

File

ORIGINAL

7

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

RECEIVED-PROCKETING DIV
00 FEB 10 PH 3:19

PUCO

In the Matter of the Petition of AT&T Communications)
Of Ohio, Inc. for Arbitration Pursuant to Section 252(b))
of the Telecommunications Act of 1996 to Establish)
an Interconnection Agreement with Ameritech Ohio.)

Case No. 96-752-TP-ARB

In the Matter of the Petition of Sprint Communications)
L.P. for Arbitration of Interconnection Rates, and)
Conditions and Related Arrangements with Ameritech)
Ohio.)

1011
Case No. 96-1101-TP-ARB

AMERITECH OHIO'S MOTION TO RENEW PROTECTIVE ORDER

Ameritech Ohio, pursuant to O.A.C. 4901:1-24(D) and (F), respectfully moves for an Order renewing the Commission's previous grant of confidential treatment to proprietary information submitted in connection with this proceeding. The reasons supporting this Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

AMERITECH OHIO

Michael T. Mulcahy, OFC
Michael T. Mulcahy

45 Erieview Plaza, Suite 1400
Cleveland, Ohio 44114
(216) 822-3437

Its Attorney

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician *[Signature]* Date Processed *Feb 11, 2000*

MEMORANDUM IN SUPPORT

I. INTRODUCTION

In the course of this proceeding, Ameritech Ohio has requested the Commission to keep portions of the record confidential. The portions of the record for which Ameritech Ohio requested confidential treatment included documents containing information on cost, negotiation strategy, market planning and other information treated by Ameritech Ohio as proprietary. The Commission granted, or confirmed its Attorney Examiners' decision to grant, confidential treatment to those documents pursuant to Rule 4901:1-24(D), O.A.C. Order on Rehearing, June 19, 1997.¹ The protective order was renewed by the Commission by Entry dated September 23, 1998.

Those documents have been segregated from the public record without interruption to date. Ameritech Ohio has evaluated the extent to which the documents previously accorded protection from disclosure continue to require confidential treatment. Because the information is neither outdated nor stale, and the need for protecting the designated information continues today for the same reasons that existed at the time the original order was adopted by the Commission, Ameritech Ohio believes that the information should remain under seal

II. DISCUSSION

Rule 4901:1-24(D), O.A.C., provides that the Commission or 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

¹ Prior to the hearing in Case No. 96-1011-TP-ARB, Sprint and Ameritech entered into a stipulation by which the parties agreed to accept the results of the decision issued by the Commission on January 23, 1997, and were also bound by the determinations made in the Order on Rehearing dated June 19, 1997.

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 renewal motion. Moreover, the non-disclosure of the information will not impair the purposes of Title 49 and 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. There is also compelling legal authority supporting the renewal of this protective order.

A. **The Information Presently Under Seal Is Trade Secrets And Is Entitled to Protection Against Public Disclosure.**

A trade secret, as referenced in Rule 4901:1-24(D), is defined in R.C. 1333.61(D) to include "any business information or plan [or] financial information" that satisfies both the following criteria:

- (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).

With respect to the initial requirement of Rule 4901:1-24(D), information contained in the documents currently under seal continues to satisfy both criteria for a trade secret under Ohio law. First, information in those documents continues to derive independent economic value from not being generally known, and not being readily ascertainable by others who could gain economic value from it. Much of the sealed record consists of data that remain proprietary and continue to derive commercial value as a result of its confidential nature. Such proprietary data requires continued protection. Second, Ameritech Ohio also has continued to maintain the confidentiality of all of the information kept under seal. Thus, it is clear that information in the

documents currently under seal continues to meet both aspects of the first requirement of Rule 4901:1-24(D).

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.

The information presently under seal, accordingly, satisfies both criteria for a trade secret under Rule 4901:1-24(D), O.A.C., and Ohio law.

B. Granting a Protective Order Is Not Inconsistent With the Purposes of Title 49 Of the Ohio Revised Code.

While the Commission has expressed its preference for open proceedings, the Commission also recognizes its statutory obligations, as set forth in R.C. 149.43, to protect information and documents, which are trade secrets:

The Commission is of the opinion that the "public records" statute [R.C. 149.43] must also be read *in pari materia* with Section 1333.51 [since recodified at Sections 1333.61 and 1333.62] 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)).

Courts of other jurisdictions have held that public utility commissions have not only the authority to protect the trade secrets of a public utility, but the relevant trade secret statute also

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 protection 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 by granting motions for extensions of protective orders. See, e.g., TCG/Ameritech Ohio Arbitration, Case No. 96-694-TR-ARB, Entry, July 29, 1998; MCI/Ameritech Ohio Arbitration, Case No. 96-888-TP-ARB, Entry, July 29, 1998; AT&T/Ameritech Ohio Arbitration, Case No. 96-752-TP-ARB, Entry, September 23, 1998; In the Matter of the Commission's Investigation Into Continuation of the Ohio Telecommunications Relay Service, Case No. 96-1139-TP-COI, Entry, January 3, 1999; Ameritech Advanced Data Services/Ohio Dominican College, Case No. 97-1391-CT-ZAC, Entry, April 19, 1999; Ameritech Advanced Data Services/SUN Television and Appliances, Case No. 97-1494-CT-ZAC, Entry, May 19, 1999.

The General Assembly has carved out an exception to the general rule in favor of the public disclosure for "records the release of which is prohibited by state or federal law." R.C. 149.43(A)(1)(p). The Commission's rule incorporates that exception by making eligible for protection from public disclosure documents containing information "the release of which is prohibited by state or federal law." Rule 4901:1-24(D). In turn, state law prohibits the release of information meeting the definition of a trade secret. R. C. §§ 1333.61(D) and 1333.62. The amended statutes also reference the purposes of Title 49 of the Revised Code. The protection of trade secret information from public disclosure is consistent with the purposes of Title 49 because the Commission and its Staff have access to the information; in many cases, the parties to a case may have access under an appropriate protective arrangement. Also, the protection of trade secret information as requested herein will not impair the Commission's regulatory responsibilities.

III. CONCLUSION

Ameritech Ohio considers and has treated the information and data currently under seal as proprietary and confidential business information, which is a trade secret under the Commission's Rules and Ohio law. The information has been stamped as confidential and is treated as proprietary and confidential by Ameritech Ohio employees and the parties. In the ordinary course of business, this information is not disclosed to anyone except in a Commission proceeding and/or pursuant to a staff data request. Such information is provided only pursuant to a non-disclosure arrangement

For the foregoing reasons, Ameritech Ohio respectfully requests that its Motion to Renew the Protective Order be granted and the information continued to be protected from public disclosure.

Respectfully submitted,

AMERITECH OHIO

Michael T. Mulcahy 

Michael T. Mulcahy

45 Erieview Plaza, Suite 1400
Cleveland, Ohio 44114
(216) 822-3437

Its Attorney

CERTIFICATE OF SERVICE

A copy of the foregoing Ameritech Ohio's Motion to Renew the Protective Order was served upon Benita Kahn, Vorys, Sater, Seymour and Pease LLP, 52 East Gay Street, Columbus, OH 43216-1008 and Joseph R. Stewart, Sprint, 50 West Broad Street, Suite 3600, Columbus, OH 43215 by regular U.S. mail, postage prepaid, this 10th day of February, 2000.

Michael T. Mulcahy JFM
Michael T. Mulcahy