BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

On March 18, 2011, Cincinnati Bell Telephone Company LLC ("CBT"), Cincinnati Bell Extended Territories LLC ("CBET"), Cincinnati Bell Wireless, LLC ("CBW") and Cincinnati Bell Any Distance Inc. ("CBAD") (collectively "Cincinnati Bell"), moved 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. On April 1, 2011, the Office of the Ohio Consumers' Counsel ("OCC") opposed Cincinnati Bell's Motion and similar motions filed by other parties. No other party has opposed the granting of any movant's request for a protective order. For the reasons stated in the Motion and this Reply Memorandum, the Commission should grant Cincinnati Bell's Motion for Protective Order.

Cincinnati Bell was required to provide the Commission with data in response to Appendix D to the Commission's Entry of November 3, 2010 and additional questions appended to the Entry of February 23, 2011. CBT, CBET, CBW and CBAD provided confidential information regarding their intrastate revenues, uncollectible revenue and access line counts, and CBT identified the specific number of basic local exchange service ("BLES") customers in each

of its rate centers and its overall number of access lines for 2010. This data is considered highly confidential and proprietary by CBT, CBET, CBW and CBAD.

The Commission clearly realized that many carriers consider this type of data competitively sensitive, as it invited the filing of motions for protective order in paragraph (6) of the February 23, 2011 Entry. Specific information of this nature is generally protected from disclosure in Commission proceedings. Further, in a March 22, 2011 Entry, the Attorney Examiner offered a Protective Order that could be used by the parties to exchange discovery while protecting the confidentiality of the underlying data. Unwilling to accept the terms of that Protective Order, the OCC filed an Interlocutory Appeal, claiming that the Protective Order improperly prescribed how the OCC would handle requests under the Ohio Public Records Act. Instead, the OCC has proposed its own form of Protective Agreement.

On April 7, 2011, Cincinnati Bell entered into a slightly modified form of Protective Agreement with the OCC. Cincinnati Bell then immediately provided the OCC with the confidential data that it had filed under seal with the Commission on March 28, 2011. Thus, OCC has Cincinnati Bell's confidential data and has no practical reason for opposing the issuance of a protective order by the Commission. When Cincinnati Bell entered into the Protective Agreement, the OCC agreed to withdraw its opposition to Cincinnati Bell's Motion for Protective Order. As of the time of this filing, Cincinnati Bell has not seen such a formal withdrawal of the OCC's opposition, so it files this Reply Memorandum to protect its position.

Cincinnati Bell agrees with and joins in the arguments on these issues of AT&T and Nexus, filed earlier today. There is little reason to burden the Commission with lengthy repetition of the same arguments, so Cincinnati Bell will be brief. The OCC's opposition to the various motions for protective order improperly generalizes whether data is deserving of

protection. The fact that some parties to this proceeding may have filed their data without seeking protection only signifies that those companies may not consider *their* data to be confidential. It does not mean the companies who do are not deserving of protection. No party can waive another party's right to protect its information.

Nor is it relevant whether certain types of information used to be part of the annual report requirements. The fact that particular data was required to be included in an annual report in the past did not mean the data did not have actual or potential economic value to competitors. When the requirement to publicly file such information was eliminated, the owners of that information did not lose the right to protect it.

There are only two elements necessary to establish that confidential business information is deserving of trade secret protection:

> (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).

The OCC has not contested that Cincinnati Bell uses reasonable efforts to maintain the secrecy the data for which it sought protective treatment and does not make such data public. The OCC then makes general arguments why it does not consider these types of data to have economic value sufficient to be worthy of protection. But the OCC is not the owner of the information and does not have a business to protect. Further, it has full access to the information with the full ability to use it in this proceeding subject to protection, so its interests are not impaired.

The information Cincinnati Bell has sought to protect could have actual or potential value to competitors. Specifically, Cincinnati Bell was required to file the amount of retail intrastate telecommunications revenue for four of its companies, together with the uncollectible portion of those revenues, and their access line counts. (Past annual reports showed total intrastate revenue, not retail revenue and contained no information about collectibles.) It would be competitively sensitive to apprise competitors of how revenue is split between retail and wholesale sources, as well as the collectible quality of that revenue. CBT was required to file data identifying the specific number of BLES customers it has in each rate center, identified separately by residence and business customers. This sort of disaggregated data has never been filed as part of a public report. The BLES customer and total access line data could be used by competitors to assess the penetration rates of residential bundles, the number of small business customers who are not under contract, and the concentrations of these sets of customers by rate center. This data is not publicly available and could be used by competitors to help target where and what services to market to Cincinnati Bell customers. While the OCC may not see the value in this information, competitive businesses do. All the potential uses of this information cannot be predicted.

For these reasons, Cincinnati Bell requests that the Commission overrule the OCC's objections and enter a protective order keeping 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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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was served electronically to the persons listed below, on this 8th day of April, 2011.

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Summary: Reply Memorandum in Support of Motion for a Protective Order electronically filed by Mr. Douglas E. Hart on behalf of Cincinnati Bell Telephone Company LLC and Cincinnati Bell Extended Territories, LLC and Cincinnati Bell Wireless, LLC and Cincinnati Bell Any Distance Inc.