

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Commission's
Investigation in to Intrastate Carrier
Access Reform Pursuant to Sub. S.B. 162

Case No. 10-2387-TP-COI

**MOTION OF CINCINNATI BELL TELEPHONE COMPANY LLC, CINCINNATI
BELL EXTENDED TERRITORIES LLC, CINCINNATI BELL WIRELESS, LLC AND
CINCINNATI BELL ANY DISTANCE INC. FOR A PROTECTIVE ORDER**

Cincinnati Bell Telephone Company LLC ("CBT"), Cincinnati Bell Extended Territories LLC ("CBET"), Cincinnati Bell Wireless, LLC ("CBW") and Cincinnati Bell Any Distance Inc. ("CBAD"), move the Commission for a protective order, pursuant to Commission Rule 4901-1-24(D), keeping confidential the proprietary information contained in their responses to the Commission's data requests 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, CBET, CBW and CBAD request that certain information contained in their data responses in this case be considered confidential and/or proprietary and be protected from public disclosure. 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.

In response to the Commission's data requests, CBT, CBET, CBW and CBAD are required to provide confidential information regarding their intrastate revenues and CBT is required to identify the number of basic local exchange service customers in each of its exchanges and rate bands and its overall number of access lines. This data is highly confidential and proprietary to CBT, CBET, CBW and CBAD. Specific information of this nature is generally protected from disclosure in Commission proceedings. In paragraph (6) of its February 23, 2011 Entry, the Commission authorized ILECs to file a motion seeking a protective order.

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 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. 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 calculations used in the application. Intervenors 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, CBET, CBW and CBAD request that the Commission enter a protective order, allowing them to file the proprietary data responsive to the Commission's data requests in this matter under seal, affording the maximum confidentiality protection available.

Respectfully submitted,



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