THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF EXTENET LVS, LLC, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE TELECOMMUNICATIONS SERVICES THROUGHOUT THE STATE OF OHIO.	**CASE NO. 23-461-TP-ACE**

ENTRY

Entered in the Journal on May 30, 2023

{¶ 1} On May 12, 2023, ExteNet LVS, LLC (ExteNet) filed a motion seeking protective treatment of the information contained in Confidential Exhibit H-2 of its application for certification to provide competitive telecommunications services throughout the state of Ohio. In support of its motion, ExteNet submits that the specified information consists of confidential and proprietary financial statements of its indirect parent, ExteNet Systems, LLC (ESL). According to ExteNet, ESL is a privately held company and is not required to file financial information with the United States Securities and Exchange Commission and does not otherwise disclose its financial information with the public. According to ExteNet, to the best of its knowledge, the information has not been disclosed or released to the public. ExteNet further represents that ESL uses its best efforts to keep and maintain the confidentiality of the submitted financial statements and that the information derives economic value from not being generally known to or readily ascertainable by another person who can obtain competitive economic value from the disclosure of the information by being able to determine revenue and other information damaging to the company. ExteNet asserts that there is no legitimate purpose or public interest to be served in disclosing the information to any person other than the appropriate Commission staff.

{¶ 2} R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43 and as consistent with the purposes of Title 49 of the Revised Code. R.C. 149.43 specifies that the term "public

records" excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St. 396, 399, 732 N.E.2d 373 (2000).

{¶ 3} Similarly, Ohio Adm.Code 4901-1-24 allows the Commission to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information, including where the information is deemed * * * to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."

{¶ 4} Ohio law defines a trade secret as "information * * * 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).

{¶ 5} The attorney examiner has reviewed the arguments presented and the information included in the motion for protective treatment. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R. C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court,[1] the attorney examiner finds that the subject operational and financial information constitutes trade secret information. Its release is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Finally, the attorney examiner concludes that these documents could not

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[1] See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner determines that the motion for protective treatment should be granted due to the proprietary nature of the relevant information. The protective order should be extended for a period of twenty-four months from the date of this Entry.

{¶ 6} Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. Therefore, confidential treatment shall be afforded for a period ending 24 months from the date of this Entry (i.e., May 30, 2023). Until that date, the Docketing Division should maintain, under seal, the information addressed in the motion.

{¶ 7} Although a party may, pursuant to Ohio Adm.Code 4901-1-24, seek an extension of a protective order, the requesting entity must demonstrate the need for the specific time frame requested. Following the end of the two-year period, ExteNet is directed to perform an evaluation in order to determine whether the protected information continues to require protective treatment.

{¶ 8} It is, therefore,

{¶ 9} ORDERED, That the motion for protective treatment be granted and the docketing division maintain the designated information under seal in accordance with Paragraphs 5 and 6. It is, further,

{¶ 10} ORDERED, That ExteNet perform an evaluation of the protected information in accordance with Paragraph 7. It is, further,

{¶ 11} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Jay Agranoff

By: Jay S. Agranoff
Attorney Examiner

PAS/dmh

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in

Case No(s). 23-0461-TP-ACE

Summary: Attorney Examiner Entry that the motion for protective treatment be granted and the docketing division maintain the designated information under seal in accordance with Paragraphs 5 and 6 electronically filed by Ms. Donielle M. Hunter on behalf of Jay S. Agranoff, Attorney Examiner, Public Utilities Commission of Ohio.