

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Summit)	
Infrastructure Group, LLC to Operate as a)	
Competitive Telecommunications Service)	Case No. 21-0964-TP-ACE
Provider.		

**SUMMIT INFRASTRUCTURE GROUP, LLC’S
MOTION FOR PROTECTIVE ORDER**

Pursuant to Ohio Administrative Code (“O.A.C.”) 4901-1-24(D), Summit Infrastructure Group, LLC (“Summit Infrastructure”) respectfully moves the Public Utilities Commission of Ohio (“Commission”) to issue a protective order in this matter. A protective order is necessary to keep confidential and prevent from public disclosure Exhibit 9 (Financial Statements) to Summit Infrastructure’s application for authority to operate as a competitive telecommunications service provider in Ohio. The documents in Exhibit 9 (Financial Statements), contemporaneously filed this date, 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 Summit Infrastructure. Pursuant to the requirements of O.A.C. 4091-1-24(D), Summit Infrastructure 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,



Dane Stinson (0019101)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291
Telephone: (614) 227-4854
Facsimile: (614) 227-2390
Email: dstinson@bricker.com

Counsel for Summit Infrastructure, LLC

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**MEMORANDUM IN SUPPORT OF SUMMIT INFRASTRUCTURE GROUP, LLC’S
MOTION FOR PROTECTIVE ORDER**

Contemporaneously with this Motion for Protective Order, Summit Infrastructure Group, LLC (“Summit Infrastructure”) filed its application for a Certificate of Public Convenience and Necessity to operate as a competitive telecommunications service (“CTS”) provider in Ohio (“Application”). Included in the materials supporting the Application is information considered trade secret and confidential. As part of the Application, Summit Infrastructure is required to provide financial statements to demonstrate its financial ability to provide service. Summit Infrastructure has submitted these financial statements (“Confidential Information”) as Exhibit 9 to the Application under seal because it contains competitively sensitive and highly proprietary business financial information that requires confidential treatment

Summit Infrastructure is a subsidiary of its parent, SDC Summit Holdings LLC (“Summit Holding”), and has submitted Summit Holding’s financial information to support Summit Infrastructure’s Application. Summit Holding is not a publicly traded company and its financial information is not publicly available. The information for which protection is sought describes Summit Infrastructure and its affiliates’ financial information. Such information clearly is competitively sensitive trade secret information. Public disclosure would impair Summit Infrastructure’s ability to respond to competitive opportunities in the marketplace and would

provide competitors with an unfair competitive advantage. Therefore, Summit Infrastructure requests that the Commission issue an order to protect the confidentiality and prohibit the disclosure of the Confidential Information.

Ohio Revised Code (“R.C.”) 4929.23(A) permits the Commission to protect the confidentiality of competitive information submitted as a part of the certification process as a CTS provider. Moreover, R.C. 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 excepts 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. R.C. 1333.61(D) and 1333.62.

The Ohio Administrative Code (“O.A.C.”) expressly permits the Commission or the attorney examiner assigned to the case to protect the confidentiality of certain information. See O.A.C. Rule 4901-1-24. Specifically, O.A.C. 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 Exhibit 9 contain competitively sensitive and highly proprietary business financial information falling within the statutory characterization of a trade secret. Summit Infrastructure 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 Summit Infrastructure 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 Summit Infrastructure 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 Summit Infrastructure would gain the benefit of Summit Infrastructure’s financial information and use that information to gain an undue advantage. Therefore, it is imperative that Summit Infrastructure 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 R.C. Title 49. Non-disclosure of the information will not impair the purposes of R.C. 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 Summit Infrastructure has the managerial, technical and financial ability to provide service and to comply with the Commission’s rules. No purpose of R.C. Title 49 would be served by the public disclosure of the information.

For the foregoing reasons, Summit Infrastructure requests that the designated information be protected from public disclosure.

Respectfully Submitted,



BRICKER & ECKLER LLP

100 South Third Street

Columbus, Ohio 43215-4291

Telephone: (614) 227-4854

Facsimile: (614) 227-2390

Email: dstinson@bricker.com

Counsel for Summit Infrastructure, LLC

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/23/2021 5:14:36 PM

in

Case No(s). 21-0964-TP-ACE

Summary: Motion for Protective Order electronically filed by Dane Stinson on behalf of Summit Infrastructure Group, LLC