

**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	)	

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**THE WINDSTREAM ENTITIES'  
MOTION TO EXTEND PROTECTIVE ORDER**

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Pursuant to Ohio Administrative Code § 4901-1-24(F), Windstream Western Reserve, Inc., LDMI Telecommunications, Inc., McLeodUSA Telecommunications Services, L.L.C., Talk America, Inc., and Windstream NuVox Ohio, Inc. (hereinafter collectively, the "Windstream Entities") move to continue to protect the information filed under seal in this docket in 2012 and protected by Entry of October 10, 2014 for the reasons set forth in the attached memorandum in support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF  
MOTION TO CONTINUE PROTECTIVE ORDER

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The Windstream Entities seek continued protection for the confidential information previously filed under seal in 2012 and determined to be trade secret and protected from public disclosure by the October 10, 2014 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 includes intrastate access demand units and related derived revenues. 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 on October 10, 2016. This motion is filed more than forty-five (45) days before that deadline in compliance with the requirements of 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 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 made clear that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State University*, 89 Ohio St. 396, 399, 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.

The Ohio Supreme Court adopted these factors in *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St. 3d 513, 524-525, 687 N.E.2d 661 (1997).

The Windstream Entities have treated all of the designated information as a trade secret. In the ordinary course of business of the Windstream Entities, this information is treated as proprietary and confidential by the Windstream Entities' employees, and is not publicly disclosed.

For the foregoing reasons, the Windstream Entities request that protective order be extended and the designated information continue to be protected from public disclosure.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing the *Windstream Entities' Motion to Extend Protective Order* by electronic mail this 16<sup>th</sup> day of August, 2016, upon the parties listed below.

/s/ William A. Adams

William A. Adams, Counsel of Record

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Summary: Motion to Extend Protective Order electronically filed by Mr. William A. Adams on behalf of Windstream Western Reserve, Inc. and LDMI Telecommunications, Inc. and McLeodUSA Telecommunications Services, L.L.C. and Talk America, Inc. and Windstream NuVox Ohio, Inc.