

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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LH Telecom, Inc.	)	
	)	
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Petition for emergency relief to protect	)	Docket 10-0146
Petitioner's 2009 Annual Report from	)	
Disclosure for not less than four years	)	
In order to protect highly proprietary	)	
Information	)	

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**RESPONSE OF LH TELECOM, INC. TO NOTICE OF  
ADMINISTRATIVE LAW JUDGE'S RULING**

LH Telecom, Inc. ("LH Telecom" or "Petitioner"), by its attorneys, hereby responds to the Administrative Law Judge's Notice of Ruling related to the sufficiency of two (2) year protection of the Petitioner's 2009 Annual Report. As stated below, Petitioner believes five (5) year protection is necessary in order to protect the Company's highly proprietary information contained therein. In the alternative, Petitioner requests four (4) year protection of its 2009 Annual Report.

Section 7 of the Illinois Freedom of Information Act ("FOIA") (5 ILCS 140/7(g)) exempts from public disclosure "trade secrets and commercial or financial information . . . where the trade secrets or information are proprietary, privileged or confidential." The Illinois legislature intended that the term trade secret would be construed broadly because it did not wish to discourage private parties from doing business with the state. *Bluestar Energy Services, Inc. v. Illinois Commerce Commission*, 374 Ill. App. 3d 990, 995 (1<sup>st</sup> Dist. App. 2007). The term trade secret in the context of the FOIA has been interpreted

to include information that (1) would either inflict substantial competitive harm or (2) make it more difficult for the agency to induce people to submit similar information in the future. Id. Petitioner's 2009 Annual Report is protected by this exemption because Petitioner's Annual Report contains highly proprietary and confidential commercial and financial information. The disclosure of proprietary information to competitors or potential competitors would be detrimental to Petitioner and provide an unfair advantage to Petitioner's competitors. Protection for a term less than four years could result in the competitive misuse of Petitioner's sensitive financial data. Without four years of confidential protection, competitors could easily use annual report data to inappropriately develop current financial comparisons of sensitive business results and trends in the provision of services. Access to such information and trends by Petitioner's competitors would result in substantial competitive harm. Indeed, 5-year protection (or a minimum of 4-year protection) ensures that the financial information contained in Petitioner's Annual Report is sufficiently dated relative to any public disclosure.

The Commission has previously granted Petitioner's requests for 5-year confidential treatment of its annual reports. Thus, data for 2006 (filed in 2007) will become public in 2012, data for 2007 will become public in 2013, and data for 2008 will become public in 2014. Thus, 5-year protection for Petitioner's 2009 Annual Report would maintain a consistency in the release of confidential information to the public and would not result in the overlapping release of a later year's release prior to the release of confidential information from an earlier year.

In the alternative, a minimum of 4-years of confidential treatment is necessary to protect Petitioner's confidential information. If 4-year protection is granted, Petitioner's

data for 2009 would become public in 2014 – the same year Data for 2008 will become public. By contrast, with 2-year protection, Petitioner’s 2009 data would become public in 2012, two years before 2008 data is available and one year before 2007 data is available. The best way to avoid this incongruity would be to provide four years of proprietary treatment to the 2009 data.

DATED: June 11, 2010

Respectfully submitted,

s/ Thomas H. Rowland  
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**CERTIFICATE OF SERVICE**

I, Kevin D. Rhoda, do hereby certify that I have, on this 11<sup>th</sup> day of June 2010, caused to be served upon the individuals listed on the service list maintained by the Illinois Commerce Commission, by e-mail and/or U.S. Mail, a copy of the foregoing pleading.

s/ Kevin D. Rhoda

Kevin D. Rhoda  
Rowland & Moore LLP