**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Filing )

Requirements for 2013 Pertaining to the ) Case No. 13-1115-TP-COI

Provisioning of High Cost Universal )

Service )

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**REVISED MOTION FOR A PROTECTIVE ORDER**

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Frontier North Inc., (“Frontier”) by its attorneys, and pursuant to Ohio Revised Code § 4901-1-24(D), and consistent with the Entry filed in this matter on August 4, 2012, moves for a protective order keeping confidential the designated confidential and/or proprietary information contained in the sealed filing submitted to the Commission by Frontier on or about October 15, 2013. The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of Section 4901-1-24(D) of the Commission’s rules, three unredacted copies of the confidential information which is the subject of this motion were filed under seal on or about October 15, 2013.

Respectfully submitted,

FRONTIER NORTH INC.

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Its Attorney

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

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Frontier requests that certain information described below as confidential and/or proprietary in the accompanying filing be protected from public disclosure. The confidential information is outage information filed confidentially with the Federal Communications Commission (“FCC”) in compliance with 47 CFR §54.313(a)(2) as part of Frontier’s FCC Form 481 filing. The outage information constitutes Frontier’s confidential trade secret information and is deserving of protection. Public disclosure of this information would provide competitors with information that they could use to analyze Frontier’s operations and target areas for market entry or market strategies targeted to specific geographic areas, and thereby obtain an unfair competitive advantage. A redacted version of the document has been filed on the public record showing the non-confidential information.

Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Public Utilities Commission of Ohio (“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. As set forth herein, federal and state law prohibits the release of the information which is the subject of this motion. Moreover, the non­disclosure 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 its statutory obligations. No purpose 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 the data is highly confidential and proprietary to Frontier. 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 Ohio Administrative Code § 4901-1-24(A)(7).

The definition of a “trade secret” is set forth in the Uniform Trade Secrets Act:

“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.

Ohio Revised Code § 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.

In 1996, the Ohio General Assembly amended O.R.C. § 4901.12 and § 4905.07 in order to facilitate the protection of trade secrets in the Commission’s possession. The General Assembly carved out an exception to the general rule in favor of the public disclosure of information in the Commission’s possession. By referencing O.R.C. § 149.43, the Commission-specific statutes now incorporate the provision of that statute that excepts from the definition of “public record” records the release of which is prohibited by state or federal law. R.C. 149.43(A)(1)(v).

State law prohibits the release of information meeting the definition of a trade secret. O.R.C. §1333.61(D) and §1333.62. The amended statutes also reference the purposes of Title 49 of the Revised Code. The protection of trade secret information from public disclosure is consistent with the purposes of Title 49 because the Commission and its Staff have access to the information; in many cases, the parties to a case may have access under an appropriate protective agreement. The protection of trade secret information as requested herein will not impair the Commission’s regulatory responsibilities.

All of the information that is the subject of this motion qualifies for trade secret protection. First it is business information that 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. Public disclosure of this information would provide competitors with information that they could use to analyze Frontier’s operations and target areas for market entry or market strategies targeted to specific geographic areas, and thereby obtain an unfair competitive advantage.

Second, it is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. In the ordinary course of business of Frontier, this information is treated as proprietary and confidential by Frontier employees, and is not disclosed to anyone except in a Commission proceeding and/or pursuant to staff data request. During the course of discovery, information of this type has generally been provided to other parties only pursuant to an appropriate protective agreement.

For the foregoing reasons, Frontier requests that the designated information be protected from public disclosure.

Respectfully submitted,

FRONTIER NORTH INC.

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Its Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail on this 7th day of August, 2014 to the following parties and counsel of record through the Commission’s docketing system:

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