

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Cox Ohio Telcom, L.L.C. to Provide	)	Case No. 08-766-TP-ACE
Competitive Local Exchange Services in	)	
Ohio.	)	

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**MOTION FOR PROTECTIVE ORDER**

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Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, Cox Ohio Telcom, L.L.C. ("Cox" or "the Applicant") respectfully moves for a protective order to keep its financial data contained in Exhibit 8 to the Application confidential and not part of the public record. The reasons supporting this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of the above cited Rule, three (3) unredacted copies of the exhibits are submitted under seal.

WHEREFORE, Cox Ohio Telcom, L.L.C. respectfully requests that the Commission afford confidential treatment to its Exhibit 8 to the Application.

Respectfully submitted,

/s/

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

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Cox submits that the financial data contained in its Exhibit 8 to its Application is confidential and should be protected from public disclosure. As set forth on Exhibit A attached to this motion, Exhibit 8 to the Application contains an income statement for the Applicant for the calendar year 2006, calendar year 2007, and the four months ending April, 2008. Exhibit 8 also contains a balance sheet as of December 31, 2006, December 31, 2007, and April 30, 2008. As shown on Exhibit 12 to the Application, the ultimate parent of the Applicant, Cox Enterprises, Inc. is a privately held company and is not required to file reports with the Securities and Exchange Commission. Exhibit 8 contains actual numbers as opposed to estimates; the Applicant does not disclose these numbers to the public. Further, if required to disclose these numbers in a public filing which relate to a specific market, Cox would be at risk of being placed at a competitive disadvantage.

Rule 4901-1-24(D) of the Ohio Administrative Code 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. State law recognizes the need to protect certain types of information which are the subject of this motion. The non-disclosure of the information will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill the Commission's statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

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.

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

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction; the trade secrets statute creates a duty to protect them. New York Tel. Co. v. Pub.

Serv. Comm. N.Y., 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to 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. 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).

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), has 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.

Applying these factors to the financial data contained in Exhibit 8 that Cox seeks to keep confidential, it is clear that a protective order should be granted.

Such sensitive information is not disclosed by the Applicant or its parent to the public. Requiring public disclosure could give competitors an advantage. On the other hand, public disclosure of this information is not likely to either assist the Commission in carrying out its duties under rules, especially if since the Commission staff will have the full text or the agreement to look at, or serve any other public policy.

WHEREFORE, for the above reasons, Cox Ohio Telcom, L.L.C. requests the Commission to grant its motion for a protective order and to maintain Exhibit 8 to the Application under seal.

Respectfully submitted,

/s/ \_\_\_\_\_  
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## EXHIBIT A

### Exhibit

Exhibit 8 contains income statement information and balance sheet information for the years 2006, 2007 and the four months ending April, 2008.

### Reasons for Protecting Confidentiality

The Applicant and its parent are privately held and do not file such information in public filings. Disclosure of these numbers when Cox does not ordinarily disclose such numbers would place the Applicant at a competitive disadvantage.

**This foregoing document was electronically filed with the Public Utilities**

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Summary: Motion Cox Ohio Telcom, L.L.C. Motion for a Protective Order electronically filed by Stephen M Howard on behalf of Cox Ohio Telcom, L.L.C.