

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

Entered in the Journal on August 26, 2016

{¶ 1} Pursuant to the attorney examiner Entry of May 31, 2013, all eligible telecommunications carriers (ETCs) were directed to file a copy in this docket of all responses to the Federal Communications Commission (FCC) May 16, 2013 Order in WC Docket No. 10-90.

{¶ 2} Beginning on October 9, 2013, through November 18, 2013, ETCs filed information consistent with the Entry of May 31, 2013. A number of responding companies submitted redacted filings accompanied by motions for protective treatment.

{¶ 3} Pursuant to the attorney examiner Entry of August 4, 2014, the motions for a protective order relative to the FCC Form 481 were granted with regard to the balance sheets, income statements, statements of cash flow, and service outage reporting.

{¶ 4} On August 6, 2014, Minford Telephone Company (Minford) filed a motion for a protective order regarding specific information contained in its FCC Form 481 filing, which was submitted under seal on October 15, 2013, in this proceeding.

{¶ 5} On August 7, 2014, Frontier North Inc. (Frontier North) filed a revised motion for a protective order specific to outage information included as part of its FCC Form 481 filing, which was submitted under seal on October 15, 2013, in this proceeding.

{¶ 6} On August 15, 2014, New Knoxville Telephone Company (New Knoxville) filed a motion for a protective order specific to its FCC Form 481 financial information (balance sheet, income statement, and statement of cash flows) filed under seal on October 15, 2013, in this proceeding.

{¶ 7} On June 16, 2016, Arthur Mutual Telephone Company, Ayersville Telephone Company, Bascom Mutual Telephone Company, Buckland Telephone Company, Champaign Telephone Company, Columbus Grove Telephone Company, Conneaut Telephone Company, Farmers Mutual Telephone Company, Fort Jennings Telephone Company, Germantown Independent Telephone Company, Glandorf Telephone Company, Kalida Telephone Company, Inc., McClure Telephone Company, Middle Point Home Telephone Company, Orwell Telephone Company, Ottoville Mutual Telephone Company, Pattersonville Telephone Company, Ridgeville Telephone Company, Sherwood Mutual Telephone Association, Sycamore Telephone Company, Telephone Service Company, Vaughnsville Telephone Company, and Wabash Mutual Telephone Company (collectively, the Company) filed a joint motion seeking a renewal of the protective treatment granted in the Entry of August 4, 2014.

{¶ 8} Pursuant to the Entry of August 19, 2016, the attorney examiner granted the June 16, 2016, motion for a renewal of protective treatment. In particular, the attorney examiner determined that the motion to continue the protective order should be granted due to the continued proprietary nature of the relevant information and that the previously issued protective orders should be extended for a period of twenty-four months from the date of this Entry.

{¶ 9} With respect to the motions of Minford, Frontier North, and New Knoxville, filed on August 6, 2014, August 7, 2014, and August 15, 2014, respectively, the attorney examiner determined that the pending motions were moot inasmuch as the information had already remained under seal for a 24-month period of time and that no request for the extension of protective treatment had been filed. The docketing division was directed to release the information previously filed under seal by Minford, Frontier North, and New Knoxville within seven days from the date of the August 19, 2016, Entry.

{¶ 10} On August 22, 2016, Frontier North filed a motion to stay the deadline for the release of information. Concurrently, Frontier North filed a motion to continue to protect the information filed under seal on October 15, 2013, and granted protection pursuant to

the Entry of August 4, 2014. In support of its motions, Frontier North asserts that the previously protected information continues to consist of outage information that could be used to analyze its operations and target areas for market entry or market strategies targeted to specific geographic areas. Therefore, Frontier North avers that the information qualifies for trade secret protection. Specifically, Frontier North contends that the subject of its motions is business information that derives independent economic value 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.

{¶ 11} Additionally, Frontier North submits that public disclosure of this information would provide competitors with information that they could use to analyze Frontier North's operations and target area for market entry or market strategies targeted to specific geographic areas. As a result, Frontier North contends that competitors could obtain an unfair competitive advantage.

{¶ 12} Further, Frontier North asserts that the information addressed in its motions is treated in the ordinary course of business as being proprietary and confidential by Frontier North employees and is not disclosed to anyone except in a Commission proceeding and/or pursuant to a staff data request. According to Frontier North, during the course of discovery, information of this type has generally been provided to other parties only pursuant to an appropriate protective assessment.

