L. Leach-Payne on behalf of Darr, Frank P. Mr.