

File

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OHIO BOOKETING DIVISION
Public Utilities Commission of Ohio

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application)
of Ameritech Ohio for Approval) Case No. 96-911-TP-AEC
of a Contract between Itself and)
TheOnRamp)

AMERITECH OHIO'S MOTION FOR PROTECTIVE ORDER

Ameritech Ohio, by its attorneys and pursuant to Section 4901-1-24(D) of the Commission's rules (O.A.C. § 4901-1-24(D)) moves for a protective order keeping confidential the designated confidential and/or proprietary information contained in the filing accompanying this motion. The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of Section 4901-1-24(D) of the Commission's rules, unredacted copies of the confidential information which is the subject of this motion have been filed under seal.

Respectfully submitted,

AMERITECH OHIO

By: *Jon F. Kelly*
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Its Attorney

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MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER

Ameritech Ohio requests that the information designated as confidential and/or proprietary in the accompanying filing (along with any and all copies, including electronic copies) be protected from public disclosure.

Section 4901-1-24(D) of the Commission's rules provides that the Commission or certain designated employees may issue an order which is necessary to 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. As set forth herein, state law prohibits the release of the information which is the subject of this motion. Moreover, the non-disclosure of the information will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill its statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission has often expressed its preference for open

proceedings, 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 (O.A.C. § 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. § 1333.61(D). This definition clearly reflects the state policy favoring the protection of trade secrets such as the information which is the subject of this motion.

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of a public utility, the trade secret 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, 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); Columbia Gas of Ohio, Inc., Case No. 90-17-GA-GCR (Entry, August 17, 1990).

In Pyromatics, Inc. v. Petruziello, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983), the Court of Appeals, citing Koch Engineering Co. v. Faulconer, 210 U.S.P.Q. 854, 861 (Kansas 1980), has delineated factors to be considered in recognizing a trade secret:

- (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.

For all of the information which is the subject of this motion, Ameritech Ohio considers and has treated the information as a trade secret. In the ordinary course of business of Ameritech Ohio, this information is stamped confidential, is treated as proprietary and confidential by Ameritech Ohio employees, and is not disclosed to anyone except in a Commission proceeding and/or pursuant to staff data request. During the course of discovery, information of this type information has generally been provided only pursuant to protective agreement.

The Attachment to this Memorandum in Support lists the information which has been redacted from the associated filing and further describes why it should be granted protected status. For the foregoing reasons, Ameritech Ohio requests that designated information be protected from public disclosure.

Respectfully submitted,

AMERITECH OHIO

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Its Attorney

ATTACHMENT

Information Redacted

Reasons

Prices

The prices set forth in this contract are competitively sensitive and were individually negotiated. Public disclosure of the prices would impair Ameritech Ohio's ability to respond to competitive opportunities in the marketplace.

Term of Contract

The term of the contract is competitively sensitive information. Its public disclosure would alert competitors to renewal and/or cancellation opportunities which could impair Ameritech Ohio's ability to serve this customer.

Customer Locations

The customer locations identified in the contract constitute competitively sensitive information which, if publicly released, would provide competitors with a clear idea of the nature of the customer's business and the services required, thus impairing Ameritech Ohio's ability to serve this customer.