

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of</b>	)	
<b>Windstream Communications, LLC's</b>	)	<b>Case No. 21-0454-TP-UNC</b>
<b>Petition for Designation as an Eligible</b>	)	
<b>Telecommunications Carrier.</b>	)	

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**MOTION FOR PROTECTIVE ORDER**

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Pursuant to Ohio Administrative Code 4901-1-24(D), Windstream Communications, LLC (“Windstream”) moves for a protective order to keep outside of the public record the confidential and proprietary design information and financial information being submitted as part of its amended application for designation as an Eligible Telecommunications Carrier in certain limited areas in Ohio. The reasons underlying this motion are detailed in the attached Memorandum in Support. This same day, Windstream is submitting the confidential design information and financial information (Amended Application Exhibits L and M) under seal in accordance with the April 8, 2020 directives in *In the Matter of the Proper Procedures and Process for the Commission’s Operations and Proceedings during the Declared State of Emergency and Related Matters*, Case Nos. 20-591-AU-UNC et al., Entry (April 8, 2020).

Respectfully submitted,

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

Windstream Communications, LLC (“Windstream”) is a subsidiary of Windstream Services, LLC, which was a winning bidder of census blocks in Ohio under the Rural Digital Opportunity Fund Phase 1 (RDOF) Auction 904. Windstream Services, LLC assigned certain parts of its Ohio winning bid to Windstream, who has since filed an application in this docket for designation as an Eligible Telecommunications Carrier for those assigned RDOF census blocks. In an amended application being filed this same day, Windstream is submitting additional information. Windstream requests that the confidential and proprietary design information and financial information included as Amended Application Exhibits L and M, respectively, be protected from public disclosure. The financial information associated with funding the deployment of facilities for RDOF-funded census block and the facilities’ design information (both the system and technology information) are highly sensitive information.<sup>1</sup> Release of this information to the public would harm Windstream by providing its competitors with its proprietary financial, system and market information.

Ohio Administrative Code (“Ohio Adm.Code”) 4901-1-24(D) provides that the Public Utilities Commission of Ohio (“Commission”) or certain designated employees may 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 (“R.C.”). State law recognizes the need to protect certain types of information, including that which is the subject of this motion. The non-disclosure of the information in Windstream’s

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<sup>1</sup> The design information includes detailed technical information submitted to the Federal Communications Commission with Windstream’s Auction 904 Long Form and it is not publicly available from the FCC either.

Amended Application Exhibits L and M will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill their 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. *See* 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.

R.C. Section 1333.61(D), emphasis added. This definition clearly reflects the state policy favoring the protection of trade secrets such as Amended Application Exhibits L and M, which are the subject of this motion.

In *State ex rel The Plain Dealer the Ohio Dept. of Ins.* (1997), 80 Ohio St. 3d 513, the Supreme Court of Ohio adopted a six-factor test to analyze whether information is a trade secret under the statute:

(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.

*Id.* at 524-525 (quoting *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983)).

After applying these factors to the information sought to be protected, it is clear that a protective order should be granted. Amended Application Exhibits L and M contain confidential and proprietary information. Such sensitive information is not being submitted publicly as it would give competitors an understanding of Windstream's funding, system design, system technology and market strategy and activities, providing competitors with an advantage that would hinder Windstream in the marketplace. The compilation of this information has unique competitive value in Ohio and elsewhere as well. In addition, public disclosure of this confidential information is not likely to assist the Commission in carrying out its duties. Moreover, an applicant has been previously granted a protective order to prevent disclosure of marketing plans and strategies that constitutes trade secrets. *In the Matter of Stream Ohio Gas and Electric, LLC d/b/a Stream Energy*

*for Certification as a Competitive Retail Natural Gas Supplier*, Case No. 07-1283-GA-CRS, Entry at ¶ 9 (May 2, 2014).

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction, the trade secrets 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 and competitive suppliers. 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); and *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR, Entry (August 17, 1990).

WHEREFORE, for the above reasons, Windstream requests that the Commission grant its motion for a protective order and to maintain under seal Exhibits L and M to Windstream's Amended Application.

Respectfully submitted,

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