

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBL. COMMISSION

In the Matter of:

SOUTH CENTRAL TELCOM LLC)
)
Complainant)
)
v.)
)
WINDSTREAM KENTUCKY)
EAST, INC.)
)
Defendant)

Case No. 2008-126

ORIGINAL

**PETITION FOR CONFIDENTIAL TREATMENT OF CERTAIN INFORMATION
IN SOUTH CENTRAL'S AMENDED FORMAL COMPLAINT**

South Central Telcom LLC ("South Central"), by counsel, pursuant to 807 KAR 5:001 §7 and KRS 61.878(1)(c)(1), requests that the Public Service Commission of Kentucky ("the Commission") accord confidential treatment to: (i) the specific billing information included within paragraphs 25 through 28, 30, 34, and 53 and Exhibit 5 of South Central's amended formal complaint (the "Amended Complaint"); (ii) the specific billing information, and information related to a company that is not a party to this matter, contained in Exhibit 6 of the Amended Complaint; and (iii) the bills attached as Exhibits 3 and 4 to the Amended Complaint (collectively, the "Information").¹ In support of its motion, South Central states as follows.

¹ Pursuant to 807 KAR 5:001 §7(2)(a)(2), a copy of the Information, highlighted in transparent ink, is attached to the original (only) of this motion. South Central notes that all of the material within Exhibits 3 and 4 is confidential and, in the interest of efficiency, South Central did not highlight the Information contained within those exhibits, but instead asks that the Commission treat the entirety of those exhibits as confidential.

I. Applicable Law.

807 KAR 5:001 §7(2) sets forth a procedure by which certain information filed with the Commission may be treated as confidential. Specifically, the party seeking such confidential treatment of certain information must "[set] forth specific grounds pursuant to KRS 61.870 et seq., the Kentucky Open Records Act, upon which the commission should classify that material as confidential." 807 KAR 5:001 §7(2)(a)(1).

The Kentucky Open Records Act, KRS 61.870 et seq., exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, KRS 61.878 provides as follows:

- (1) The following public records are excluded from the application of [the Open Records Act] and shall be subject to inspection only upon order of a court of competent jurisdiction:
 - (c) 1. Upon and after July 15, 1992, 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.

Id.

II. The Information Should Be Classified Confidential.

Read in conjunction, 807 KAR 5:001 §7(2)(a)(1) and KRS 61.878(1)(c)(1) provide that the Commission may classify the Information as confidential if the open disclosure of the Information to the general public "would permit an unfair commercial advantage to competitors of the entity that disclosed the records." *See* KRS 61.878(1)(c)(1). For the reasons set forth below, the disclosure of the Information to the general public "would permit an unfair

commercial advantage to competitors of [South Central]." *Id.* Accordingly, the Information should be classified as confidential.

In paragraphs 25 through 28, 30, 34, and 53² of the Amended Complaint, South Central refers to specific billing information in the form of monthly facility bills and charges. Exhibits 3³ and 4⁴ to the Amended Complaint are composed entirely of Windstream bills to South Central. Exhibit 5⁵ to the Amended Complaint, a disconnect notice sent from Windstream to South Central, also contains specific billing information identifying South Central's facility charges. Lastly, Exhibit 6⁶ to the Amended Complaint, which consists of correspondence between South Central and Windstream, contains reference to specific billing information and facility charges, as well as similar information related to a company that is not a party to this matter.

The disclosure of this Information to the public would permit South Central's competitors and potential competitors, while investing only minimal amounts of their own time and resources, to use South Central's cost data to reverse-engineer their own rate structure and business development strategy. Additionally, the disclosure of the Information would provide competitors, and potential competitors, with confidential information regarding the financial conditions of South Central, Windstream, and the company that is not a party to this matter (collectively, the "Companies"). Ultimately, competitors' access to such cost data and financial condition information would provide them a blueprint by which they could exploit the Information to gain an unfair competitive advantage and undercut the Companies. If, however, the Commission classifies the Information as confidential, competitors will be rightly forced to

² Pages containing these paragraphs are included as Attachment 1.

³ Included as Attachment 2.

⁴ Included as Attachment 3.

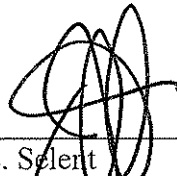
⁵ Included as Attachment 4.

