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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Commission's)
Investigation into Intrastate Carrier Access) Case No. 10-2387-TP-COI
Reform Pursuant to Sub. S.B. 162)

MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, Ohio RSA #3 Limited Partnership ("Alltel Wireless") respectfully moves for a protective order to keep its responses to Appendix D of the November 3, 2010 Entry in this matter confidential and not part of the public record. The reasons underlying 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 responses are submitted under seal.

WHEREFORE, Alltel Wireless respectfully requests that the Commission grant its motion for a protective order.

Respectfully submitted,


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

Alltel Wireless requests that its responses to Appendix D be designated as confidential and be protected from public disclosure. The responses to Appendix D contain sensitive financial information including intrastate revenues and subscriber counts as of December 31, 2010. Alltel Wireless does not disclose such information to the public. Such information if released to the public would harm Alltel Wireless by providing its competitors proprietary information that could put Alltel Wireless 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 purposes 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)).

Information that constitutes a “trade secret” under Ohio’s codification of the Uniform Trade Secrets Act is exempt from disclosure under Ohio’s public records laws. R.C. 149.43(A)(1)(v). The definition of a “trade secret” is set forth in the Uniform Trade Secrets Act as follows:

“Trade secret” means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, patter, 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 companies subject to its jurisdiction, the trade secrets statute creates a duty to protect them. New York Tel. Co. v. Pub. Serv. Comm. NY., 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. 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); Columbus 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), delineated factors to be considered in recognizing a trade secret:

- (1) The extent of 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.

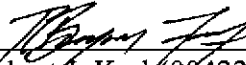
These factors were explicitly adopted by the Supreme Court of Ohio in State ex rel. Plain Dealer v. Ohio Dept. of Insurance, 80 Ohio St.3d 513, 525 (1997), for use in determining whether a trade secret claim meets the definition codified in R.C. 1333.61(D). In Plain Dealer, the Court examined several categories of records that were submitted to the Ohio Department of Insurance relating to the proposed merger of two insurance companies. In examining the trade secret claims at issue, the Plain Dealer Court further clarified that financial data kept as part of the ongoing conduct of a business, as opposed to information that is momentary or ephemeral (e.g. draft contracts, bids, or letters of negotiation relating solely to the proposed merger), are appropriately considered trade secrets under R.C. 1333.61(D). Using the statutory definition set forth in R.C. 1333.61(D) and the Pyromatics factors as a guide, the Plain Dealer Court examined

several categories of records for which trade secret claims had been made. The Court found that several categories of financial information that had “an economic value to [the company] or its competitors]” and that was “relevant to the ongoing business of [the company]” were trade secrets, and therefore exempt from disclosure to the public under R.C. 149.43(A)(1). Plain Dealer, at 529-531.

Applying the factors set forth in Pyromatics and Plain Dealer to the information contained in Alltel Wireless’ responses to Appendix D that it seeks to keep confidential and protect, it is clear that a protective order should be granted. In its ordinary course of business, the information contained in Alltel Wireless’ responses to Appendix D is not disclosed to the public. As the Supreme Court of Ohio phrased the issue in Plain Dealer, the information that Alltel Wireless seeks to protect is “not generally known outside the corporate walls of [Alltel Wireless].” Plain Dealer, at 530. Requiring Alltel Wireless to disclose such information to the public could give competitors an advantage and hinder Alltel Wireless’ ability to compete. The information has economic value to Alltel Wireless and its competitors. Further, as in Plain Dealer, the financial information that Alltel Wireless seeks to protect is kept as part of the ongoing conduct of its business, and is not merely momentary or ephemeral to the company. Plain Dealer, at 529 (holding financial data relevant to the ongoing conduct of a business to be a trade secret, and exempt from disclosure under R.C. 149.43). Finally, public disclosure of this trade secret information is not likely to assist the Commission.

WHEREFORE, for the reasons stated above, Alltel Wireless requests the Commission to grant its motion for a protective order and to maintain its responses to Appendix D under seal.

Respectfully submitted,



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