

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of Time )  
Warner Cable Information Services )  
(Ohio), LLC for Designation as an Eligible )  
Telecommunications Carrier in Specified )  
Areas to Receive Rural Digital )  
Opportunity Fund Auction (Auction 904) )  
Support for Voice and Broadband )  
Services and Request For Expedited )  
Review )**

**Case No. 21-0027-TP-UNC**

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**MOTION FOR PROTECTIVE ORDER**

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Pursuant to Ohio Administrative Code 4901-1-24(D), Time Warner Cable Information Services (Ohio), LLC (“TWCIS”) moves for a protective order to keep Exhibit E of the application (regarding funding in Ohio) confidential and not part of the public record. The reasons underlying this motion are detailed in the attached Memorandum in Support. This same day, TWCIS is submitting Exhibit E of its Application under seal in accordance with the directives of the Commission in *In the Matter of the Proper Procedures and Process for the Commission’s Operations and Proceedings during the Declared State of Emergency and Related Matters*, Case Nos. 20-591-AU-UNC et al., Entries (April 8, 2020 and September 9, 2020).

Respectfully submitted,

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**MEMORANDUM IN SUPPORT  
OF  
MOTION FOR PROTECTIVE ORDER**

Time Warner Cable Information Services (Ohio), LLC (“TWCIS”) requests that Exhibit E of its Application be protected from public disclosure. Release to the public of the funding information contained in Exhibit E would harm TWCIS by disclosing information contrary to restrictions under the Rural Digital Opportunity Fund (“RDOF”) Auction 904 and by providing TWCIS’ competitors with sensitive and proprietary, trade secret market information related to TWCIS’ competitive service.

Ohio Administrative Code (“OAC”) 4901-1-24(D) provides that the Public Utilities Commission of Ohio (“Commission”) or certain designated employees may protect the confidentiality of information contained in documents filed with the Commission’s Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code (“R.C.”). State law recognizes the need to protect certain types of information, including that which is the subject of this motion. The non-disclosure of this information in the Application will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill their statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect from public disclosure the funding information in Exhibit E is clear, and there is compelling legal authority supporting the requested protective order. First, the information in Exhibit E should not be disclosed in order to remain consistent with the Federal Communications Commission’s prohibited communications rule (47 C.F.R. § 1.21002), which restricts disclosure of

bids and bidding strategies until after the post-auction deadline for winning bidders.<sup>1</sup> Exhibit E includes such information and, therefore, should not be publicly disclosed.

There is a second reason, which is separate and independent from the first reason, as well. The information in Exhibit E should not be disclosed because it is a trade secret. The Commission also long ago recognized its statutory obligations with regard to trade secrets:

The Commission is of the opinion that the “public records” statute must also be read in pari materia with Section 1333.31, Revised Code (“trade secrets” statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

*In re: General Telephone Co.*, Case No. 81-383-TP-AIR, Entry (February 17, 1982). Likewise, the Commission has facilitated the protection of trade secrets in its rules. *See*, OAC 4901-1-24(A)(7).

The definition of a “trade secret” is set forth in the Uniform Trade Secrets Act:

“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. Section 1333.61(D). This definition clearly reflects the state policy favoring the protection of information that is the subject of this motion.

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<sup>1</sup> The post-auction deadline for the RDOF Auction 904 is January 29, 2021.

In *State ex rel The Plain Dealer the Ohio Dept. of Ins.* (1997), 80 Ohio St. 3d 513, the Supreme Court of Ohio adopted a six-factor test to analyze whether information is a trade secret under the statute:

(1) The extent to which the information is known outside the business, (2) the extent to which it is known to those inside the business, i.e., by the employees, (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information, (4) the savings effected and the value to the holder in having the information as against competitors, (5) the amount of effort or money expended in obtaining and developing the information, and (6) the amount of time and expense it would take for others to acquire and duplicate the information.

*Id.* at 524-525 (quoting *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983)).

After applying these factors to the information sought to be protected in Exhibit E, it is clear that a protective order should be granted. Exhibit E identifies funding in Ohio in the RDOF Census Blocks identified in Exhibit A of the Application, which is confidential and proprietary information. This sensitive information is generally not disclosed because its disclosure would give competitors an understanding of TWCIS' costs, marketing strategy and activities, providing competitors with an advantage that would hinder TWCIS' ability to compete. In addition, public disclosure of this confidential information is not likely to assist the Commission in carrying out its duties. Moreover, the Commission has granted protective orders to prevent disclosure of this kind of funding information as part of numerous economic development projects, finding that the information constitutes trade secrets.<sup>2</sup> The funding information in Exhibit E is likewise a trade secret.

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<sup>2</sup> See e.g., *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval of an Economic Development Project with Tractor Supply Company*, Case No. 20-1703-GA-EDP, Entry at ¶ 8 (December 7, 2020); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project with American Freight*, Case No. 20-1517-GA-EDP, Entry at ¶ 8 (October 9, 2020); *In the Matter of the Application of Ohio Gas Company for Approval of an Economic Development Project with the North Pioneer Industrial Park*, Case No. 20-1315-GA-EDP, Entry at ¶ 8 (August 24, 2020); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project with Emerson Process Management Value Automation, Inc.*, Case No. 19-2001-GA-EDP, Entry at ¶ 8 (November 25, 2019); *In the Matter of the Application of Columbia Gas*

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction, the trade secrets statute creates a duty to protect them. *New York Tel. Co. v. Pub. Serv. Comm. N.Y.*, 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses, including public utilities who will be providing utility services through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in numerous proceedings. *See, e.g., Elyria Tel. Co.*, Case No. 89-965-TP-AEC, Finding and Order (September 21, 1989); *Ohio Bell Tel. Co.*, Case No. 89-718-TP-ATA, Finding and Order (May 31, 1989); and *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR, Entry (August 17, 1990).

WHEREFORE, for the above reasons, TWCIS requests that the Commission grant its motion for a protective order and maintain Exhibit E of its Application under seal and not disclose the funding in Ohio in the RDOF Census Blocks identified in the Application for a period of at least 24 months after the issuance of a protective order, consistent with Ohio Administrative Code 4901-1-24.

Respectfully submitted,

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*of Ohio, Inc. for Approval of an Economic Development Project with Mucci Farms*, Case No. 19-2000-GA-EDP, Entry at ¶ 8 (November 25, 2019); and *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project with Next Generation Films, Inc.*, Case No. 19-1999-GA-EDP, Entry at ¶ 8 (November 25, 2019).

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**1/6/2021 5:00:56 PM**

**in**

**Case No(s). 21-0027-TP-UNC**

Summary: Motion Motion for Protective Order electronically filed by Mrs. Gretchen L. Petrucci on behalf of Time Warner Cable Information Services (Ohio), LLC