⁶ Included as Attachment 5.

bear their own cost of perpetuating or starting-up their own competitive ventures and developing their own cost structure.

807 KAR 5:001 §7(2)(a)(1) and KRS 61.878(1)(c)(1) expressly authorize the Commission to classify the Information as confidential (and thereby restrict public access to the Information) because the disclosure of the Information to the public would permit an unfair competitive advantage to competitors of the Companies. For the reasons set forth above, the disclosure of the Information will provide competitors with an unfair competitive advantage over the Companies. Accordingly, the Commission should classify the Information as confidential pursuant to 807 KAR 5:001 §7 and KRS 61.878(1)(c)(1) and prevent the public disclosure of the Information.

Respectfully submitted,



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Edward T. Depp
Matthew J. Hallingstad
DINSMORE & SHOHL LLP
1400 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
(502) 540-2300 (tel.)
(502) 585-2207 (fax)

*Counsel to South Central
Telcom LLC*

21. Windstream should not bill South Central for any portion of the interconnection facilities that South Central leases from a third-party.

22. Nevertheless, Windstream is billing South Central for the interconnection facilities leased to South Central by the third-party.

23. By charging South Central for the portion of the interconnection facilities that Windstream does not provide and is not authorized to collect on, Windstream is requiring South Central to pay twice for those interconnection facilities, which results in South Central being double-billed for those facilities.

F. Samples of Windstream's Inaccurate Bills.

24. As a specific example of Windstream's incorrect billing, South Central refers the Commission to the bill attached as Exhibit 3.²

25. Pursuant to the terms of the Interconnection Agreement, since the installation of its fourth interconnection facility on or about September 17, 2008, South Central's monthly facility bill from Windstream should be [REDACTED] per month for the interconnection facilities.

26. Instead, during that same period, Windstream has been billing South Central [REDACTED] per month for these same facilities.

27. As a result, Windstream has overcharged, and continues to overcharge, South Central [REDACTED] per month, every month, since September 2007.

² Unreasonable practices such as those described in paragraphs 24 through 28 are also replete in Windstream's bills from at least January 2007 through April 2008. Rather than dissect each monthly bill in detail, however, South Central has simply described (in paragraphs 24 through 28) a representative unreasonable Windstream billing practice and then attached (as Exhibit 4) Windstream's bills from January 2007 through April 2008 as further evidence of the pervasive nature of those practices. Nowhere in those bills does Windstream charge South Central the appropriate amount for South Central's interconnection facilities.

28. Prior to September 2007, Windstream was incorrectly billing South Central for its facilities then in place at [REDACTED] per month, resulting in a monthly over-billing of [REDACTED]

G. Other Harm Caused by Windstream's Unreasonable Billing Practices.

29. In addition to imposing such unlawfully inflated charges upon South Central, Windstream's unreasonable billing practices are imposing significant administrative burdens and other expense on South Central, as South Central is forced to spend increasing amounts of time disputing and otherwise addressing Windstream billing errors, as well as Windstream's unfounded threats to disconnect services to South Central as a result of those billing practices.

30. For example, Windstream sent South Central a disconnect notice on December 5, 2007. (A copy of this notice is attached as Exhibit 5.) In that notice, Windstream threatened to disconnect South Central, unless South Central paid Windstream [REDACTED] within 30 days.

31. Though the disconnect notice was addressed to South Central Telcom, many of the charges included on the notice actually belonged to South Central Rural Telephone Cooperative Corporation, Inc. and were already the subject of a separate dispute before the Commission.

32. The overcharges that are subject of this complaint, including the South Central Telcom charges included on the disconnect notice, had been in dispute for several months prior to the disconnect notice, and an independent consultant, as well as South Central's Regulatory and Customer Service Manager, its Chief Financial Officer, and its General Manager had been working together with various levels of Windstream personnel to correct the mistakes in billing and erroneous charges.

33. On or before December 13, 2007, counsel for South Central notified counsel for Windstream that South Central had received the December 5, 2007 disconnect notice and asked that he look into the matter.³

34. On December 14, 2007, in an email to counsel for South Central, counsel for Windstream responded to counsel for South Central's inquiry and alleged that South Central had outstanding balances of [REDACTED] for switched access service and [REDACTED] for usage service.