{¶ 13} On August 23, 2016, New Knoxville filed a motion to stay the release of confidential trade secret information as required by the Entry of August 19, 2016, and a request for an expedited ruling. Further, New Knoxville filed an application for rehearing of the attorney examiner's determination that the trade secret information should no longer be protected and seeks a 24-month extension of the previously granted protective treatment.¹ In support of its motions, New Knoxville submits that the determinations set forth in the Entry of August 19, 2016, contravene Ohio Adm.Code 4901-1-24(E), which provides that the information that is subject of a motion for a protective order will remain

¹ New Knoxville's August 23, 2016 pleading shall be considered as a motion for extension of protective treatment rather than as an application for rehearing.

protected while the motion is pending. According to New Knoxville, because no order had been issued regarding its pending motion for protective treatment, there was no deadline for the expiration of the protective order and no extension request could be filed. Consistent with Ohio Adm.Code 4901-1-24(F), New Knoxville opines that once a motion for protective treatment is granted, the protection expires 24 months after the date of the order granting protection.

{¶ 14} New Knoxville asserts that it will be irreparably harmed by having its highly competitive information disclosed to the public, resulting in its competitors being given an unfair competitive advantage in the marketplace.

{¶ 15} New Knoxville represents that it has treated all of the designated information as a trade secret and that in the ordinary course of business, this information is treated as proprietary and confidential by New Knoxville's employees and is not publicly disclosed.

{¶ 16} As additional support for its motion, New Knoxville states that the information that is the subject of its motion is the identical information that the Commission found to be a protected trade secret in its Entry of August 19, 2016, for other companies.

{¶ 17} On August 24, 2016, Minford filed a motion for a protective order, a motion for a stay of the August 19, 2016 requirement that previously determined confidential information be released on the public record, and a request for expedited relief. In support of its motion, Minford submits that its current motion addresses the same information that was previously granted protective treatment pursuant to the Entry of August 4, 2014.

{¶ 18} While the Entry of August 19, 2016, focused on the fact that 24 months had passed since the filing of the pending August 6, 2014, motion for a protective order, Minford asserts that notwithstanding the passage of time, the information remains confidential and critical to its business. In support of its motion for a protective order,

Minford notes that the Commission, in its Entry of August 4, 2014, already determined that Minford's October 15, 2013, filing contains competitively sensitive and highly proprietary business and financial information that constitutes a trade secret. According to Minford, failure to extend protective treatment pursuant to the Commission's rules will result in undue harm that is not in the public interest.

{¶ 19} In support of its motion for a stay, Minford asserts that the information currently under seal, and the subject of its August 24, 2016 motions, continues to be a trade secret. Minford contends that the release of the information will cause irreparable harm to the company. Further, Minford notes that there has been no opposition to this request.

{¶ 20} On August 23, 2016, the Ohio Telecom Association (OTA) filed a letter in support of the motions of its member companies, Frontier North, New Knoxville, and Minford.

{¶ 21} Upon a review of the arguments set forth above, the attorney examiner finds that the motions for a protective and/or an extension of protective treatment are reasonable and should be granted. The attorney examiner has reviewed the arguments presented, and the information included in these motions. 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,² the attorney examiner finds that the subject operational and financial information (including balance sheet, income statement, and statement of cash flows) constitutes trade secret information. Its release is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Finally, the attorney examiner concludes that these documents could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner determines that the motion to continue the protective order should be granted due to the continued

² See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

proprietary nature of the relevant information and the previously issued protective orders should be extended for a period of twenty-four months from the date of this Entry.

{¶ 22} Although a party may, pursuant to Ohio Adm.Code 4901-1-24, seek an extension of a protective order, the requesting entity must demonstrate the need for the specific time frame requested. Following the end of the aforementioned two-year period, the Companies are directed to perform an evaluation in order to determine whether the protected information continues to require protective treatment.

{¶ 23} Consistent with the granting of the motions for a protective order/extension of protective treatment, the attorney examiner finds that the motions for a stay of the requirement to publicly release specified documents is granted and the information previously addressed in the Entry of August 19, 2016, shall remain under seal. Additionally, the motions for an expedited ruling are granted.

{¶ 24} It is, therefore,

{¶ 25} ORDERED, That the motions for an expedited ruling, the motions for a protective order/extension of protective treatment, and the motions for a stay be granted. It is, further,

{¶ 26} ORDERED, That the docketing division continue to maintain the financial information under seal in accordance with paragraphs 21-23. It is, further,

{¶ 27} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Jay S. Agranoff

By: Jay S. Agranoff
Attorney Examiner

JRJ/dah

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Case No(s). 13-1115-TP-COI

Summary: Attorney Examiner Entry ordering the motions for an expedited ruling, the motions for a protective order/extension of protective treatment, and the motions for a stay be granted; and that the docketing division continue to maintain the financial information under seal in accordance with paragraphs 21-23. Entry electronically filed by Debra Hight on behalf of Jay S. Agranoff, Attorney Examiner.