

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Filing	)	
Requirements for 2013 Pertaining	)	Case No. 13-1115-TP-COI
to the Provisioning of High Cost	)	
Universal Service	)	

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**MOTION FOR PROTECTIVE ORDER, MOTION FOR STAY, AND REQUEST FOR  
EXPEDITED RELIEF OF THE MINFORD TELEPHONE COMPANY**

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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 24, 2016**

**Attorneys for Minford Telephone Company**

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Minford Telephone Company ("Minford") moves for a Protective Order and an order staying the release of confidential information filed by Minford on October 15, 2013. Additionally, Minford requests expedited relief.

The reasons supporting these motions are set out in the accompanying Memorandum in Support.

Respectfully submitted,

/s/ Frank P. Darr

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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  
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fdarr@mwncmh.com  
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**MEMORANDUM IN SUPPORT OF THE MOTIONS**

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**I. INTRODUCTION**

On August 19, 2016, an Entry in this matter found that the Motion for a Protective Order (“Motion” or “Motion for Protective Order”) filed by Minford was moot and directed the docketing division to disclose to the public the information that Minford had filed under seal on October 15, 2013. Entry at 3 (Aug. 19, 2016). In response to this Entry, Minford moves for a Protective Order directing that the materials filed under seal on October 15, 2013 not be disclosed. Additionally, Minford seeks a stay of the order directing the docketing division to release the information Minford filed under seal on October 15, 2013. Further, Minford requests an expedited ruling on the Motions.

**II. STATEMENT OF FACTS**

In an Entry dated May 31, 2013, the Commission directed telephone companies to file copies of their FCC Form 481 filings for 2013 by July 1, 2013. Entry (May 31, 2013). On June 10, 2013, the FCC issued an order extending the deadline for the compliance filings at the FCC, and in response to the FCC order, a second attorney examiner’s entry was issued that provided that telephone companies should file the FCC Form 481 information with the Commission consistent with the FCC’s future established deadline. Entry at 1 (June 27, 2013).

In compliance with the June 27, 2013 entry, Minford, through an agent, filed under seal its FCC Form 481 information and a request seeking a protective order of the confidential information contained in the sealed filing on October 15, 2013. Contemporaneously, other Ohio telephone companies also filed their information in compliance with the Commission's Entry. Just as Minford had done, these other telephone companies filed business information including balance sheets, income statements, statements of cash flow, and service outage reporting forms under seal and sought protective orders to prevent that information from being placed in the Commission's public files. Entry at 1-2 (Aug. 4, 2014). Based on the representations of the companies, the Attorney Examiner found that the business information including balance sheets, income statements, statements of cash flow, and service outage reporting forms filed by Minford and the other Ohio telephone companies was trade secret information, that release of this information was prohibited by state law, and that protection of the information was not inconsistent with the purposes of Title 49 of the Revised Code. *Id.* at 3.

Based on those findings, the Attorney Examiner issued a protective order to all companies requesting the relief as to balance sheets, income statements, statements of cash flow, and service outage reporting forms except Minford, Frontier North Inc., and New Knoxville Telephone Company. The Attorney Examiner noted that the motions of these three parties did not appear to be filed by an attorney admitted to practice law in Ohio or with proper pro hac vice admission. *Id.* at 4. Accordingly, the Attorney Examiner deferred ruling on their motions for protective orders until they were represented by

counsel and permitted them to “submit properly-filed motions for protective order on or before 30 days from the date of this Entry.” *Id.* at 5.

In response to the August 4, 2014 Entry, Minford secured Ohio counsel and filed another motion seeking a protective order. In that motion, Minford again demonstrated that Minford’s filing contained confidential business information including balance sheets, income statements, statements of cash flow, and service outage reporting forms that the Attorney Examiner had already determined state law prohibited the Commission from disclosing. Motion of Minford Telephone Company for Protective Order and Memorandum in Support (Aug. 6, 2014). The information contained within this material is competitively sensitive and highly proprietary business and financial information falling within the statutory characterization of a trade secret.<sup>1</sup> Public disclosure of the information would jeopardize Minford’s business position and its ability to compete. *Id.*, Memorandum in Support at 2. Minford’s properly filed Motion for a Protective Order was not opposed. There was no ruling on the Motion until August 19, 2016.

On June 16, 2016, several of the telephone companies that had received a protective order on August 4, 2014 sought extensions of their protective orders because the information remained competitively sensitive and deserved continuing protection. Motion to Continue Protective Order (June 16, 2016). That motion to extend the protective orders was not opposed.

On August 19, 2016, an Attorney Examiner Entry was issued that granted the June 16, 2016 motion to extend the protective orders of the requesting telephone companies. Based on the Attorney Examiner’s review of the operational and financial

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<sup>1</sup> Section 1333.61(D), Revised Code.

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. Entry at 2 (Aug. 19, 2016).

While the August 19, 2016 Entry extended the protective order for those parties that had received a protective order through the August 4, 2014 Entry, the August 19, 2016 Entry denied Minford's properly filed and unopposed August 6, 2014 Motion for a Protective Order. The Attorney Examiner found that the information "has already remained under seal for a 24-month period of time. Additionally, no request for the extension of protective treatment has been filed. Therefore, the pending motions are moot." *Id.* at 3. Having found that Minford's Motion was 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 MOTION FOR PROTECTIVE ORDER**

The August 19, 2016 Entry found that Minford's Motion for a Protective Order was moot because 24 months had passed since the Motion was filed and Minford had not sought to renew its motion. Entry at 3. The passage of time, however, has not changed the status of the information: that information remains confidential and critical to the business of Minford. Accordingly, Minford moves for a protective order of the information filed under seal on October 15, 2013.