35. In a January 3, 2008 email to counsel for South Central, Windstream alleged that there had been no payment or progress regarding resolution of the allegedly-outstanding balance and suggested that, if the allegedly-outstanding balance remained unpaid, South Central would likely be disconnected.

36. In a January 15, 2008 letter to Windstream, counsel for South Central advised Windstream that South Central⁴ disputed the entire allegedly-outstanding balance, claimed that the allegedly-outstanding balance resulted from inaccurate billing by Windstream, and suggested once again that representatives from South Central and Windstream meet to review bills to "clarify charges and rectify errors."

37. In a January 16, 2008 letter to counsel for South Central, Windstream acknowledged receipt of counsel for South Central's letter disputing the entire allegedly-outstanding balance, acknowledged that Windstream would not terminate service to South Central, requested contact information for South Central billing personnel, and provided the name of Jana Lee as a Windstream contact.

³ The dispute-related correspondence described in paragraphs 33 through 38 of this Amended Complaint are attached as Exhibit 6.

⁴ Two letters sent to Windstream were drafted in the name of South Central Rural Telephone Cooperative Corporation, Inc. because Windstream's inaccurate billing contained commingled charges that made it difficult to determine which South Central entity was in the best position to resolve these billing matters with Windstream.

51. In summary, Windstream's inaccurate bills and unreasonable service places South Central at a competitive disadvantage relative to Windstream (with whom it directly competes) and other CLECs within the Commonwealth of Kentucky.

52. Absent prompt resolution of this matter, South Central will also be forced – to its commercial detriment – to continue spending inordinate amounts of time and expense addressing Windstream's ongoing, unreasonable billing practices.

53. As of the date of this amended complaint, Windstream has overcharged South Central approximately [REDACTED] and is continuing to overcharge South Central in the amount of [REDACTED] per month.

54. Because of the utter confusion and pervasive inaccuracy of Windstream's bills, South Central is unable, at this time, to further identify specific problems with Windstream's bills. For this reason, however, South Central believes that a Commission investigation and adjudication of this matter is appropriate.

55. If not rectified, Windstream's unreasonable billing practices will cause irreversible harm to South Central and the competitive telecommunications landscape in Glasgow, Kentucky,

56. In the event Windstream does not refund the amounts already overpaid by South Central and accurately bill South Central from this point forward, South Central contemplates ceasing payment of all monies to Windstream, whether disputed or undisputed, until it has recovered the credit it is due.

WHEREFORE, South Central respectfully requests that the Commission take the following actions.

A. Order Windstream not to disconnect South Central during the pendency of this dispute;

REDACTED

PURSUANT TO 807 KAR 5:001 §7, KRS 61.878(1)(c)(1),
AND SOUTH CENTRAL'S PETITION FOR CONFIDENTIAL TREATMENT,
FILED CONCURRENTLY WITH THIS AMENDED FORMAL COMPLAINT.

REDACTED

PURSUANT TO 807 KAR 5:001 §7, KRS 61.878(1)(c)(1),
AND SOUTH CENTRAL'S PETITION FOR CONFIDENTIAL TREATMENT,
FILED CONCURRENTLY WITH THIS AMENDED FORMAL COMPLAINT.

WINDSTREAM COMMUNICATIONS

Wholesale Billing (1170 B3F03-368)
4001 North Rodney Parham Rd.
Little Rock AR 72212-2442

VIA CERTIFIED MAIL



December 05, 2007

SOUTH CENTRAL TELCOM LLC

PO BOX 159
ATTN: CHRIS LAWRENCE
GLASGOW, KY 421420159
Account Number: 2019

Send Check to:

Windstream Communications
c/o Bank of America, N.A.
P. O. Box 60549
St. Louis, MO 63160-0549

ACH Payments:

RTN #:
Acct #:
email payment detail to:
WCLCABS@windstream.com
SUBJ: Remit Detail

FINAL NOTICE OF SERVICE
EMBARGO / PIC BLOCK / DISCONNECTION

IN ACCORDANCE WITH THE APPLICABLE TARIFF OR CONTRACT, WINDSTREAM IS HEREBY PROVIDING YOU 30-DAY NOTIFICATION THAT SERVICE EMBARGO (including PIC block) AND/OR DISCONNECTION PROCEDURES HAVE BEEN INITIATED ON YOUR DELINQUENT ACCOUNTS. IN THE EVENT THAT PIC BLOCK OR DISCONNECT OCCURS, IT MAY TAKE UP TO ONE WEEK TO REMOVE SAID BLOCK OR RESTORE SERVICE.

