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October 24, 2008

Ms. Renee Jenkins  
Chief, Docketing Division  
The Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215-3793

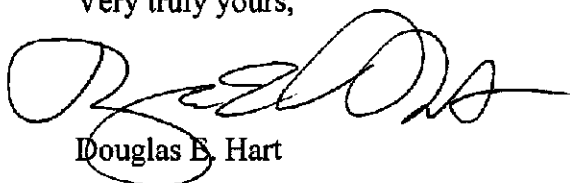
Re: Case No. 08-1124-TP-WVR

Dear Ms. Jenkins:

Enclosed please find an original and 21 copies of the Supplemental Documentation In Support of Application of Cincinnati Bell Telephone Company LLC for Waiver of Minimum Telephone Service Standard 4901:1-5-08. Also enclosed are the original and 21 copies of the Motion of Cincinnati Bell Telephone Company LLC For a Protective Order. Finally, enclosed is a sealed envelope containing three copies of the confidential information that is the subject of the motion.

Please file the original and 20 copies of the above motions in this proceeding, as well as the sealed envelope, and please date stamp and return the additional copy of each motion to me in the enclosed self-addressed stamped envelope.

Very truly yours,



Douglas E. Hart

DEH

Enclosures

cc: All counsel of record

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of )  
Cincinnati Bell Telephone Company LLC )  
For Waiver of Certain Minimum )  
Telephone Service Standards )  
Pursuant to Chapter 4901:1-5, Ohio )  
Administrative Code. )

Case No. 08- 1124-TP-WVR

**MOTION OF CINCINNATI BELL TELEPHONE COMPANY LLC  
FOR A PROTECTIVE ORDER**

Cincinnati Bell Telephone Company LLC ("CBT") moves for a protective order, pursuant to Commission Rule 4901-1-24(D), keeping confidential the proprietary information used to support its Application in this case. The reasons for this motion are detailed in the attached Memorandum in Support. In accordance with Commission Rule 4901-1-24(D), three unredacted copies of the confidential information which is the subject of this Motion have been filed under seal.

Respectfully submitted,



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

CBT has applied for a waiver of Commission Rule 4901:1-5-08(D) because it experienced an extraordinary number of out-of-service reports following a severe windstorm on September 14, 2008. The Commission's rules require that CBT follow up its application with documentation showing that it satisfies the requirements of the rule. Such documentation requires CBT to provide detailed information regarding service outages that it considers highly confidential and which could be used to advantage competitors if it was released publicly.

CBT requests that the data used in support of its Application in this case be considered confidential and/or proprietary and be protected from public disclosure. Commission Rule 4901:1-4-09(E) provides that confidential information will be eligible for proprietary treatment in accordance with Rule 4901-1-24. Division (D) of Rule 4901-1-24 provides that the Commission or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. As set forth herein, the information described below represents confidential business information and, therefore, should be protected from disclosure.

The need to protect the designated information from public disclosure is clear and there is 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 material* 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. 91-383-TP-AIR (Entry, Feb. 17, 1982). Likewise, the Commission has facilitated the protection of trade secrets in its rules. Ohio Admin. Code § 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.

Revised Code § 1333.61(D). This definition clearly reflects the state policy in favor of the protection of trade secrets such as the information which is the subject of this motion.

In 1996, the General Assembly amended Revised Code §§ 4901.12 and 4905.07 in order to facilitate the protection of trade secrets in the Commission's possession. By referencing Revised Code § 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. Revised Code § 149.43(A)(1). State law prohibits the release of information meeting the definition of a trade secret. Revised Code §§ 1333.61(D), 1333.62.

In support of its Application herein, CBT is providing data with respect to the number of out-of-service reports on a daily basis in each of its Ohio exchanges. The information is highly confidential and proprietary to CBT and is not released outside the company. A competitor could find this information very valuable, but has no legitimate purpose for having it. However, it is necessary to provide this data to the Commission so that it can verify whether CBT has

satisfied the requirement that it experience a 300% increase in such reports during the period for which an MTSS waiver is requested.

The protection of trade secret information as requested herein will not impair the Commission's regulatory responsibilities. The Commission and its Staff will have full access to the information in order to review the showings made in the application. Intervenor may obtain access to the information by signing a protective order limiting their use of the information to purposes of preparing this case and prohibiting the public disclosure of the confidential information. No purpose of Title 49 would be served by the public disclosure of the information.

For these reasons, CBT requests that the Commission enter a protective order, allowing CBT to file the proprietary data supporting its Application in this matter under seal.

Respectfully submitted,


A handwritten signature in black ink, appearing to read 'Douglas E. Hart', is written over a horizontal line.

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Attorney for Cincinnati Bell  
Telephone Company LLC

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served by first class U.S. Mail, postage prepaid,  
this 24<sup>th</sup> day of October 2008, upon the following:

A handwritten signature in black ink, appearing to read 'T. Etter', written over a horizontal line.

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