

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Investigation)	
Into the Implementation of Section 276 of the)	
Telecommunications Act of 1996 Regarding)	Case No. 96-1310-TP-COI
Pay Telephone Services)	

EMBARQ'S MOTION FOR A PROTECTIVE ORDER

United Telephone Company of Ohio d/b/a Embarq ("Embarq") respectfully moves, pursuant to O.A.C. section 4901-1-24(D), for the issuance of a protective order with respect to the cost study and all supporting worksheets and detail as they relate to the cost components and inputs to the Embarq Total Element Long Run Incremental Cost (TELRIC) cost study. Embarq requests that the Commission determine and declare that this information is properly the subject of a protective order.

The subject information includes the following: the average cost for a access line and various expense inputs, adjustments and factors utilized in the Embarq TELRIC cost study. The CD that contains the cost study should be deemed confidential in its entirety. If a competitor had access to Embarq's underlying cost data, it would give the competitor an unfair competitive advantage.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. 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.

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 as evincing the recognition, on the part of the General Assembly, of the value of trade secret information. *In re: General Telephone Co.*, Case No. 81-383-TP-AIR (Entry February 17, 1982). 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 reflects the state policy favoring the protection of trade secrets such as the information which is the subject of this motion.

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 by carving out an exception to the general rule in favor of the public disclosure of that information. 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

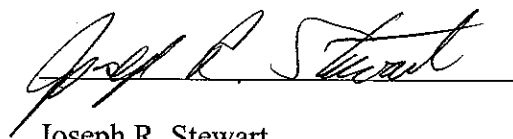
secret information from public disclosure is consistent with the purposes of Title 49 because the Commission and its Staff have access to the information; in many cases (as here), the parties to a case may have access under an appropriate protective agreement. The protection of trade secret information as requested herein will not impair the Commission's regulatory responsibilities.

In *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 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.

Embarq respectfully requests that its Motion for Protective Order be granted and that the subject information be deemed confidential and proprietary.

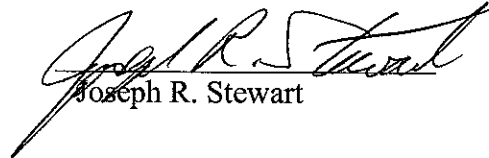
Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Protective Order was served upon the parties listed below by regular U. S. mail, postage prepaid, this 18th day of September 2008.



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Summary: Motion of United Telephone Company of Ohio d/b/a Embarq for the issuance of a protective order electronically filed by Sonya I Summers on behalf of United Telephone Company of Ohio d/b/a Embarq