In accordance with the applicable tariff or contract, you must immediately pay the total amount due listed below to avoid embargo, PIC block and/or disconnection. An additional fee or deposit will be required to continue or reinstate service.

We do not want to lose your business, therefore please contact Jana Lee immediately at 1-501-748-6750 to make appropriate arrangements to avoid embargo, PIC block and/or disconnection.

<u>BILLING ACCOUNT NUMBER (BAN):</u>	<u>INVOICE NUMBER</u>	<u>INVOICE DATE</u>	<u>INVOICE DUE DATE</u>	<u>AMOUNT DUE*</u>
219DM05026	0712572624	5/5/2007	6/4/2007	
	0718676154	6/5/2007	7/4/2007	
	0718676154	7/5/2007	8/4/2007	
	0724879749	9/5/2007	10/5/2007	
	0727881567	10/5/2007	11/4/2007	
	<u>Total Due for this BAN:</u>			
219DMIW418	0724879804	9/5/2007	10/5/2007	
	0727881622	10/5/2007	11/4/2007	
	<u>Total Due for this BAN:</u>			
219SP05026	0706469163	3/5/2007	4/4/2007	
	0709570884	4/5/2007	5/5/2007	
	0712572626	5/5/2007	6/4/2007	
	0715674388	6/5/2007	7/5/2007	
	0718676156	7/5/2007	8/4/2007	
	0721777943	8/5/2007	9/4/2007	
	0724879751	9/5/2007	10/5/2007	
	0727881567	10/5/2007	11/4/2007	
	<u>Total Due for this BAN:</u>			
219SP0UESP	0715674389	6/5/2007	7/5/2007	

* Late payment charges will be applied per invoice not paid in full by the next cycle due date.

WINDSTREAM COMMUNICATIONS

Wholesale Billing (1170 B3F03-368)
4001 North Rodney Parham Rd.
Little Rock AR 72212-2442

VIA CERTIFIED MAIL



December 05, 2007

0718676157	7/5/2007	8/4/2007
0721777944	8/5/2007	9/4/2007
0724879752	9/5/2007	10/5/2007
0727881570	10/5/2007	11/4/2007

Total Due for this BAN:

220DM05026

0709571565	4/5/2007	5/5/2007
0712575322	5/5/2007	6/4/2007
0715675085	6/5/2007	7/5/2007
0719079853	7/5/2007	8/4/2007
0724880465	9/5/2007	10/5/2007
0727882289	10/5/2007	11/4/2007

Total Due for this BAN:

TOTAL AMOUNT DUE

* Late payment charges will be applied per invoice not paid in full by the next cycle due date.

From: Overstreet, Mark R. [mailto:MOVERSTREET@stites.com]
Sent: Friday, December 14, 2007 7:53 AM
To: WALLACE, HOLLY
Subject: South Central

Holly:

Kimberly Bennett reports that for both companies it appears some transit charges (and two for South Central) were inadvertently included in the disconnect notice. For this we apologize. Nevertheless, our research also reveals both companies owe Windstream other undisputed and unpaid amounts that are unrelated to the transit case for items such as special access and usage.

Windstream's records show that South Central has an outstanding balance of for switched access and for usage. These amounts are unrelated to transit and have not been disputed. Similarly, Windstream's records indicate has an outstanding balance of that is unrelated to transit and is not disputed.

Given the amounts involved, it would seem appropriate for the appropriate business contacts at the two companies to call either Tony Fuller (501/748-5101) or Janann Holmes (501/748-5317) to discuss these issues and make arrangements. This seems like one that the business owners should be able to resolve.

