

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

APPLICATION OF BALLARD RURAL TELEPHONE)
COOPERATIVE CORPORATION, INC.) CASE NO. 2016-00042
FOR A GENERAL ADJUSTMENT IN RATES)

PETITION OF BALLARD RURAL TELEPHONE
COOPERATIVE CORPORATION, INC.
FOR CONFIDENTIAL TREATMENT

1. Ballard Rural Telephone Cooperative Corporation, Inc. (“Ballard”) 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 Ballard is contemporaneously filing with its application for a general adjustment in rates (the “Application”). The information Ballard seeks to protect as confidential is hereinafter referred to as the “Confidential Information.”

2. The Confidential Information includes portions of:

- a. Exhibit 1 of the Application; and
- b. Exhibit 1, Attachment B of the Application.

3. 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.

4. The Confidential Information is not publicly available, is not disseminated within Ballard 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.

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

6. 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."

ARGUMENT

I. Disclosure of the Confidential Information Would Permit an Unfair Commercial Advantage to Ballard's Competitors.

7. The Confidential Information identified in the exhibits to Ballard's Application and listed in Paragraph 2 above consists of information related to the inner workings of Ballard, including financial and service usage details. This information "if openly disclosed would present an unfair commercial advantage to competitors" of Ballard, and it therefore qualifies as protectable confidential information pursuant to KRS 61.878(1)(c)(1).

8. 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.

9. 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.

10. Ballard, as a participant in the telecommunications market, faces economic competition from other entities in the same market. Ballard 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, Ballard faces an increasingly competitive market. Ballard's 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, Ballard has "competitors" as is contemplated under the statute and faces actual competition from other market participants. The Confidential

Information contained in Ballard's Application would result in an "unfair commercial advantage to competitors" of Ballard if disclosed.

11. 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 Confidential Information for which Ballard seeks confidential treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky law. Moreover, in the 2014 rate floor proceedings, the Commission granted Ballard confidential treatment to comparable information as is requested here. *See Application of Ballard Rural Telephone Cooperative Corporation, Inc. for a General Adjustment in Rates*, Ky. P.S.C. Case No. 2014-00330 Order (November 26, 2014).

12. The Confidential Information contained in the Exhibits identified in Paragraph 2 above consists of information related to the inner workings of Ballard, including financial and service usage details:

- a. The Confidential Information in Exhibit 1 of the Application consists of data related to the revenue changes Ballard has experienced as a result of adjustment of its 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”).

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

13. The disclosure of the above-referenced Confidential Information would provide competitors an unfair competitive advantage, allowing them insight into Ballard’s financial position and giving them the ability to unfairly tailor their competitive efforts against Ballard in light of this Confidential Information. For these reasons, Ballard respectfully requests that the Commission grant confidential treatment to the Confidential Information.

II. Time Period.

14. Pursuant to 807 KAR 5:001, Section 13(2)(a)(2), Ballard 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

15. Based on the foregoing, the Confidential Information is entitled to confidential treatment. If the Commission disagrees that Ballard 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, Ballard respectfully requests that the Commission classify and protect as confidential the Confidential Information.

On this the 2nd day of March, 2016.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that, on the date this Petition for Confidential Treatment was filed 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
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601-3449

On this the 2nd day of March, 2016.



*Counsel to Ballard Rural Telephone
Cooperative Corporation, Inc.*