

**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 THE MINFORD TELEPHONE COMPANY**

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Minford Telephone Company ("Minford") moves for a Protective Order to prevent the disclosure of trade secrets filed under seal on June 30, 2014. Additionally, Minford moves for a stay of the order directing the docketing division to disclose trade secret information filed under seal by Minford on June 30, 2014.

Minford requests an expedited order on its motions. The reasons supporting these motions are set out in the accompanying Memorandum in Support.

Respectfully submitted,

/s/ Frank P. Darr

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MEMORANDUM IN SUPPORT OF THE MOTIONS

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 June 30, 2014. Entry at 2 (Aug. 19, 2016). Initially, Minford moves for a protective order to maintain the confidentiality of the materials filed under seal on June 30, 2014. Additionally, the Commission should stay the order directing the docketing division to disclose the operational and financial information of Minford because a stay is in the public interest. Minford requests 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, Minford filed a redacted version of its FCC Form 481 filing, an unredacted version of its FCC Form 481 information under seal, and a motion seeking a protective order of the confidential information contained in the sealed filing on June 30, 2014. Contemporaneously, other Ohio telephone companies also filed their information in compliance with the Commission’s Entry.

In the Motion for a Protective Order, Minford demonstrated that its filing 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 Motion for a Protective Order filed on June 30, 2014, 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 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 this Motion until August 19, 2016.

On June 16, 2016, several of the telephone companies that had received a protective order 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 order was not opposed.

On August 19, 2016, an attorney examiner entry was issued that granted the June 16, 2016 motion to continue the protective order of the requesting telephone companies in the 2013 Universal Service Case. Based on the Attorney Examiner’s review

¹ Section 1333.61(D), Revised Code.

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 Minford's were moot. According to the Entry, the information that Minford 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 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 2. The passage of time, however, has not changed the status of the information: that information remains confidential and critical to the business of Minford.

Minford filed confidential operational and financial information under seal and a Motion for a Protective Order to prevent the public disclosure of that information on June 30, 2014. As Minford explained in its 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.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 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).

As the Commission already determined in its August 4, 2014 Entry in the 2013 Universal Service Case, Minford's June 30, 2014 filing contains 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

² See R.C. 4901.12 and 4905.07.

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).

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 Entry in the 2013 Universal Service Case indicated in regard to several other companies' motion to extend protective orders, the passage of time has not reduced the importance of this information. As this Motion and the request for 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 Attorney Examiner issue a Protective Order and stay the release of the information filed under seal.

Minford also requests that the Motion for a Protective Order be granted on an expedited basis. There has not been any opposition to Minford's prior Motion 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 Minford's Motion for a Protective Order is 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

⁴ R.C. 1333.61(D).

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.

The order directing the docketing division to release the information on August 26, 2016 should be stayed 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, that 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 it is entitled to a protective order. 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 trade secrets 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 Minford's Motion for a Protective Order. Further, the Commission should direct the docketing division to maintain the confidentiality of the sealed information.

Respectfully submitted,

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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.

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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.