

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Application of)	
Southern Ohio Communication Services Inc.)	
Designation as an Eligible Telecommunications)	
Carrier in Specified Areas to Receive Rural Digital)	Case No. 21-0024-TP-UNC
Opportunity Fund Auction (Auction 904) Support)	
for Voice and Broadband Services and Request)	
for Expedited Review)	

MOTION FOR PROTECTIVE ORDER

Pursuant to Ohio Administrative Code 4901-1-24(D), Southern Ohio Communication Services Inc. (“SOCS”) moves for a protective order to keep its Rural Digital Opportunity Fund (“RDOF”) Phase I long-form application confidential and not part of the public record. The reasons underlying this motion are described in the attached Memorandum in Support. This same day, SOCS is confidentially submitting requested portions of its long-form application under seal in accordance with the directives of the Commission in *In the Matter of the Proper Procedures and Process for the Commission’s Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case Nos. 20-591- AU-UNC et al., Entries (Apr. 8, 2020 and Sept. 9, 2020).

Respectfully submitted,

February 26, 2021

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**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

Southern Ohio Communication Services Inc. (“SOCS”) requests that the long-form application information submitted confidentially at the request of the Public Utilities Commission of Ohio (“Commission”) be protected from public disclosure. Release to the public of the contents of SOCS’ RDOF long-form application submitted confidentially would harm SOCS by disclosing information contrary to restrictions under the Rural Digital Opportunity Fund (“RDOF”) Auction 904, and by providing SOCS’ competitors with sensitive and proprietary trade secret market information related to SOCS’ competitive service.

The Federal Communications Commission (“FCC”) is treating this information as presumptively confidential,¹ and the application filed with the Commission should not afford competitors, disappointed bidders and others an opportunity to review information that the FCC has taken precautions to protect from public disclosure. The FCC has indicated that the Initial Overview of its Description of Technology and System Design to be submitted to the FCC by January 29, 2020 “will be made publicly available.”² However, the FCC has not yet made this information publicly available. With respect to the Detailed Description of Technology and System Design and Available Funds Certification and Description portions of the long-form application, the FCC has indicated that it “will treat all the information submitted with this second submission as confidential and will withhold it from routine public inspection.”³

Ohio Administrative Code (“OAC”) 4901-1-24(D) provides that the Commission or certain designated employees may protect the confidentiality of information contained in

¹ *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, Public Notice, 35 FCC Rcd 6077, 6167 & 6168 (2020).

² *Id.* at 6167 ¶ 302.

³ *Id.* at 6168 ¶ 303; *see also id.* at 6175 ¶ 312.

documents filed with the Commission's Docketing Division to the extent that state or federal law prohibits the release of the information and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. State law recognizes the need to protect certain types of information, including that which is the subject of the accompanying motion. The nondisclosure of this information in SOCS' competitive eligible telecommunications carrier ("CETC") application will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill their statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect from public disclosure the funding information in the long-form application is clear, and there is compelling legal authority supporting the requested protective order. First, in order to remain consistent with the FCC's order, the information in the long-form application upon which SOCS has reasonably relied, should not be disclosed. Public disclosure of the information in the long-form application would contravene the FCC's procedures, which are designed to enable long-form applicants to submit detailed plans about their network design and financial qualifications so that FCC staff can conduct a thorough review, but without disclosure of competitively harmful information.

There is a second reason separate and independent from the first. The information from the long-form application should not be disclosed because it is a trade secret. The Commission long ago 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 materia* with Section 1333.31, Revised Code ("trade secrets" statute). The latter statute must be interpreted the long-form

application reted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.”⁴

Likewise, the Commission has facilitated the protection of trade secrets in its rules.⁵

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.⁶

This definition clearly reflects the state policy favoring the protection of information that is the subject of this motion.

In *State ex rel The Plain Dealer the Ohio Dept. of Ins.*, 80 Ohio St. 3d 513, 524 (1997), the Supreme Court of Ohio adopted a six-factor test to analyze whether information is a trade secret under the statute:

- (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.

⁴ *In re: General Telephone Co.*, Case No. 81-383-TP-AIR, Entry (Feb. 17, 1982).

⁵ See Ohio Admin. Code § 4901-1-24(A)(7) (“A trade secret or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated way.”).

⁶ Ohio Rev. Code § 1333.61(D).

Applying these factors to the information sought to be protected, it is clear that a protective order should be granted. The long-form application submitted confidentially provides detailed technical and financial information about SOCS and its deployment plans, which the FCC has determined is confidential and proprietary information that should not be made available to the public. Disclosure of this sensitive information would give competitors an understanding of SOCS' network plans, costs, marketing strategy and activities, providing competitors with an advantage that would hinder SOCS' ability to compete. Public disclosure of this confidential information would not assist the Commission in carrying out its duties. The Commission has granted protective orders to prevent disclosure of this kind of funding information as part of numerous economic development projects, finding that the information constitutes trade secrets.⁷ The technical and funding information in the long-form application is likewise a trade secret.

Certain courts in other jurisdictions have held that public utilities commissions not only have the authority to protect the trade secrets of the companies subject to their jurisdiction, but that the trade secrets statute creates a duty to protect them.⁸ Indeed, for the Commission to act otherwise would be to negate the protections the Ohio General Assembly has granted to

⁷ See, e.g., *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval of an Economic Development Project with Tractor Supply Company*, Case No. 20-1703-GA-EDP, Entry at ¶ 8 (Dec. 7, 2020); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project with American Freight*, Case No. 20-1517-GA-EDP, Entry at ¶ 8 (Oct. 9, 2020); *In the Matter of the Application of Ohio Gas Company for Approval of an Economic Development Project with the North Pioneer Industrial Park*, Case No. 20-1315-GA-EDP, Entry at ¶ 8 (Aug. 24, 2020); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project with Emerson Process Management Value Automation, Inc.*, Case No. 19-2001-GA-EDP, Entry at ¶ 8 (Nov. 25, 2019); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project with Mucci Farms*, Case No. 19-2000-GA-EDP, Entry at ¶ 8 (Nov. 25, 2019); and *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project with Next Generation Films, Inc.*, Case No. 19-1999-GA-EDP, Entry at ¶ 8 (Nov. 25, 2019).

⁸ See *New York Tel. Co. v. Pub. Serv. Comm. N.Y.*, 56 N.Y. 2d 213 (1982).

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.⁹

WHEREFORE, for the above reasons, SOCS requests that the Commission grant its motion for a protective order and maintain the long-form application submitted confidentially under seal for a period of at least 24 months after the issuance of a protective order, consistent with Ohio Administrative Code 4901-1-24.

Respectfully submitted,

February 26, 2021

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⁹ See, e.g., *Elyria Tel. Co.*, Case No. 89-965-TP- AEC, Finding and Order (Sept. 21, 1989); *Ohio Bell Tel. Co.*, Case No. 89-718-TP-ATA, Finding and Order (May 31, 1989); and *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR, Entry (Aug. 17, 1990).

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Summary: Motion Motion for Protective Order electronically filed by Ms. Rebecca Goldman on behalf of Southern Ohio Communications Services Inc.