Thanks,

Mark R. Overstreet
Stites & Harbison PLLC
421 West Main Street
P.O. Box 634
Frankfort, Kentucky 40602-0634
Phone: (502) 223-3477
Facsimile: (502) 223-4387
E-Mail: moverstreet@stites.com

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WALLACE, HOLLY

From: Overstreet, Mark R. [MOVERSTREET@stites.com]
Sent: Thursday, January 03, 2008 4:41 PM
To: WALLACE, HOLLY; SELENT, JOHN; Depp, Tip
Subject: FW: Outstanding Balances for and South Central

I think this answers your question. See the last paragraph:

I just confirmed the status on these accounts with our Windstream billing folks, and unfortunately we are not showing resolution. In the

In the case of South Central, there doesn't seem to have been any progress, and the outstanding balance is still approximately (includes charges 30 days or older and excludes current charges and transit/disputed charges). We did just receive a dispute letter in the amount of about from Eilleen Bodamer / Johnny McClanahan that is unrelated to this outstanding balance and is related to other services. Any assistance Holly can offer in getting South Central to contact Windstream to make arrangements on that balance would be helpful.

The appropriate business contacts for and SC can contact Jana directly at the number above. I have requested that disconnect notices not be sent for one more billing period in an effort to allow the business owners to resolve this. However, especially in the case of South Central, if that balance continues and arrangements are not made, I don't know that that Windstream can continue delaying disconnect notice for undisputed/unpaid charges.

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-----Original Message-----

From: Bennett, Kimberly K [mailto:Kimberly.K.Bennett@windstream.com]
Sent: Thursday, January 03, 2008 3:45 PM
To: Overstreet, Mark R.

Subject: Outstanding Balances for [redacted] and South Central

Mark,

I just confirmed the status on these accounts with our Windstream billing folks, and unfortunately we are not showing resolution. In the

In the case of South Central, there doesn't seem to have been any progress, and the outstanding balance is still approximately [redacted] (includes charges 30 days or older and excludes current charges and transit/disputed charges). We did just receive a dispute letter in the amount of about [redacted] from Eilleen Bodamer / Johnny McClanahan that is unrelated to this outstanding balance and is related to other services. Any assistance Holly can offer in getting South Central to contact Windstream to make arrangements on that balance would be helpful.

The appropriate business contacts for [redacted] and SC can contact Jana directly at the number above. I have requested that disconnect notices not be sent for one more billing period in an effort to allow the business owners to resolve this. However, especially in the case of South Central, if that balance continues and arrangements are not made, I don't know that that Windstream can continue delaying disconnect notice for undisputed/unpaid charges.

Thanks,

Kimberly

The information contained in this message, including attachments, may contain privileged or confidential information that is intended to be delivered only to the person identified above. If you are not the intended recipient, or the person responsible for delivering this message to the intended recipient, Windstream requests that you immediately notify the sender and asks that you do not read the message or its attachments, and that you delete them without copying or sending them to anyone else.

421 West Main Street
Post Office Box 634
Frankfort, KY 40602-0634
(502) 223-3477
(502) 223-4124 Fax
www.stites.com

January 16, 2008

VIA E-MAIL AND MAIL

Holly C. Wallace
Dinsmore & Shohl LLP
1400 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202

Mark R. Overstreet
(502) 209-1219
(502) 223-4387 FAX
moverstreet@stites.com

RE: Billing Dispute Between South Central Rural Telephone Cooperative Corporation, Inc. and Windstream Communications

Dear Holly:

This acknowledges my receipt of your letter dated January 15, 2008 informing my client Windstream Kentucky East that South Central Rural Telephone Cooperative Corporation, Inc. disputes the entirety of the approximately _____ balance I identified in my January 3, 2008 e-mail message to you. Windstream further acknowledges its obligations under 807 KAR 5:006, Section 11 not to terminate service to South Central with respect this disputed amount, as well as any other amount disputed by South Central, "as long as ... [South Central] continues to make undisputed payments and stays current on subsequent bills."

As it has throughout this matter, Windstream looks forward to working with South Central to resolve this matter. Windstream also agrees that this matter is best handled by direct communication between the appropriate billing personnel at the respective companies.

To ensure that such communications take place, please provide me at your earliest convenience with the name and contact information for the appropriate South Central contact. As indicated in my earlier communication, the Windstream Kentucky East contact is Jana Lee. She may be reached at 501-748-6750.

Very truly yours,


Mark R. Overstreet

KE242:0KE11:16460:1:FRANKFORT