

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Smart)	
Communications Holding, Inc. to Provide)	
Inmate Operator Services Throughout the State)	Case No. 20-1423-TP-ACE
of Ohio.)	

**SMART COMMUNICATIONS HOLDING, INC.’S
MOTION FOR PROTECTIVE ORDER**

Pursuant to Ohio Administrative Code (“OAC”) 4901-1-24(D), Smart Communications Holding, Inc. (“Smart Communications”) respectfully moves the Public Utilities Commission of Ohio (“Commission”) to issue a protective order to keep confidential and prevent from public disclosure Exhibit 9 (Financial Statements) to Smart Communications’ application for authority to provide inmate operator services in Ohio, contemporaneously filed this date. The documents in Exhibit 9 contain competitively sensitive and highly proprietary business financial information composed of trade secrets. Public disclosure of this confidential and sensitive information will have an adverse effect on Smart Communications. Pursuant to the requirements of O.A.C. 4091-1-24(D), Smart Communications has filed under seal unredacted copies of the confidential information sought to be protected by this Motion.

The grounds for this Motion are set forth in the attached Memorandum in Support.

Respectfully Submitted,



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Inc.**

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**MEMORANDUM IN SUPPORT OF SMART COMMUNICATIONS HOLDING, INC.'S
MOTION FOR PROTECTIVE ORDER**

Contemporaneously with this Motion for Protective Order, Smart Communications Holding, Inc. (“Smart Communications”) filed its application to provide inmate operator services (“IOS”) in Ohio (“Application”). As part of the Application, Smart Communications is required to provide financial statements to demonstrate its financial ability to provide service. Smart Communications has submitted these financial statements (“Confidential Information”) as Exhibit 9 to the Application under seal because they contain competitively sensitive and highly proprietary business financial information that are trade secret and require confidential treatment.¹

Smart Communications is not a publicly traded company and its financial information is not publicly available. The Confidential Information for which protection is sought describes Smart Communications’ financial position, which clearly is competitively sensitive trade secret information. Public disclosure would impair Smart Communications’ ability to respond to competitive opportunities in the marketplace and would provide competitors with an unfair competitive advantage. Therefore, Smart Communications requests that the Commission issue

¹ Pursuant to Entry issued May 5, 2020 in Case No. 20-591-AU-UNC, the confidential information contained in Exhibit 9 has been submitted for filing by First Class U.S. Mail this date.

an order to protect the confidentiality and prohibit the disclosure of the Confidential Information.

R.C. 4929.23(A) permits the Commission to protect the confidentiality of competitive information submitted as a part of the certification process as an IOS. Moreover, RC 4901.12 and 4905.07 facilitate the protection of trade secrets in the Commission's possession. These statutes incorporate by reference the provisions of R.C. 149.43, which except from the public record information and records for which disclosure is prohibited by law. State law prohibits the release of information meeting the definition of a trade secret. 1333.61(D) and 1333.62.

The Ohio Administrative Code expressly permits the Commission or the attorney examiner assigned to the case to protect the confidentiality of certain information. See OAC Rule 4901-1-24. Specifically, OAC Rule 4901-1-24 (D) provides that:

the commission...[or] an attorney examiner may issue any order which is necessary to protect the confidentiality of information contained in [a] document, to the extent that state or federal law prohibits release of the information, including where it is determined that both of the following criteria are met: The information is deemed by the commission, or [the attorney examiner] to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purpose of Title 49 of the Revised Code.

I. The Confidential Information Constitutes Trade Secret Information.

Under Ohio law:

“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.

In addition, in *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 687 N.E.2d 661 (1997), the Ohio Supreme Court adopted a six factor test, which served to further define “trade secrets” under Ohio law. The six factors to be considered in recognizing a trade secret are:

- (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 documents and information in Exhibit9 contains competitively sensitive and highly proprietary business financial information falling within the statutory characterization of a trade secret. Smart Communications considers and has treated the Confidential Information contained in the exhibits for which protection is sought as trade secret. In the ordinary course of business, the information is deemed confidential, and is treated as proprietary and confidential by Smart Communications’ employees. The Confidential Information is not disclosed to anyone unless required pursuant to a legal proceeding.

The Commission has issued orders protecting trade secrets and confidential information 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. 90-17-GA-GCR (Entry, August 17, 1990). *See also, Buckeye Energy Brokers, Inc.*, Case No. 02-1676-GA-AGG (Entry July 15, 2003,

explaining, “income statement and balance sheet information can be considered a trade secret and afforded confidential treatment”). For the Commission to do otherwise in this proceeding would be to negate the protections the General Assembly has granted to all businesses, including public utilities, through the Uniform Trade Secrets Act.

Considering the competitive environment in which Smart Communications operates, the information requested in the exhibits for which protection is sought is highly proprietary, confidential and commercially sensitive. Other telecommunications carriers seeking to compete with Smart Communications would benefit from Smart Communications’ financial information and use that information to gain an undue advantage. Therefore, it is imperative that Smart Communications be required to provide such information only under seal, thus precluding potential competitors from gaining access to this commercially sensitive information.

II. Non-disclosure of the Confidential Information is not Inconsistent with the Purpose of R.C. Title 49.

The protection of trade secret information from public disclosure is not inconsistent with the purposes of Title 49. 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 information in order to fulfill the Commission’s statutory obligations to ensure that Smart Communications has the managerial, technical and financial ability to provide service and to comply with the Commission’s rules. No purpose of Title 49 would be served by the public disclosure of the information.

For the foregoing reasons, Smart Communications requests that the designated information be protected from public disclosure.

Respectfully Submitted,



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Summary: Motion for Protective Order of Smart Communications Holding, Inc.'s and
Memorandum in Support electronically filed by Teresa Orahod on behalf of Dane Stinson