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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  
Reform Pursuant to Senate Bill 162.

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Case No. 10-2387-TP-COI

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**MOTION FOR A PROTECTIVE ORDER**

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Now comes **tw telecom of ohio llc** ("TWT") pursuant to Ohio Administrative Code ("OAC") Rule 4901-1-24(D) and moves for a protective order to keep its computations for its transitional intrastate access rates as requested by the Commission's February 29, 2012 Entry 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 OAC Rule 4901-1-24(D), TWT has filed under seal three (3) unredacted copies of the confidential exhibits that are the subject of this motion.

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**MEMORANDUM IN SUPPORT**

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TWT requests that its computations for reducing intrastate switched access charges in compliance with the first phase of the FCC ICC Reform Order be designated as confidential and be protected from public disclosure. The information for which protection is sought covers: TWT's minute of use and revenue amounts used for calculations comparing inter and intrastate rates for the time period specified in the Commission's Order, October 31, 2010 through September 30, 2011. Such information if released to the public would harm TWT by providing

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its competitors proprietary information on a market-specific basis regarding highly competitive services.

OAC Rule 4901-1-24(D) provides that the Commission or certain designated Commission employees may issue an order “which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where the information is deemed. . . to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.” Moreover, Ohio Revised Code Section (“R.C.”) 4928.06(F) specifically permits the Commission to grant confidentiality to competitive information.

R.C. 4901.12 and 4905.07 were amended in 1996 to facilitate the protection of trade secrets in Commission proceedings. By referencing R.C. 149.43 (Ohio’s Public Records Law), the Commission-specific statutes incorporate the definition of “public records,” as well as an exception to that definition that includes “[r]ecords the release of which is prohibited by state or federal law.” R.C. 149.43(A)(1). In turn, state law prohibits the release of information meeting the definition of a trade secret. See R.C. 1333.61(D) and 1333.62. For this reason, records containing trade secrets are prohibited from public disclosure.

The definition of “trade secret” is set forth in R.C. 1333.61(D)

“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.

This definition clearly reflects the state policy favoring the protection of trade secrets such as the financial information which is the subject of this motion. As the Ohio Supreme Court recently explained:

by adopting the Uniform Trade Secrets Act, with the express purpose to make uniform the law with respect to their subject among states, the General Assembly has determined that public policy in Ohio, as in the majority of other jurisdictions, favors the protection of trade secrets, whether memorized or reduced to some tangible form.

*Al Minor & Associates, Inc. v. Martin*, (2008) 117 Ohio St.3d 58.

Courts of other jurisdictions not only have held that a state public utilities commission has the authority to protect trade secrets, but that trade secret statutes create a duty to protect them. See *New York Tel. Co. v. Pub. Serv. Comm. N.Y.*, 56 N.Y. 2d 213 (1982).

Furthermore, this Commission itself has recognized the need to protect trade secrets from public disclosure as consistent with its other statutory obligations:

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). The Commission previously has carried out its obligation to protect the trade secret status of information from utilities and other regulated entities in numerous proceedings. See, e.g., *Cleveland Electric Illuminating Co.*, Case No. 07-171-EL-BTX (Entry dated August 14, 2008); *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).

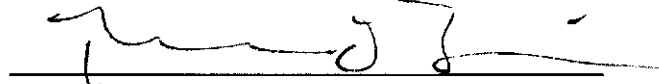
Expounding upon the "trade secret" definition above, the Ohio Supreme Court has delineated factors to be considered in analyzing a trade secret claim:

(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.

*State ex. rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-525. The Commission applies these factors in the context of competitive retail natural gas broker/aggregator applications to conclude that certain financial exhibits constitute trade secrets.

For the reasons stated above, for the above reasons TWT requests that the Commission grant its motion for a protective order and to maintain its supporting computations for its transitional intrastate access rates under seal.

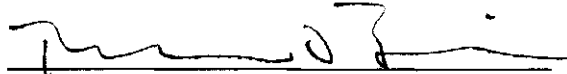
Respectfully submitted on behalf of  
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## CERTIFICATE OF SERVICE

The undersigned hereby acknowledges that a copy of the foregoing was served by electronic mail this 11<sup>th</sup> day of April 2012.



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