

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Filing	)	
Requirements for 2016 Pertaining to the	)	Case No. 16-1115-TP-COI
Provisioning of Lifeline Universal Service	)	

**MOTION FOR A PROTECTIVE ORDER  
ON BEHALF OF FRONTIER NORTH INC. AND  
FRONTIER COMMUNICATIONS OF MICHIGAN, INC**

Frontier North, Inc. and Frontier Communications of Michigan, Inc. (collectively, "Frontier") by its attorneys, and pursuant to Ohio Revised Code § 4901-1-24(D), 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. Consistent with the requirements of Section 4901-1-24(D) of the Commission's rules, two unredacted copies of the confidential information which is the subject of this Motion have been filed under seal.

Respectfully submitted,

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## **MEMORANDUM IN SUPPORT**

Frontier North Inc. and Frontier Communications of Michigan, Inc. (collectively, "Frontier") request that certain information described below as confidential and/or proprietary in the accompanying filing be protected from public disclosure. The confidential information is voice outage information, unfulfilled broadband service request information, and publicly unavailable information on broadband pricing 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 voice 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.

The unfulfilled broadband service request information also is competitively sensitive. A competitor could use that information to infer where Frontier may target its future service expansions. Conversely, it will provide competitors with insight as to where to target *their* future broadband service expansion.

Broadband pricing information is advertised and is not ordinarily competitively sensitive. However, while Frontier advertises its broadband price offerings for a particular area is in that area, this is not the non-public document that Frontier's FCC report provides. Instead, the report includes a table showing all of Frontier's broadband pricing in all areas. It would allow competitors to review *at a glance* Frontier's pricing and infer its strategies, rather than do the necessary work to gather the information from the market. This would give Frontier's

competitors a competitively unearned advantage in the market and, conversely, would place Frontier at an undeserved competitive disadvantage.

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 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 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)(l)(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 is non-public information and is confidential and competitively sensitive for the reasons outlined above. That information 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, 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,

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