

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE APPLICATION OF
DARK FIBER AND INFRASTRUCTURE,
LLC TO PROVIDE
TELECOMMUNICATIONS SERVICES
THROUGHOUT THE STATE OF OHIO.**

CASE No. 21-106-TP-ACE

**IN THE MATTER OF THE APPLICATION OF
CONGRUEX GROUP LLC TO PROVIDE
TELECOMMUNICATIONS SERVICES
THROUGHOUT THE STATE OF OHIO.**

CASE No. 21-255-TP-ACE

**IN THE MATTER OF THE APPLICATION OF
VERO FIBER NETWORKS LLC TO
PROVIDE COMPETITIVE
TELECOMMUNICATION SERVICES IN THE
STATE OF OHIO.**

CASE No. 21-287-TP-ACE

**IN THE MATTER OF THE APPLICATION OF
LTD BROADBAND LLC TO PROVIDE
TELECOMMUNICATIONS SERVICES
THROUGHOUT THE STATE OF OHIO.**

CASE No. 21-509-TP-ACE

**IN THE MATTER OF THE APPLICATION OF
NORTH COAST WIRELESS
COMMUNICATIONS, LLC TO PROVIDE
TELECOMMUNICATIONS SERVICE IN THE
STATE OF OHIO.**

CASE No. 21-559-TP-ACE

**IN THE MATTER OF THE APPLICATION OF
EXTENET ASSET ENTITY, LLC TO
PROVIDE TELECOMMUNICATIONS
SERVICES IN THE STATE OF OHIO.**

CASE No. 21-780-TP-ACE

ENTRY

Entered in the Journal on July 27, 2021

{¶ 1} In the six above-captioned cases, each of the six applicants has, respectively, filed an application seeking certification to provide telecommunications services in the state of Ohio. In each application, each respective applicant has sought to have the Commission issue a protective order for the purpose of extending confidential treatment to certain information each has submitted as part of its respective certification application. In each case, two versions have been filed of the documents containing the information for which protective treatment is sought: the first, in each case, being a publicly available version from which the purportedly sensitive material has been redacted; the second, in each case, being a completely unredacted version, filed under seal. Each respective applicant considers that the information it has submitted, for which it seeks protective treatment, constitutes confidential, sensitive, and proprietary trade secret information, as defined in R.C. 1333.61, and as recognized by Ohio Adm.Code 4901-1-24. The limited purpose of this Entry is to consider and to rule on the merits of each respectively submitted request for protective order.

{¶ 2} No memoranda contra has been filed with respect to any of six submitted motions for protective order under consideration.

{¶ 3} In Case No. 21-106-TP-ACE, the applicant, Dark Fiber and Infrastructure, LLC (Dark Fiber), filed its motion for protective order on February 16, 2021. Specifically, Dark Fiber seeks a protective order to keep confidential its actual and pro forma financial statements which were filed on February 9, 2021, as part of Dark Fiber's certification application. Dark Fiber argues that the information for which protective treatment is sought consists of proprietary, sensitive, financial information that it has never made publicly available and which, the applicant argues, if released, could expose Dark Fiber to undue competitive disadvantage.

{¶ 4} In Case No. 21-255-TP-ACE, the applicant, Congruex Group LLC (Congruex), filed its motion for protective order as part of its certification application, on March 22, 2021. Congruex seeks a protective order to prevent public disclosure of the financial information

it included as Exhibit H-2 to its certification application. Congruex argues that the information for which protective treatment is sought consists of proprietary, sensitive, financial information that it has never made publicly available and which, the applicant argues, if released, could expose Congruex to undue competitive disadvantage.

{¶ 5} In Case No. 21-287-TP-ACE, the applicant, Vero Fiber Networks, LLC (Vero Fiber), filed its motion for protective order on April 2, 2021. Vero Fiber seeks a protective order to prevent public disclosure of financial information included with exhibits C-2 and C-3 to its certification application. Vero Fiber argues that the information for which protective treatment is sought consists of sensitive financial information, confidential personal information, and confidential information regarding Vero Fiber's corporate structure. Vero Fiber contends that the involved information is not publicly available and that its release could expose Vero Fiber to undue competitive disadvantage.

{¶ 6} In Case No. 21-509-TP-ACE, the applicant, LTD Broadband LLC (LTD), filed its motion for protective order on May 24, 2021. LTD seeks a protective order to prevent public disclosure of information, which LTD considers confidential trade secret information, that LTD provided in response to a Staff data request made in LTD's certification application case. LTD argues that public release of the involved information would impair LTD's ability to respond to competitive opportunities in the marketplace and would provide LTD's competitors with an unfair competitive advantage.

