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November 7, 2014

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PUCO

Barcy McNeal, Secretary
Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street, 11th Floor
Columbus, OH 43215-3793

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

Dear Ms. McNeal:

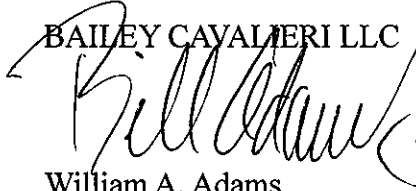
Enclosed are the original and one (1) copy of the following documents to be filed in the above-referenced case:

- ✓ 1. Motion for Protective Order of the Ohio Rural Broadband Association, Inc.; and
- ✓ 2. Motion for Protective Order of the Windstream Entities.

Please time-stamp the additional copies of each of the *Motions for Protective Order* and return them to our courier.

Please let me know if you should have any questions. Thank you for your assistance.

Very truly yours,

BAILEY CAVALIERI LLC

William A. Adams

WAA/sg

Enclosure

cc(w/enclosure-Via Electronic Transmission): Pursuant to the attached Service List

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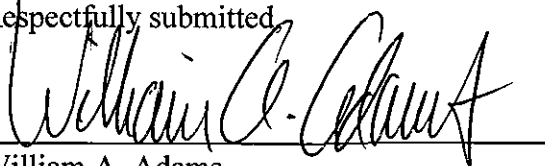
**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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
THE WINDSTREAM ENTITIES**

Pursuant to Ohio Administrative Code § 4901-1-24(F), Windstream Ohio, Inc., Windstream Western Reserve, Inc., Windstream Communications, Inc., Windstream NuVox Ohio, Inc., LDMI Telecommunications, Inc., McLeodUSA Telecommunications Services, L.L.C., Talk America, Inc., US LEC Communications LLC, Intellifiber Networks, Inc., Kentucky Data Link, Inc., Norlight, Inc., Norlight Telecommunications, Inc. and PAETEC Communications, Inc. (hereinafter collectively, the "Windstream Entities"), move to continue to protect the information filed under seal and protected by Entry of June 25, 2013. 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

The Windstream Entities seek continued protection for the confidential information previously filed under seal and determined to be trade secret and protected from public disclosure by the June 25, 2013 Entry. The information was filed under seal in compliance with previous Commission Entries seeking highly sensitive access-related information as part of its investigation in this docket and accompanied by similar motions for protective order. The information filed under seal remains competitively sensitive trade secret information and public disclosure would impair the Windstream Entities' ability to compete in the marketplace and provide competitors with an unfair competitive advantage.

The existing protection expires as early as December 25, 2014.¹ This motion is filed more than forty-five (45) days before that deadline in compliance with the requirements of the rule. Ohio Adm. Code § 4901-1-24(F).

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

¹ The eighteen months of protection granted in the June 25, 2013 Entry expires on December 25, 2014. Finding 29 of that Entry, however, suggests that the protection might continue for two more months and expire on February 25, 2015. Out of an abundance of caution, this motion is being filed at this time, more than 45 days before the earlier date.

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 Adm. 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 Rev. 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.

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 Ohio Rev. Code §§ 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 Ohio Rev. Code § 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. Ohio Rev. Code § 149.43(A)(1)(v). In turn, state law prohibits the release of information meeting the definition of a trade secret. Ohio Rev. Code §§ 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. The Ohio Supreme Court has confirmed that the state and federal law exception protects trade secrets. *State ex rel. Besser v. Ohio State University*, 89 Ohio St. 3d 396, 732 N.E.2d 373 (2000).

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,

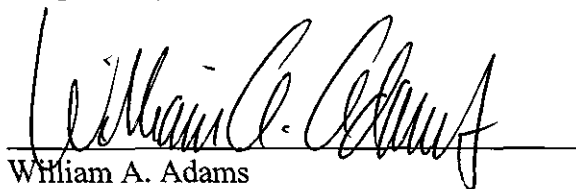
(4) the savings effected and the value to the holder in having the information as against competitors, (5) the amount of effort or money expended in obtaining and developing the information, and (6) the amount of time and expense it would take for others to acquire and duplicate the information.

See, also, State ex rel. The Plain Dealer v. Ohio Dept. of Ins. (1997), 80 Ohio St. 3d 513, 524-525.

The Windstream Entities continue to satisfy these factors for the information filed under seal. The Windstream Entities consider and have treated the information as a trade secret. In the ordinary course of business of the Windstream Entities, this information is treated as proprietary and confidential, and is not disclosed to anyone except under seal in a Commission proceeding and/or pursuant to a confidential staff data request or subject to the protection of a confidentiality agreement.

For the foregoing reasons, the Windstream Entities request that the information filed under seal continue to be protected from public disclosure for an additional twenty four months.

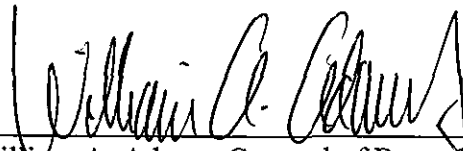
Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing *Motion for Protective Order of the Windstream Entities* by electronic mail this 7th day of November, 2014, upon the persons listed below.



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