

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
BASCOM MUTUAL TELEPHONE
COMPANY DBA BASCOM
COMMUNICATIONS, INC. FOR
DESIGNATION AS A HIGH-COST RURAL
COMPETITIVE ELIGIBLE
TELECOMMUNICATIONS CARRIER.

CASE NO. 21-13-TP-UNC

ENTRY

Entered in the Journal on July 6, 2023

{¶ 1} Pursuant to the Finding and Order of May 19, 2021, the Commission granted Bascom Mutual Telephone Company dba Bascom Communications, Inc.'s motion for a protective order specific to information related to a technical plant description set forth in Exhibit J of the amended application.

{¶ 2} On April 5, 2023, Bascom Mutual Telephone Company dba Bascom Communications, Inc. (Bascom) filed a motion seeking an extension of the protective order previously granted on May 19, 2021. In support of its motion, Bascom submits that the specified information is confidential material because the information is a trade secret deserving of on-going protection. According to Bascom, the material continues to retain commercial value inasmuch as it contains technical information that could be used to adversely affect the new fiber system described in Exhibit J and its customers if released at this time.

{¶ 3} 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 which, 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. 396, 399, 732 N.E.2d 373 (2000).

{¶ 4} Similarly, Ohio Adm.Code 4901-1-24 allows the Commission 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.”

{¶ 5} Ohio law defines a trade secret as “information * * * 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).

{¶ 6} The attorney examiner has reviewed the arguments presented, and the information included in the motion for an extension of a 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 set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the subject of technical plant information 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 for protective treatment should be granted due to the proprietary nature of the relevant information. The protective order should be extended for a period of twenty-four months from the date of this Entry.

¹ 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).

{¶ 7} 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, confidential treatment shall be afforded for a period ending 24 months from the date of this Entry. Until that date, the Docketing Division should continue to maintain, under seal, the information addressed in the motion.

{¶ 8} 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 two-year period, Bascom is directed to perform an evaluation in order to determine whether the protected information continues to require protective treatment.

{¶ 9} It is, therefore,

{¶ 10} ORDERED, That the motion for extension of the protective order be granted and the Docketing Division continue to maintain the designated information under seal in accordance with Paragraphs 6 and 7. It is, further,

{¶ 11} ORDERED, That Bascom perform an evaluation of the protected information in accordance with Paragraph 8. It is, further,

{¶ 12} 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

GNS/CES/dr

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in

Case No(s). 21-0013-TP-UNC

Summary: Attorney Examiner Entry ordering that the motion for extension of the protective order be granted and the Docketing Division continue to maintain the designated information under seal in accordance with Paragraphs 6 and 7 electronically filed by Debbie S. Ryan on behalf of Jay S. Agranoff, Attorney Examiner, Public Utilities Commission of Ohio.