As Minford explained in its August 6, 2014 Motion, 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.<sup>2</sup> 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 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.<sup>3</sup> 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).

As the Commission already determined in its August 4, 2014 Entry, Minford's October 15, 2013 filing contains competitively sensitive and highly proprietary business and financial information falling within the statutory characterization of a trade secret.<sup>4</sup>

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<sup>2</sup> See R.C. 4901.12 and 4905.07.

<sup>3</sup> 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).

Public disclosure of the information would jeopardize Minford's business position and its ability to compete. Further, the Commission has already determined that non-disclosure of the information will not impair the purposes of Title 49 of the Revised Code as the Commission and its Staff will have full access to the confidential information in order to complete its review process. Because Minford's information constitutes a trade secret, the Commission is prohibited from disclosing it.

Further, as the August 19, 2016 Entry indicated in regard to several other companies' request to extend protective orders, the passage of time has not reduced the status of the information as a trade secret. As this Motion and the Motion for a Stay discussed below demonstrate, failure to extend the protection afforded under Commission rules to Minford will work an undue harm that is not in the public interest. Accordingly, as a solution to the current situation, Minford requests that the Commission grant Minford's Motion for a Protective Order.

Further, Minford requests that the Motion for a Protective Order be granted on an expedited basis. There has not been any opposition to Minford's prior Motions for a Protective Order, and an expedited decision is necessary to protect the information from disclosure.

**IV. THE COMMISSION SHOULD GRANT THE MOTION SEEKING A STAY OF THE AUGUST 19, 2016 ORDER DIRECTING THE DOCKETING DIVISION TO DISCLOSE THE TRADE SECRETS OF MINFORD FILED UNDER SEAL ON OCTOBER 15, 2013**

After finding that Minford's August 6, 2014 Motion for a Protective Order was moot, the August 19, 2016 Entry directs the docketing division of the Commission "to release the information previously filed under seal by Minford ... on October 15, 2013" seven days

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<sup>4</sup> R.C. 1333.61(D).



from the date of the Entry. August 19, 2016 Entry at 3. In the Orders, the third ordering paragraph then states “[t]hat the operational and financial information of Minford ... filed under seal on October 15, 2013, be released to the public seven days from the date of this Entry.” *Id.*

A stay 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, Minford has made a strong showing that the information filed under seal is a trade secret. Second, release of the information will cause irreparable harm to Minford. 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 the Motion. Finally, the public interest supports granting the Motion. 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 operational and financial information of Minford on August 26, 2016.

Further, Minford requests that the stay be granted on an expedited basis. There has not been any opposition to Minford's Motion 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 Motion for a Protective Order and 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](mailto:fdarr@mwncmh.com)

(willing to accept service by e-mail)

[selisar@mwncmh.com](mailto:selisar@mwncmh.com)

(willing to accept service by e-mail)

[mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com)

(willing to accept service by e-mail)

**Attorneys for Minford Telephone 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 the Minford Telephone Company* was sent by, or on behalf of, the undersigned counsel for Minford to the following parties of record this 24th 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](mailto:info@telecomcounsel.com)

Stephen M. Howard  
Vorys, Sater, Seymour and Pease LLP  
52 E. Gay Street  
Columbus, OH 43215  
[smhoward@vorys.com](mailto:smhoward@vorys.com)

Roxanne K. Hacker  
Interstate Telcom Consulting, Inc.  
130 Birch Avenue West  
Hector, MN 55342  
[roxih@interstatetelcom.com](mailto:roxih@interstatetelcom.com)

Eileen M. Bodamer  
BCLLC  
415 Hepplwhite Drive  
Johns Creek, GA 30022  
[eileen@bodamer.com](mailto:eileen@bodamer.com)

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

Vesta R. Miller  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215  
[vesta.miller@puc.stateoh.us](mailto:vesta.miller@puc.stateoh.us)

Michele L. Noble  
Squire Patton Boggs LLP  
41 South High Street, Suite 2000  
Columbus, OH 43215  
[michele.noble@squirepb.com](mailto:michele.noble@squirepb.com)

Josh S. Motzer  
CenturyLink  
17 South High Street, Suite 610  
Columbus, OH 43215  
[josh.motzer@centurylink.com](mailto:josh.motzer@centurylink.com)

Cassandra Cole  
Frontier Communications  
1300 Columbus Sanduky Road N.  
Marion, OH 43302  
[cassandra.cole@ftr.com](mailto:cassandra.cole@ftr.com)

Patricia L. Rupich  
Cincinnati Bell  
221 E. Fourth Street, 103-1280  
Cincinnati, OH 45202  
[pat.rupich@cinbell.com](mailto:pat.rupich@cinbell.com)

Kym D. Rupeiks  
The Pinnacle Group Inc.  
167 Tampa Avenue E., # 712  
Venice, FL 34285  
[pinnacle@blissnet.com](mailto:pinnacle@blissnet.com)

Jeff A. Blevins  
The Chillicothe Telephone Company  
68 East Main Street  
Chillicothe, OH 45601  
[Jeff.blevins@horizontel.com](mailto:Jeff.blevins@horizontel.com)

David A. Ferris  
The Ferris Law Group LLC  
6797 North High Street, Suite 214  
Worthington, OH 43085  
[dferris@ferrislawgroup.com](mailto:dferris@ferrislawgroup.com)

Lisa Hanscom  
Total Call Mobile, Inc.  
1411 W. 190th Street, Suite 700  
Gardena, CA 90248  
[lisah@totalcallusa.com](mailto:lisah@totalcallusa.com)

Craig Neeld  
Technologies Management, Inc.  
2600 Maitland Center Parkway,  
Suite 300  
Maitland, FL 32751  
[cneeld@tminc.com](mailto:cneeld@tminc.com)

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

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