

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

XO Communications Services, Inc. :
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 :
 Petition for emergency relief to protect : 10-0113
 Petitioner's 2009 Annual Report from :
 disclosure for not less than five years in :
 order to protect highly proprietary :
 information. :
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ORDER

By the Commission:

On February 16, 2010, XO Communications Services, Inc. ("Petitioner") filed a verified Petition requesting that the Illinois Commerce Commission ("Commission") enter an Order protecting Petitioner's 2009 Annual Report from public disclosure for a period of not less than five years.

Petitioner is certified by the Commission to provide competitive telecommunications services in Illinois. The Petition indicates that Petitioner's 2009 Annual Report contains commercial and financial information that is proprietary and confidential, the disclosure of which to competitors could be detrimental to Petitioner. The Petition further indicates that because the telecommunications industry is highly competitive, it is imperative that public disclosure of confidential information contained in the Petitioner's 2009 Annual Report be avoided for a period of at least five years following issuance of an Order by the Commission, due to the competitive harm such disclosure would likely cause Petitioner.

On February 19, 2010, the Administrative Law Judge issued a ruling directing Petitioner to explain why it believed a five year time period was warranted. Petitioner responded to the ruling with an explanation of its request on March 12, 2010. It is the Commission's recent practice, however, to grant confidential and proprietary treatment to Annual Reports for a two year time period. Since all facts necessary for the Commission to grant the relief requested are contained in the Petition, the Administrative Law Judge waived hearing in this matter.

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Petitioner, XO Communications Services, Inc., is a telecommunications carrier within the meaning of Section 13-202 of the Public Utilities Act ("Act")

and provides competitive telecommunications service as defined in Section 13-209 of the Act;

- (2) the Commission has jurisdiction over Petitioner and the subject matter herein;
- (3) the recitals of fact set forth in the prefatory portion of this Order are supported by the Petition and are hereby adopted as findings of fact;
- (4) Section 5-109 of the Act states, in relevant part:

All reports made to the Commission by any public utility and the contents thereof shall be open to public inspections, unless otherwise ordered by the Commission;

- (5) Section 7(g) of the Illinois Freedom of Information Act ("Illinois FOIA") (5 ILCS 140/7) exempts from disclosure:

Trade secrets and commercial or financial information obtained from a person or business where such trade secrets or information are proprietary, privileged or confidential, or where disclosure of such trade secrets or information may cause competitive harm;

- (6) the information contained in Petitioner's 2009 Annual Report falls within the exemption stated in Finding (5);
- (7) Petitioner's 2009 Annual Report should be exempt from public disclosure under Section 7(g) of the Illinois FOIA and Section 5-109 of the Act for a period of two years from the date of this Order; and
- (8) Petitioner should file with the Chief Clerks office both a proprietary Annual Report and a redacted public Annual Report along with a cover letter indicating that proprietary treatment was granted in this Docket and identifying the date on which this Order was entered. Only the specific information deemed proprietary should be redacted from the public version.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the 2009 Annual Report filed by XO Communications Services, Inc. is afforded proprietary treatment and is exempt from public disclosure and will be accessible only by the Commission and the Commission Staff for a period of two years from the date of this Order.

IT IS FURTHER ORDERED that both a proprietary Annual Report and a redacted public Annual Report shall be filed with the Chief Clerks office along with a cover letter indicating that proprietary treatment was granted in this Docket and identifying the date on which this Order was entered.

IT IS FURTHER ORDERED that the Illinois Commerce Commission retains jurisdiction over XO Communications Services, Inc. and the subject matter hereof for the purpose of issuing such further Orders as it may deem necessary.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 5th day of May, 2010.

(SIGNED) MANUEL FLORES

Acting Chairman