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June 24, 2011

Ms. Betty McCauley
Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street, 13th Floor
Columbus, OH 43215-3793

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Re: *In the Matter of the Commission's Investigation into Intrastate Carrier Access Reform Pursuant to Sub. S.B. 162, Case No. 10-2387-TP-COI*

Dear Ms. McCauley:

Enclosed are the original and fifteen (15) copies of the *Fourth Supplemental Data Responses of Windstream Western Reserve, Inc. to February 23, 2011 Entry* for filing in the public record in the above-referenced matter. Please time stamp the extra copies of the *Fourth Supplemental Data Responses* and return them to our courier.

Also enclosed are the original and fifteen (15) copies of the *Motion for Protective Order of Windstream Western Reserve, Inc.* for filing in this matter, along with three (3) unredacted copies of the designated confidential information to be filed under seal. Please time stamp the extra copies of the *Motion for Protective Order* and the confidential information being filed under seal, and return them to our courier.

Thank you for your assistance.

Very truly yours,

BAILEY CAVALIERI LLC


William A. Adams

Enclosure

cc(w/enclosures): All Counsel of Record set forth on the attached Service List

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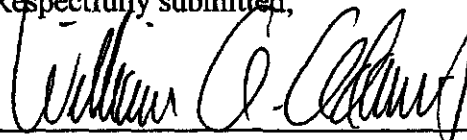
**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	
Investigation into Intrastate Carrier)	Case No. 10-2387-TP-COI
Access Reform Pursuant to Sub. S.B. 162)	

MOTION FOR PROTECTIVE ORDER OF WINDSTREAM WESTERN RESERVE, INC.

Windstream Western Reserve, Inc. (hereinafter, "Windstream"), by its attorneys and pursuant to Section 4901-1-24(D) of the Commission's Rules, moves for a protective order keeping confidential the designated confidential and/or proprietary information contained in the sealed filing accompanying this motion. The reasons underlying this motion are detailed in the attached Memorandum in Support.

Respectfully submitted,



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MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER

Windstream requests that the information designated as confidential and/or proprietary in the accompanying filing (along with any and all copies, including electronic copies) be protected from public disclosure. The confidential information consists of corrected detailed intrastate access revenue information by rate element and quantity in response to the November 3, 2010 Entry Appendix C. This constitutes Windstream confidential trade secret information and is deserving of protection as the Commission contemplated in paragraph 6 of the Entry.

The corrected access information filed in response to Appendix C consists of two spreadsheets for Windstream (2009 and 2010). Portions of these spreadsheets do not include confidential information and redacted versions are being filed in the public record. It is only the unredacted information – quantity and total revenue of each access rate element listed on each of the spreadsheets – that Windstream seeks to maintain as confidential.

The quantity and total revenue by access element information is very competitively sensitive information and is Windstream's trade secret. This information discloses the balance of Windstream's originating and terminating intrastate switched access minutes and discloses the relative use of indirect tandem switching and direct end office switching by Interexchange carrier customers of Windstream. Such information would be useful to current and potential competitors of Windstream that provide competitive access service seeking to identify intrastate switched access functions on which to compete. Additionally, such information would be useful to current and potential retail competitors of Windstream that then would be able to calculate the wholesale intrastate revenue generated by Windstream's retail customers and develop marketing

plans accordingly. Windstream carefully safeguards this information internally such that only those with a need to know can obtain the information. Windstream competitors could benefit greatly by access to the information. For example, they could determine which access element has the greatest volume and revenue and seek to develop a product to cherry pick that revenue stream to Windstream's detriment.

Windstream also is seeking to keep the total intrastate access revenue figure confidential for 2010, because it is no longer required to be made public as part of the annual reports (unlike the 2009 number). This total is confidential because of the same reasons discussed above regarding competitors' use of Windstream's intrastate switched access data.

The information set forth in this filing is clearly competitively sensitive trade secret information. Public disclosure of this information would impair Windstream's ability to respond to competitive opportunities in the marketplace, and would provide competitors with an unfair competitive advantage. The information will be made available to other parties in this case pursuant to an appropriate protective agreement.

Section 4901-1-24(D) of the Commission's rules provides that the 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, state law prohibits the release of the information which is the subject of this motion. Moreover, the non-disclosure 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 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 (O.A.C. § 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.

R. C. § 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.

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of a public utility, the trade secret statute creates a

duty to protect them. *New York Tel. Co. v. Pub. Serv. Comm. N.Y.*, 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses, including public utilities, through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in numerous proceedings. See, e.g., *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).

In 1996, the Ohio General Assembly amended 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 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). In turn, state law prohibits the release of information meeting the definition of a trade secret. 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.

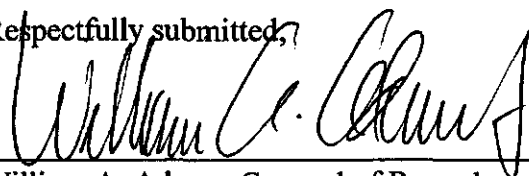
In *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983), the Court of Appeals, citing *Koch Engineering Co. v. Faulconer*, 210 U.S.P.Q. 854, 861 (Kansas 1980), has delineated factors to be considered in recognizing a trade secret:

(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.

For all of the information which is the subject of this motion, Windstream considers and has treated the information as a trade secret. In the ordinary course of business of Windstream, this information is treated as proprietary and confidential by Windstream employees, and is not disclosed to anyone except in a Commission proceeding and/or pursuant to staff data request. Information of this type will be provided to other parties only pursuant to an appropriate protective agreement.

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

Respectfully submitted,



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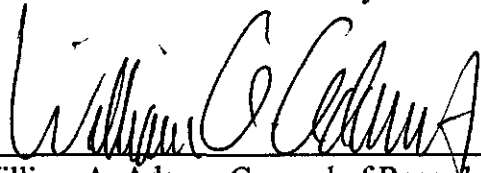
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing *Motion for Protective Order of Windstream Western Reserve, Inc.* by electronic mail this 24th day of June, 2011, upon the persons listed below.



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Page 2

June 24, 2011

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