

June 5, 2014

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DELIVERED VIA HAND DELIVERY

Public Utilities Commission of Ohio
ATTN: Barcy F. McNeal, Secretary
180 E. Broad Street, 11th Floor
Columbus, OH 43215-3793

RE: Case No. 14-0849-TP-ACE
Application for Certification to Provide Competitive Local Exchange Services
in the State of Ohio

Dear Ms. McNeal:

KEPS Technologies, Inc. d/b/a ACD.net and ACD Telecom ("ACD"), through the attached, is filing its ***Motion for Protective Order*** and three (3) copies of Exhibit A which is Confidential Information hereby submitted under seal.

If there are any questions or concerns regarding this filing or its contents, please do not hesitate to contact me directly.

Very truly yours,

ICE MILLER LLC



Christopher L. Miller
Attorney for KEPS Technologies, Inc.

CLM/sk
Enclosures

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

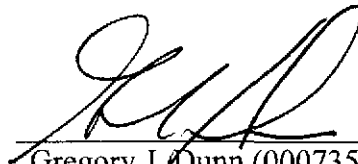
IN THE MATTER OF THE
APPLICATION OF KEPS
TECHNOLOGIES, INC. D/B/A ACD.NET
& ACD TELECOM TO BECOME
CERTIFIED AS A COMPETITIVE
LOCAL EXCHANGE CARRIER

CASE NO. 14-0849 -TP-ACE

MOTION FOR PROTECTIVE ORDER

Pursuant to O.A.C. § 4901-1-24(D), KEPS Technologies, Inc. d/b/a ACD.net and ACD Telecom ("ACD") moves for a protective order to prevent public disclosure of confidential and proprietary information, including financial data, included as exhibits in ACD's application for certification to provide competitive local exchange services in the State of Ohio (the "Application"). The reasons underlying this motion are detailed in the attached Memorandum in Support. Pursuant to O.A.C. § 4901-1-24(D)(2), three (3) unredacted copies of the confidential exhibits are being submitted under seal as Exhibit A.

Respectfully submitted,



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MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

BACKGROUND

ADC has recently filed the above-referenced Application with the Commission. Pursuant to the terms of the Application, ADC is required to provide information regarding sensitive financial information (including a statement of ADC's financial condition as well as audited financial statements and financial forecasts), confidential personal information, and confidential information regarding ADC's corporate structure. ADC submits that this information is confidential and proprietary in nature and requests that it be protected from public disclosure.

THE NEED FOR A PROTECTIVE ORDER

The information for which protection is sought is attached herewith as Exhibit A. Due to the sensitive nature of this information, its release to the public would harm ADC by providing ADC's competitors with confidential information in what is designed by statute to be a competitive service. Therefore, the information in Exhibit A should be used solely and exclusively by the Commission in exercising its governmental functions in considering ADC's Application.

Pursuant to O.A.C. § 4901-1-24(D), the Commission or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in the 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 Ohio Revised Code.

Although 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, the statute (R.C. § 149.43) specifies that the term "public records" excludes information which, under state or federal law,

may not be released. The Supreme Court of Ohio and O.A.C. § 4901-1-24(D) make clear that the "state or federal law" exception includes trade secrets. *See State ex rel. Besser v. Ohio State Univ.* (2008), 89 Ohio St.3d 396, 399.

The non-disclosure of the subject information will not impair the purposes of Title 49 of the Ohio Revised Code. The Commission and its Staff have full access to the information in order to fulfill the required statutory obligations. No purpose of Title 49 is served by the public disclosure of the information. Public disclosure of the information will only prove detrimental to ADC.

There is further compelling legal authority supporting ADC's requested protective order. While the Commission has often expressed its preference for open proceedings, the Commission has also 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 material 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 further recognized the protection of trade secrets in its rules. *See* O.A.C. § 4901-1-24(A)(7).

The Uniform Trade Secrets Act prohibits the misappropriation of trade secrets without express or implied consent. R.C. 1333.61 *et seq.* Under the Act, a "trade secret" is defined as:

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 the following (emphasis added):

- (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)(emphasis added). This definition clearly reflects the state policy favoring the protection of trade secrets such as the names and financial information that are the subject of this motion.

The Supreme Court of Ohio has adopted a six-factor analysis for determining whether information is a "trade secret" under R.C. 1333.61(D):

- (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.

State ex rel. The Plain Dealer v. Ohio Dept. of Ins. (1997), 80 Ohio St.3d 513, 524-25 (quoting *Pyromatics, Inc. v. Petruziello*, 7 Ohio App.3d 131, 134-35, 454 N.E.2d 588 (8th Dist. 1983)).

Applying these factors to the information contained in Exhibit A that ADC has designated as confidential, it is clear that a protective order should be granted. Exhibit A contains ADC's confidential financial statements, financial arrangements, and financial forecasts. Disclosure of this financial information could give competitors an advantage that would impair ADC's ability to compete in the market. ADC, a Michigan Corporation authorized to do business in Ohio as a foreign corporation, is a privately held company and is not required to file financial information with the United States Securities and Exchange Commission. Consequently, ADC does not otherwise disclose its financial information to the public.

Exhibit A also contains confidential personal information of ADC's directors and officers, such as the phone numbers and personal addresses of each, as well as confidential

information regarding ADC's corporate structure and capitalization. Again, this information is not disclosed to the public and could give competitors an advantage that would impair ADC's ability to compete in the market.

Further, public disclosure of ADC's confidential information is not likely to assist the Commission in carrying out its duties in considering ADC's Application. Such information is often kept under seal in similarly filed applications, and ADC respectfully requests that its information be kept under seal due to its competitively sensitive nature. This information is confidential, proprietary and can be considered a trade secret per the law cited above.

Finally, it should be noted that the Commission has recently granted similar motions for other applicants protecting substantially similar categories of sensitive information in Case Nos. 13-1145-TP-ACE and 13-1217-TP-ACE.

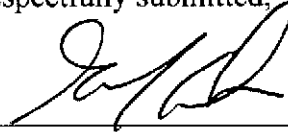
Accordingly, ADC respectfully requests that the Commission grant its Motion for Protective Order allowing the information contained in the documents provided in Exhibit A to be treated as confidential, thereby protecting said information from public disclosure.

CONCLUSION

For the foregoing reasons, ADC, Inc. respectfully requests that its Motion for Protective Order be granted.

[Signatures appear on following page.]

Respectfully submitted,



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Attorneys for the Applicant

EXHIBIT A

Confidential Information Submitted Under Seal

(Submitted Separately)