{¶ 7} In Case No. 21-559-TP-ACE, the applicant, North Coast Wireless Communications, LLC (NCW), filed its motion for protective order on May 10, 2021. NCW seeks a protective order to keep confidential its Balance Sheet and Statement of Revenues and Expenses submitted on May 10, 2021 as part of NCW's certification application. NCW argues that the information for which protective treatment is sought consists of proprietary, sensitive, financial information that it has never made publicly available and which, if released, could expose NCW to undue competitive disadvantage.

{¶ 8} In Case No. 21-780-TP-ACE, the applicant, ExteNet Asset Entity, LLC (ExteNet), filed its motion for protective order as part of its certification application, on July 6, 2021. ExteNet seeks a protective order to prevent public disclosure of the financial information included as Exhibit H-2 to its certification application. ExteNet argues that the information for which protective treatment is sought consists of proprietary, sensitive, financial information that it has never made publicly available and which, if released, could expose ExteNet to undue competitive disadvantage.

{¶ 9} R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purposes of Title 49 of the Revised Code. R.C. 149.43 specifies that the term “public records” excludes information that, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the “state or federal law” exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).

{¶ 10} Similarly, Ohio Adm.Code 4901-1-24 allows the attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, “to the extent that state or federal law prohibits release of the information, including where the information is deemed * * * to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”

{¶ 11} Ohio law defines a trade secret as “information * * * that satisfies both of the following: (1) it derives independent economic values, 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; and (2) it is the subject of efforts to that are reasonable under the circumstances to maintain its secrecy.” R.C. 1333.61(D).

{¶ 12} The attorney examiner has reviewed the information filed under seal, for which protective treatment is sought, in each of the above-captioned certification application cases, as well as the assertions set forth by each respective applicant in support

of each motion for protective order. 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 forth by the Ohio Supreme Court,¹ the attorney examiner finds that the information for which protective treatment is sought, in each case, constitutes trade secret information. Its release is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of the information, in each case, is not inconsistent with the purposes of Title 49 of the Revised Code. Therefore, the attorney examiner finds that each of the six motions for protective order under consideration in this Entry is reasonable and should be granted.

{¶ 13} Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. Therefore, in each involved case, the confidential treatment being granted here shall be afforded for a period ending 24 months from the date of this Entry. Until that date, the Commission's docketing division should maintain, under seal, the information filed confidentially in each of the six above-captioned cases, namely: (a) the financial exhibits filed under seal on February 9, 2021 by Dark Fiber, the applicant in Case No. 21-106-TP-ACE; (b) the financial exhibits filed under seal on March 22, 2021 by Congruex, the applicant in Case No. 21-255-TP-ACE; (c) the financial exhibits filed under seal on April 2, 2021 by Vero Fiber, the applicant in Case No. 21-287-TP-ACE; (d) the response to Staff data request filed under seal on May 24, 2021 by LTD, the applicant in Case No. 21-509-TP-ACE; (e) the financial exhibits filed under seal on May 10, 2021 by NCW, the applicant in Case No. 21-559-TP-ACE; and (f) the financial exhibits filed under seal on July 6, 2021 by ExteNet, the applicant in Case No. 21-780-TP-ACE.

{¶ 14} Ohio Adm.Code 4901-1-24 (F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If any of the six applicants wishes to extend the confidential treatment granted by today's Entry,

¹ See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-25, 687 N.E.2d 661 (1997).

such applicant should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may, upon expiration of the protective treatment period, release the information without prior notice to the involved applicant.

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That that each of the six motions for protective order under consideration in this Entry be granted. It is, further,

{¶ 17} ORDERED, That the Commission's docketing division maintain, under seal, the information filed confidentially in each of the six above-captioned cases (as more specifically described in Paragraph 13) for a period ending 24 months from the date of this Entry. It is, further,

{¶ 18} ORDERED, That a copy of this Entry be served upon all parties of record in each of the six involved cases.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Daniel E. Fullin

By: Daniel E. Fullin
Attorney Examiner

JRJ/kck

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in

Case No(s). 21-0106-TP-ACE, 21-0255-TP-ACE, 21-0287-TP-ACE, 21-0509-TP-ACE, 21-0559-TP-ACE,

Summary: Attorney Examiner Entry ordering that that each of the six motions for protective order under consideration in this Entry be granted and ordering that the Commission's docketing division maintain, under seal, the information filed confidentially in each of the six above-captioned cases (as more specifically described in Paragraph 13) for a period ending 24 months from the date of this Entry.

electronically filed by Kelli C. King on behalf of Daniel E. Fullin, Attorney Examiner, Public Utilities Commission of Ohio