

& Communications Industry Association (“CCIA”) (D.I. No. 840).¹ The Motion seeks an order requiring that “all non-confidential information” contained in the parties’ preliminary case statements (D.I. Nos. 625, 627, 628, 629, 634, 635, 645, 646, 648), and transcripts of certain telephone conferences and hearings (D.I. Nos. 633, 637, 683) be unsealed and made available to the public. Dell understands that certain of the confidential documents and information it produced to the parties in this case were attached to or otherwise referenced in the parties’ respective case statements. To the extent that the Motion seeks disclosure of that confidential information and/or documents produced by Dell, the Motion should be denied.

Dell has produced over 89 gigabytes of data to the parties in this case. Much—*if not most*—of that data is composed of Dell’s confidential business information and trade secrets (such as sales, pricing and cost information; information regarding business strategy; product roadmaps; etc.). The dissemination of that confidential information would significantly and irreparably harm Dell, and thus Dell produced this information in reliance upon the terms, conditions, and protections afforded to third parties by the Confidentiality Agreement and Protective Order (the “Protective Order”). *See* D.I. No. 276 ¶ 15 (“Any Third Party that produces documents or provides testimony in the AMD Litigation or the Class Litigation . . . shall have the full benefits and protections of this Protective Order.”). Dell’s reliance on those protections weighs heavily against modifying the Protective Order that has been in place for nearly two years and which induced Dell, as a third party, to produce confidential business information and trade secrets. *See Pansy v. Borough of Soudsburg*, 23 F.3d 772, 790 (3rd Cir. 1994). Movants have not articulated a compelling reason for removing those protections, particularly as they

¹ Dell expressly preserves any objection it may have to the Court’s jurisdiction over it with respect to any issues that may arise in the litigation. Dell further does not waive its right to have any and all subpoenas that are served on Dell be issued out of the Western District of Texas.

have not articulated a compelling reason for removing those protections, particularly as they relate to third parties such as Dell. Therefore, to the extent that the Motion seeks access to Dell's confidential information that was included in the preliminary case statements, it should be denied.

ASHBY & GEDDES

/s/ Lauren E. Maguire

Richard I.G. Jones (I.D. #3301)
Lauren E. Maguire (I.D. #4261)
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, Delaware 19899
302-654-1888
rjones@ashby-geddes.com
lmauire@ashby-geddes.com

Attorneys for Third Party Dell Inc.

Of Counsel:

Daniel Conrad
Thomas R. Jackson
JONES DAY
2727 North Harwood St.
Dallas, Texas 75201
(214) 220-3939
(214) 969-5100

Dated: September 2, 2008