

# **Confidential Release**

**Case Number: 96-431-TP-ACE**

**Date of Confidential Document:  
June 28, 1996**

**Today's Date:  
August 25, 2009**

**Motion for protective order with unredacted  
financial information and memorandum in  
support filed on behalf of applicant by N.  
Hawthorne. (48 pgs.) (FILED UNDER SEAL)**

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

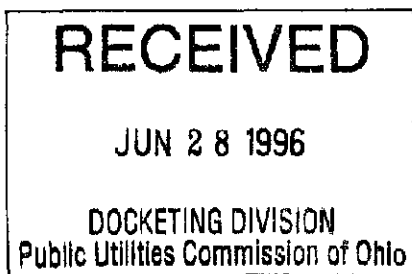
In the Matter of the Application of Communications )  
Buying Group, Inc. for a Certificate of Public )  
Convenience and Necessity to Provide ) Case No. 96-431-TP-ACE  
Telecommunications Services in the State of Ohio )

COMMUNICATIONS BUYING GROUP, INC.  
MOTION FOR PROTECTIVE ORDER  
AND  
MEMORANDUM IN SUPPORT

Communications Buying Group, Inc. ("CBG"), a privately held company, hereby moves for an order protecting the confidentiality of its financial viability information attached hereto, pursuant to, inter alia, O.A.C. Section 4901-1-24(D). Reasons for this Motion are set forth in the attached Supporting Memorandum.

Respectfully submitted,

Communications Buying Group, Inc.



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CBG'S SUPPORTING MEMORANDUM

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CBG moves that the information designated as confidential, proprietary and/or a trade secret ("Confidential Information" or "Information") in the accompanying filing under seal (along with any and all paper and electronic copies) be protected from public disclosure by The Public Utilities Commission of Ohio ("Commission"). The Commission recently granted protection of another applicant's financial viability information under these circumstances. See, In the Matter of the Application of USN Communications, Inc. for a Certificate of Public Convenience and Necessity to Provide Local Telecommunications Services in Certain Specified Areas in Ohio, Case No. 95-876-TP-ACE, Transcript at 5-6 (March 19, 1996). See also, In the Matter of the Application of The Ohio Bell Telephone Company for approval of an Alternative Form of Regulation, Case No. 93-487-TP-ALT (March 30, 1994).

Section 4901-1-24(D) of the Commission's rules provides for a protective order which is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division to the extent that Ohio or federal law prohibits the release of the Confidential Information; and where non-disclosure of the financial Information is not inconsistent with the purposes of Ohio Revised Code Title 49 ("Title 49"). Ohio law prohibits the release of the financial Information which is the subject of CBG's Motion. The non-disclosure of the Information will not blemish the purposes of Title 49. The Commission will have full access to the Information in order to fulfill its 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 CBG's request for a protective order. The Commission has often expressed its desire for public and open proceedings, but the Commission has also recognized its strong statutory duty 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.

See, In re: General Telephone Co., Case No. 81-383-TP-AIR (Entry, February 17, 1982). Also, the Commission has facilitated the protection of trade secrets in its rules (O.A.C. Section 4901-1-24(A)(7).

The Uniform Trade Secrets Act provides, in relevant part:

"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.

See Ohio Revised Code Section 1333.61(D). This definition clearly reflects the state governmental 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 of the Ohio General Assembly as 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.

In Pryomatics, 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), focused on specific 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 affected 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 the financial Information which is the subject of this Motion, CBG considers and has treated the Information as a trade secret. In the ordinary course of business of CBG, this Information is stamped confidential, is treated as proprietary and confidential by CBG employees, and will not be disclosed to anyone except in a Commission proceeding and/or pursuant to a Commission request.

The attachment to this Supporting Memorandum outlines the categories of the financial Information which has been redacted from the associated filing. For the foregoing reasons, CBG requests that designated financial Information be protected from public disclosure.

Respectfully Submitted,

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Nathaniel Hawthorne

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Fax: (216) 514-3337

Attorney for Communications Buying Group, Inc.

ATTACHMENT

**CBG, INC. - REDACTED**

**Consolidated Income Statement**

**REVENUE**

**COST OF GOODS SOLD**

**GROSS PROFIT**

**EXPENSES**

**NET INCOME (LOSS)**

	1996	1997	1998	1999	2000

CBG, INC. - REDACTED

1996 1997 1998 1999 2000

CASH FLOW FROM OPERATIONS -  
Net Income (Loss)

ADJUSTMENTS -  
Depreciation & Amortization  
Allowance for Doubtful Accounts

(INCREASE) DECREASE IN -  
Accounts Receivable  
Employee Advances  
Prepaid Expenses  
Other Assets

INCREASE (DECREASE) IN -  
Accounts Payable  
Accrued Expenses  
Subordinated Debt  
Line of Credit

INVESTING ACTIVITIES -  
Purchase of Fixed Assets

FINANCING ACTIVITIES -  
Capital Funding  
Distributions

NET INCREASE (DECREASE) IN CASH

CASH - BEGINNING OF MONTH

CASH - END OF MONTH



**CBG, INC. - REDACTED**

	1996	1997	1998	1999	2000
<b>ASSETS</b>					
<b>CURRENT ASSETS</b>					
Cash					
Accounts Receivable					
Allowance for Bad Debts					
Employee Advances					
Prepaid Expenses					
Total Current Assets					
<b>FIXED ASSETS</b>					
Total Fixed Assets					
Less: Accumulated Depreciation					
Net Fixed Assets					
<b>OTHER ASSETS</b>					
Deposits & Deferred Interest					
Total Other Assets					
<b>TOTAL ASSETS</b>					

**CBG, INC. - REDACTED**

	1996	1997	1998	1999	2000
<b>LIABILITIES</b>					
<b>CURRENT LIABILITIES</b>					
Accounts Payable -					
Total Current Liabilities					
<b>SHAREHOLDERS' EQUITY</b>					
Common Stock					
Additional Paid in Capital					
Accumulated Adjustment Account -					
Beginning Balance					
Net Income (Loss) - Year to Date					
Total Accumulated Adjustment Account					
Total Shareholders' Equity					
<b>TOTAL LIABILITIES &amp; SHAREHOLDERS' EQUITY</b>					

**CERTIFICATE OF SERVICE**

I hereby certify that CBG's Motion for Protective Order and Supporting Memorandum (with Financial Statement Redacted Copy) has been served by first class mail or hand-delivered to A. Kelsey Attorney for the Office of Consumers Counsel, 77 S. High St., 15th Floor, Columbus, Ohio 43266-0550, this 28th day of June, 1996.

Nathaniel Hawthorne  
Nathaniel Hawthorne