

COMMONWEALTH OF KENTUCKY

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BEFORE THE PUBLIC SERVICE COMMISSION

MAR 30 2010  
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COMMISSION

In the Matter of:

AN INVESTIGATION IN THE TRAFFIC DISPUTE )  
BETWEEN WINDSTREAM KENTUCKY LLC, )  
BRANDENBURG TELEPHONE COMPANY AND ) Case No. 2008-00203  
MCIMETRO TRANSMISSION SERVICES, LLC D/B/A )  
VERIZON ACCESS )

MOTION FOR CONFIDENTIAL TREATMENT

Windstream Kentucky East, LLC (“Windstream East”) moves the Commission, pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 7, for an Order granting confidential treatment to information included in responses to data requests issued by Brandenburg Telephone Company (“Brandenburg”). Specifically, Windstream East seeks confidential treatment of its responses to Brandenburg’s Request No. 7 and Request No. 9.<sup>1</sup>

1. The information for which confidential treatment is being sought (“Confidential Information”) includes proprietary usage information for Brandenburg, MCIMetro Access Transmission Services, LLC d/b/a Verizon Access (“Verizon”), and other carriers who are not a party to this action. (Brandenburg Request No. 7). The Confidential Information also includes customer proprietary network information (“CPNI”) of customers of Windstream, Brandenburg, Verizon, and other carriers who are not a party to this action. (Brandenburg Request No. 9).

2. Windstream East’s responses to Brandenburg Request No. 7 and Brandenburg Request No. 9, which contain the Confidential Information, are contained on a Compact Disc

<sup>1</sup> Brandenburg’s Request No. 7 provides: “Please produce a copy of the “initial, high-level audit” that Mr. Smith testified Windstream performed “in 2006.” (Supplemental Test. Of K. Smith at 8:10-12) When producing this documentation, identify the date(s) on which the “initial, high-level audit” was performed. If Windstream possesses an electronic copy of this documentation, provide (in addition to hard copy format) an electronic copy of this documentation in the same file format(s) as that in Windstream’s possession.” Brandenburg’s Request No. 9 provides: “With respect to Mr. Smith’s testimony that he captured a sample month’s worth of total minutes of use and messages from Brandenburg, please provide a copy of the captured sample and all documentation related to the

("CD"). Pursuant to 807 KAR 5:001, Section 7, an original of the CD is being filed under seal with this motion. Because the Confidential Information is being filed on a CD and confidential treatment is being sought for all of the information contained on the CD, Windstream East is not highlighting the information for which it seeks confidential treatment or filing redacted copies of the responses (which would just be blank pages in this instance). Windstream East understands that this approach is consistent with the Commission's established practice.

#### Statutory Standard

3. KRS 61.878 excludes from the public disclosure requirements of the Open Records Act the following information:

- "Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;"<sup>2</sup>
- "[R]ecords 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."<sup>3</sup>

The Confidential Information at issue in this motion satisfies these exceptions to Kentucky's Open Records Act.

#### The Information is of a Personal Nature and Disclosure would Constitute an Unwarranted Invasion of Privacy

4. The information contained in Windstream East's response to Brandenburg Request No. 9 includes CPNI. CPNI includes the time, date, duration and destination number of each call made by a customer, along with certain other personal information included on a customer's bill. In this case, the information at issue involves confidential usage information.

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same (Supplemental Test. Of K. Smith at 16:6-7.) Please state the specific date(s) and time frame(s) to which the captured sample relates."

<sup>2</sup> KRS 61.878(1)(a).

<sup>3</sup> KRS 61.878(1)(c)(1).

This information is protected from disclosure to third parties by the Telecommunications Act of 1996 and by subsequent orders issued by the Federal Communications Commission.

The Information is Generally Recognized as Confidential and Proprietary and Disclosure Will Result in an Unfair Commercial Advantage to Other Carriers

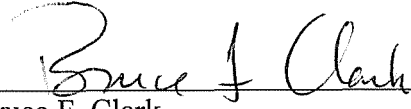
5. The information contained in Windstream East's response to Brandenburg Request No. 7 includes proprietary usage information for Brandenburg, Verizon, and certain other carriers who are not a party to this action. This information is generally considered confidential and proprietary and is maintained as such by the carriers. The Confidential Information is not available to, or ascertainable by, persons outside Windstream East by proper means other than on a confidential basis.

6. In light of the confidential and proprietary nature of the information at issue, Windstream East takes all reasonable efforts to protect it from public disclosure. These measures include limiting access to the information within Windstream East to only those persons with a legitimate need to access the information and protecting the information against disclosure outside Windstream East.

7. The Confidential Information, if disclosed to competitors of Windstream East and the other carriers, would provide an unfair competitive advantage to competing carriers by (1) allowing them to learn the identity of customers, and (2) offering them otherwise-unavailable evidence about market position and customer base. Windstream East and the other carriers for whom proprietary usage information is being provided in response to Brandenburg Request No. 7 will suffer a competitive economic injury if the Confidential Information is publicly disclosed.

8. The information at issue in this motion is regularly afforded confidential treatment by the Commission and Windstream East simply asks for the same treatment in this instance.

Respectfully submitted,



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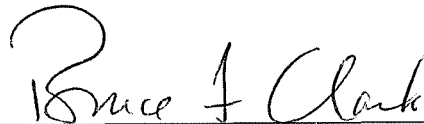
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been served by first class mail, postage prepaid, on those persons whose names appear below on this 30th day of March, 2010:

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