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November 5, 2009

VIA HAND DELIVERY

Ms. Rence Jenkins
 Docketing Division
 Public Utilities Commission of Ohio
 180 East Broad Street, 13th Floor
 Columbus, OH 43215-3793

Re: *In the Matter of the Application of Wabash Mutual Telephone
 Company for a "Me Too" Edge-Out Waiver*
 Case No. 08-703-TP-WVR

Dear Ms. Jenkins:

Enclosed please find the original and thirteen (13) copies of Wabash Mutual Telephone Company's Motion for Protective Order for filing in this matter. Please file stamp and return the additional two (2) copies of the Motion for Protective Order to our courier.

Thank you for your attention to this matter.

Very truly yours,

BAILEY CAVALIERI LLC



William A. Adams

WAA/sg

Enclosures

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Wabash)	Case No. 08-703-TP-WVR
Mutual Telephone Company for a "Me Too")	
Edge-Out Waiver)	

**WABASH MUTUAL TELEPHONE COMPANY
MOTION FOR PROTECTIVE ORDER**

Pursuant to Ohio Administrative Code § 4901-1-24(F), Wabash Mutual Telephone Company ("Wabash") moves to continue to protect the information filed under seal and protected by Entry of June 24, 2008. The reasons underlying this motion are detailed in the attached memorandum in support.

Respectfully submitted,



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

On June 11, 2008, Wabash filed under seal confidential billing system modification information to comply with the Public Utilities Commission of Ohio's ("Commission") edge-out access rate reduction requirements. The information was and is competitively sensitive trade secret information and public disclosure would impair Wabash's ability to compete in the marketplace and provide competitors with an unfair competitive advantage. The Commission granted Wabash's motion for protective order by Entry of June 24, 2008.

The existing protection expires on December 24, 2009. This motion is filed more than forty-five (45) days before that deadline in compliance with the requirements of the rule. Ohio Adm. Code § 4901-1-24(F). Because Wabash now is completing the implementation of these billing system changes in order to implement the edge-out access rate reductions ordered by the Commission, these costs remain confidential and continued protection is needed.

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 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 a public utility, the trade secret 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 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. The General Assembly carved out an exception to the general rule in favor of the public disclosure of information in the Commission's possession. 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)(v). 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, 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), 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.

See, also, State ex rel. The Plain Dealer v. Ohio Dept. of Ins. (1997), 80 Ohio St. 3d 513, 524-525.

All of the information which is the subject of this motion Wabash considers a trade secret and guards the secrecy of the information. The only employees who have access to the information are those with a need to know to perform their job duties. Disclosure of this information to a competitor would harm Wabash in the marketplace, and provide competitors with an unfair competitive advantage.

For the foregoing reasons, Wabash requests that the designated information continue to be protected from public disclosure and kept under seal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William A. Adams", is written over a horizontal line.

William A. Adams, Counsel of Record
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