

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

APPLICATION OF Foothills Rural Telephone ) CASE NO. 2014-00328  
COOPERATIVE CORPORATION, INC. )  
FOR A GENERAL ADJUSTMENT IN RATES )

**PETITION OF Foothills Rural Telephone Cooperative Corporation, Inc., for Confidential Treatment**

Foothills Rural Telephone Cooperative Corporation, Inc., (“Foothills”) hereby petitions the Kentucky Public Service Commission (the “Commission”), pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, to grant confidential treatment to certain information Foothills is contemporaneously filing with its application for a general adjustment in rates (the “Application”). The information Foothills seeks to protect as confidential is hereinafter referred to as the “Confidential Information.”

Pursuant to 807 KAR 5:001, Sections 13(2)(a)(3) and 13(2)(b), one (1) copy of the hardcopy pages containing Confidential Information, with the Confidential Information highlighted with transparent ink, printed on yellow paper, or otherwise marked “CONFIDENTIAL,” is being filed with this petition. A copy of those pages with the Confidential Information redacted is being filed with the original and each of the ten (10) copies of the application filed with this petition.

The Confidential Information is not publicly available, is not disseminated within Foothills except to those employees and professionals with a legitimate business need to know and act upon the information, and is not disseminated to others without a legitimate need to know and act upon the information.

If and to the extent the Confidential Information becomes generally available to the public, whether through filings required by other agencies or otherwise, Foothills will notify the Commission and have the information's confidential status removed pursuant to 807 KAR 5:001, Section 13(1)(b).

As discussed below, the Confidential Information is entitled to confidential treatment based upon KRS 61.878(1)(c)(1), which protects "records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records."

#### **APPLICABLE LAW**

807 KAR 5:001, Section 13(2)(a), sets forth the procedure by which certain information filed with the Commission may be treated as confidential. The regulation provides that a party seeking confidential treatment of certain information must:

Establish specific grounds pursuant to KRS 61.878, upon which the Commission should classify that material as confidential;

State the time period in which the material should be treated as confidential and the reasons for the time period; and

Include[ ] in a separate sealed envelope marked confidential, one (1) copy of the material . . . which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless redacted would disclose confidential material.

The Kentucky Open Records Act, KRS 61.870, *et seq.*, exempts certain records from the requirement of public inspection. In particular, KRS 61.878(1)(c)(1) provides the following exemption from the requirement of public inspection:

records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would present an unfair commercial advantage to competitors of the entity that disclosed the records.

## ARGUMENT

### **I. Disclosure of the Confidential Information Would Grant Foothills' Competitors an Unfair Commercial Advantage**

The Confidential Information identified in the exhibits to Foothills' Application consists of information related to the inner workings of Foothills, including financial and service usage details. This information "if openly disclosed would present an unfair commercial advantage to competitors" of Foothills, and it therefore qualifies as protectable confidential information pursuant to KRS 61.878(1)(c)(1).

The Confidential Information in Exhibit 1 of the Application consists of data related to the revenue changes due to adjustment of terminating access rates pursuant to the Federal Communications Commission's November 18, 2011 Order reforming intercarrier compensation and the Universal Service Fund (the "ICC/USF Order").

The Confidential Information in Exhibit 1, Attachment B contains detailed subscriber line data and service usage information.

The Confidential Information in Exhibit 1, Attachment C contains detailed subscriber service usage and revenue information, including the number of customers subscribed to specific services and the amount of revenue derived, or projected to be derived, from those services.

The highlighted information contained in Foothills' Application would result in an "unfair commercial advantage to competitors" of Foothills if disclosed. Foothills, as a participant in the telecommunications market, faces economic competition from other entities in the same market. Foothills competes in the telecommunications market to sell

telecommunication services to customers. With the increased penetration of alternatives to basic local service such as VoIP and wireless services, Foothills faces an increasingly competitive market. Foothills' ability to successfully compete against other entities in the telecommunications market would be adversely affected by the disclosure of its internal financial and service usage information. Therefore, Foothills has "competitors" as is contemplated under the statute and faces actual competition from other market participants.

The Confidential Information for which Foothills seeks confidential treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky law. In Foothills' 2013 rate floor proceeding, the Commission granted confidential treatment to comparable information "related to the revenue changes due to adjustment of terminating access rates pursuant to the Federal Communications Commission's Order dated November 18, 2011." *See In the Matter of Tariff Filing of Foothills Rural Telephone Cooperative Corporation, Inc.*, Ky. P.S.C. Case No. 2013-00193, Order Regarding Request for Confidential Treatment (March 26, 2014). In addition, information about a company's detailed inner workings is generally recognized as confidential or proprietary. *See, e.g., Hoy v. Ky. Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is 'generally recognized as confidential or proprietary . . . .'"); *Marina Mgmt. Servs. v. Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995) ("The most obvious disadvantage may be the ability to ascertain the economic status of the entities without the hurdles systematically associated with the acquisition of such information about privately owned organizations.").

The disclosure of this confidential and proprietary information would provide competitors an unfair competitive advantage, allowing them insight into Foothills' financial

position and giving them the ability to unfairly tailor their competitive efforts against Foothills in light of this Confidential Information. For these reasons, Foothills respectfully requests that the Commission grant confidential treatment to the Confidential Information.

## **II. Time Period**

Pursuant to 807 KAR 5:001, Section 13(2)(a)(2), Foothills requests that the Confidential Information remain confidential for a period of five (5) years from the date of this petition, which should allow sufficient time for the projected data to become sufficiently outdated that it could not be used to determine similar Confidential Information at that time.

## **CONCLUSION**

Based on the foregoing, the Confidential Information is entitled to confidential treatment. If the Commission disagrees that Foothills is entitled to confidential treatment, due process requires the Commission to hold an evidentiary hearing. *Utility Regulatory Comm'n v. Kentucky Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

WHEREFORE, Foothills respectfully requests that the Commission classify and protect as confidential the Confidential Information.

On this the 21st day of October, 2014.

Respectfully submitted,



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Cooperative Corporation, Inc.*

**CERTIFICATE OF SERVICE**

I certify that, on the date this Petition was filed or served with the Kentucky Public Service Commission, a true and accurate copy of the foregoing was served by Federal Express or by hand delivery upon the persons listed below.

Kentucky Attorney General  
Office of Rate Intervention  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601

On this the 21st day of October, 2014



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*Counsel for Foothills Rural Telephone Cooperative  
Corporation, Inc.*