

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Communications Venture)
Corporation d/b/a INdigital telecom)
to Provide Competitive Emergency)
Telecommunications Services in)
the State of Ohio.)

Case No. 11- 4236 -TP-ACE

MOTION FOR PROTECTIVE ORDER OF COMMUNICATIONS VENTURE
CORPORATION d/b/a INDIGITAL TELECOM AND REQUEST FOR EXPEDITED
TREATMENT

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Pursuant to Ohio Administrative Code ("O.A.C.") 4901-1-24(D), Communications Venture Corporation d/b/a INdigital telecom ("INdigital telecom") respectfully moves the Commission to issue a Protective Order keeping confidential the designated confidential, proprietary, and/or trade secret information contained in the filing accompanying this motion.

The documents for which protective treatment is sought are Exhibits 9, 10 and 11 of Communications Venture Corporation d/b/a INdigital telecom's Application for Carrier Certification, which are being filed under seal simultaneously with this Motion. The information in Exhibits 9, 10 and 11 are competitively sensitive and highly proprietary business financial information comprising of trade secrets (collectively, "Protected Information"). The Protected Information has been clearly marked as confidential and is hereby filed under seal, separate from the remainder of the materials that comprise INdigital telecom's Application to Provide Competitive Emergency Telecommunications Services in the State of Ohio.

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The grounds for the instant Motion for Protective Order are set forth in the attached Memorandum in Support, incorporated herein by referenced as if fully set forth.

Respectfully submitted,



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**Venture Corporation d/b/a INdigital
telecom**

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**MEMORANDUM IN SUPPORT OF COMMUNICATIONS VENTURE CORPORATION
d/b/a INDIGITAL TELECOM'S MOTION FOR PROTECTIVE ORDER**

As part of INdigital telecom's Tariff Application, the Commission requested information regarding INdigital telecom's financial statements and financial viability describing the company's current financial condition, liquidity, and capital resources, including internally generated sources of cash and external funds available to support the Applicant's operations that are the subject of this Tariff Application (Exhibits 9, 10 and 11). INdigital telecom has submitted the Protected Information under seal because the documents contain competitively sensitive and highly proprietary business financial information, which require confidential treatment.

OAC 4901-1-24(D) provides for the issuance of an order that is necessary to protect the confidentiality of information contained in documents filed at the Commission: (i) to the extent that state and federal law prohibit the release of such information, and (ii) where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code ("RC"). State law recognizes the need to protect information that is confidential in nature, such as the Protected Information. Further, RC § 4901.12 and 4905.07 facilitate the protection of trade secrets in the

Commission's possession.¹ RC § 4901.12 and 4905.07 have reference to RC § 149.43, and therefore, incorporate the provision that excepts from the public record such information and records whose release is prohibited by law.² Therefore, it is clear that state law prohibits the release of information meeting the definition of a trade secret.

The Protected Information contained in Exhibits 9, 10 and 11 is comprised of competitively sensitive and highly proprietary business financial information that falls within the statutory characterization of a trade secret as defined by RC § 1333.61(D).

The definition of trade secret contained in RC § 1333.61 (D) is as follows:

"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.³

The Ohio Supreme Court adopted six factors to be used in determining whether a trade secret claim meets the statutory definition:

¹ RC § 4901.12 provides: "Except as otherwise provided in section 149.43 of the Revised Code and as consistent with the purposes of Title XLIX [49] of the Revised Code, all proceedings of the public utilities commission and all documents and records in its possession are public records." RC § 4905.07 provides: "Except as provided in section 149.43 of the Revised Code and as consistent with the purposes of Title XLIX [49] of the Revised Code, all facts and information in the possession of the public utilities commission shall be public, and all reports, records, files, books, accounts, papers, and memorandums of every nature in its possession shall be open to inspection by interested parties or their attorneys."

² RC § 149.43(A)(1)(v) provides in part that "'Public record' does not mean records the release of which is prohibited by state or federal law."

³ Emphasis added.

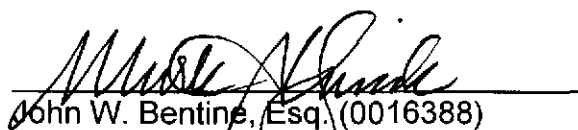
- 1) The extent to which the information is known outside the business;
- 2) The extent to which it is known to those inside the business, i.e., by the employees;
- 3) The precautions taken by the holder of the trade secret to guard the secrecy of the information;
- 4) The savings effected and the value 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 Dep't. of Ins., 80 Ohio St.3d 513, 524-25 (1997).

The Protected Information consists of financial information that is proprietary, and therefore, is confidential. Public disclosure of this information would jeopardize INdigital telecom's business position in negotiations with other parties and its ability to compete. INdigital telecom avers that this information is not generally known by the public and is held in confidence in the normal course of business. INdigital telecom has taken precautions to guard the secrecy of the Protected Information by limiting its dissemination. Accordingly, INdigital telecom respectfully requests that the Protected Information contained in Exhibit 9, 10 and 11 be deemed to contain trade secrets, and thus, be treated as confidential by the Commission and its Staff. In any event, the non-disclosure of the information will not impair the purposes of Title 49 because the Commission and its Staff will have full access to the requested information in order to complete their review process.

Wherefore, for the reasons set forth above, INdigital telecom respectfully requests that the Commission grant this Motion for Protective Order, which includes the request for protective treatment of the information contained in Exhibit 9, 10 and 11 filed under seal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John W. Bentine", is written over a horizontal line.

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