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BEFORE THE

PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)	TRF Docket No.
Vitcom LLC)	Case No. 15-535-TP-ACE
to provide Resold and Facilities Based Local Exchange)	
and Competitive Telecommunications Services)	

MOTION OF VITCOM LLC TO PROTECT CONFIDENTIAL INFORMATION PURSUANT TO
OHIO ADMINISTRATIVE CODE SECTION 4901-1-24

Vitcom LLC ("Vitcom"), moves, under O.A.C. 4901-1-24, that the Commission issues a protective order so that certain confidential information is exempted from public disclosure as confidential, proprietary, competitively-sensitive and trade secret information. The information was attached to the Application. Three unredacted copies of the confidential attachment are being provided docketing with this filing and a public version is attached to the Application.



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MEMORANDUM IN SUPPORT

Vitcom's motion requests that certain confidential information contained in its Application be exempted from public disclosure as confidential, proprietary, competitively-sensitive and trade secret information (the "Confidential Information").

The exhibits to the Application contain confidential information regarding Financials of the Company. Such information would harm Vitcom if it were made available to competitors.

Section 4901-1-24(D) of the Commission's rules provides that the Commission or certain 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 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 Motion.

Moreover, the non-disclosure of the information will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to review the filing. While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets. *See In re: General Telephony Co.*, Case No. 81-383-TP-AIR (Entry, February 17, 1982) (recognizing necessity of protecting trade secrets). Likewise, the Commission has facilitated the protection of trade secrets in its rules. O.A.C. § 4901-1-24(A)(7).

The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act:

"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.

R. C. § 1333.61(D). This definition clearly reflects the state policy favoring the protection of trade secrets such as the information which is the subject of this Motion.

The Ohio Supreme Court has held that not only does the Commission have the authority to protect the trade secrets of a public utility, the trade secret statute creates a duty to protect them. *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2009), 121 Ohio St.3d 362, 2009-Ohio-604. Indeed, for the Commission to do otherwise would be to negate the protections 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. *See, eg, 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. 90-17-GA-GCR (Entiy, August 17, 1990).

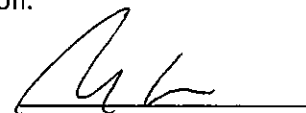
In 1996, the Ohio General Assembly amended R.C. §§ 4901.12 and 4905.07 in order to facilitate the protection of trade secrets in the Commission's possession. The General Assembly carved out an exception to the general rule in favor of the public disclosure of information in the Commission's possession. By referencing R.C. § 149.43, the Commission-specific statutes now incorporate the provision of that statute that excepts from the definition of "public record" records the release of which is prohibited by state or federal law. R.C. § 149.43(A)(1). 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 agreement. The protection of trade secret information as requested herein will not impair the Commission's regulatory responsibilities.

In *Pvromatics, Inc. v. Pettiziello*, 1 Ohio App. 3d 131,134-135 (Cuyahoga App. 1983), the Court of Appeals, citing *Koch Engineering Co. v. Faulconer*, 210 U.S.P.Q. 854, 861 (Kansas 1980), 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 Ohio Supreme Court has adopted these factors as appropriate. *State ex rel. Perrea v. Cincinnati Pub. Sch.* (2009), 123 Ohio St.3d 410, 414, 2009-Ohio-4762 (2009).

Vitcom has treated all of the information which is the subject of this Motion as proprietary, confidential business information, Vitcom considers and has treated the information as a trade secret. In the ordinary course of business of Vitcom, this information is treated as proprietary and confidential by Vitcom employees, and is not disclosed to anyone. The information that is the subject of this Motion provides specific information about Vitcom Financial conditions, which would allow a competitor to learn the sources and structure of Vitcom's business, its Customers, and business strategies. This would competitively disadvantage Vitcom if publicly disclosed.

Wherefore, Vitcom respectfully requests the Commission to determine the Confidential Information constitutes a trade secret subject to confidential treatment and be exempted from public disclosure as confidential, proprietary, competitively-sensitive and trade secret information.

A handwritten signature in black ink, appearing to read 'Zalmen', is written over a horizontal line.

Respectfully submitted,

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