

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

NECA-IBEW PENSION FUND,
Derivatively on Behalf of
CINCINNATI BELL, INC.,

Case No. 1:11-cv-451

Judge Timothy S. Black

Plaintiff,

vs.

PHILLIP R. COX, *et al.*,

Defendants.

**ORDER GRANTING JOINT MOTION FOR LEAVE TO FILE THE
AMENDED VERIFIED SHAREHOLDERS COMPLAINT (DOC. 72)**

Upon consideration of the Joint Motion for Leave to File the Amended Verified Shareholders Derivative Complaint for Breach of Fiduciary Duty of Loyalty, Aiding and Abetting and Unjust Enrichment (Doc. 72), and in accordance with Rule 15(a)(2) of the Federal Rules of Civil Procedure, **IT IS HEREBY ORDERED** that:

1. The Joint Motion is **GRANTED**;
2. Plaintiff shall file the Amended Verified Shareholders Derivative Complaint for Breach of Fiduciary Duty of Loyalty, Aiding and Abetting, and Unjust Enrichment (Doc. 66, Ex. 1) **WITHIN SEVEN DAYS** of the date of entry of this Order;
3. The pending Motion for Leave to File Plaintiff's Amended Complaint and Dismiss Defendant Wentworth (Doc. 66) is **DENIED** as moot;
4. The pending Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc. 34) is **DENIED** as moot.¹

¹ See *Yates v. Applied Performance Techs., Inc.*, 205 F.R.D. 497, 499 (S.D. Ohio 2002) (“Because amended complaints supersede the original pleading, the filing of the amended complaint in this case did technically render the pending motion to dismiss moot.”).

IT IS SO ORDERED.

Date: 3/6/12

s/ Timothy S. Black

Timothy S. Black

United States District Judge