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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
Case No. 2018-00157

SEP 19 2018
PUBLIC SERVICE
COMMISSION

In the Matter of

CMN-RUS, INC:

COMPLAINANT

v.

WINDSTREAM KENTUCKY EAST, LLC

RESPONDENT

**WINDSTREAM KENTUCKY EAST, LLC'S REPLY TO CMN-RUS, INC.'S
RESPONSE TO WINDSTREAM KENTUCKY EAST, LLC'S SUPPLEMENTAL
PETITION FOR CONFIDENTIAL TREATMENT
OF CONFIDENTIAL CONTRACTS**

Comes the Respondent, Windstream Kentucky East, LLC ("Windstream"), and for its Reply to CMN-RUS, Inc.'s ("CMN") Response to Windstream Kentucky East, LLC's Supplemental Petition for Confidential Treatment of Confidential Contracts, hereby states as follows:

1) How any contract was treated inside Windstream is irrelevant.

CMN argues that it is somehow evident that the contract found at WIN1473-1507 was not treated as confidential "within" Windstream and therefore it is not entitled to confidential treatment in this proceeding.

As an initial matter, it is unclear how CMN could possibly know how any contract is treated "within" another company. CMN cannot possibly claim to know how any document is treated inside Windstream, just as Windstream does not know the details of operations at CMN. CMN's assertions on this point are completely baseless.

Additionally, CMN's claim that some sort of segregation or other marking should have been on the contract or that it should have received some special treatment inside Windstream itself is illogical. As the contract at issue would not be confidential from those working at

Windstream, there would be no reason to mark it as such or treat it specially while it was inside the walls of Windstream's own business.

The bottom line is that if Windstream agrees that it will keep a contract confidential, the other party to that contract is relying on Windstream and has paid consideration for Windstream to keep that promise. Windstream should not be forced to break its confidences because CMN saw fit to file this action.

2) Disclosure of one contract does not waive the confidentiality of others.

CMN is also critical that Windstream disclosed the KIH contract, claiming that it was not disclosed in its entirety in the attachments to the Complaint and that its disclosure somehow waives the confidentiality of other contracts.

First, disclosure of the KIH is not relevant to whether or not any other contract should be entitled to confidential treatment. It is unclear why CMN believes that disclosure of one contract marked confidential should waive confidentiality on all others, there are no cases or other authorities cited on this point in CMN's Response. To the extent that CMN considers this a matter of logic or some other unassailable truth, it is simply not. The contracts at issue are between Windstream and various different parties. The disclosure of one or more of these contracts might be perfectly agreeable amongst the parties to one contract, despite the existence of a confidentiality clause, and be unacceptable to other parties to a separate contract.

Second, it is obviously true that at least part of the KIH contract, *all* of which should have been covered by the confidentiality clause, including the amendment attached to the Complaint, was already in the public domain. If it was not, CMN would not have had the amendment. In addition, the KIH contract is with the Commonwealth of Kentucky and is subject to open records laws. Not that any of these facts matter here, because, as stated above, there is no reason as to why

disclosure of one contract would waive the confidentiality of any other contract.

3) The New Cingular Wireless PCS, LLC contract is not for the same type of attachment sought by CMN.

In the Response, CMN complains that the New Cingular Wireless PCS, LLC contract found at WIN1473-1507 (the "New Cingular Contract") does not contain the 300 pole rule and is therefore relevant to this proceeding. However, the New Cingular Contract is for attachment of wireless facilities, not the cable facilities CMN seeks to attach. This is a material difference, making the terms of New Cingular Contract irrelevant to this proceeding.

4) CMN asked Windstream only if Windstream was seeking confidential treatment for the communications between the companies. CMN never asked if Windstream was seeking confidential treatment for any other documents.

CMN has misleadingly argued in the Response that CMN's counsel inquired as to whether Windstream wished to seek confidential treatment of any documents and that Windstream's counsel responded that it was not seeking such treatment. This is a gross misrepresentation of the communications between the attorneys in this matter that unsigned counsel now feels compelled to correct for the record.

As seen in Exhibit A, when counsel for CMN contacted counsel for Windstream concerning this issue, she stated specifically that she was inquiring about whether Windstream wished to seek confidential treatment for "the parties' communications or agreements." It was obvious that counsel was referring to the fact that the PSC had asked both parties to produce some of the same documents in its First Requests for Information (found at Request No. 19 to Windstream and Request No. 16 to CMN). That CMN's counsel was exclusively making reference to these specific documents was further evident by the rest of the email which stated that she had been looking at "communications and agreements related to the KDL/invoice issue and Lexington pole attachments" and that there was "overlap" between what the parties would be producing.

Nothing about her statements in the email makes any reference to any other documents Windstream might plan to produce. At the time, undersigned counsel considered this to be a very polite and helpful thing to ask and, in the spirit of cooperation, responded that she was not seeking confidential treatment for "those documents"—clearly referring to the documents sought by the PSC in Request No. 19 to Windstream and Request No. 16 to CMN.

Now CMN is attempting to manipulate what was a cordial and cooperative exchange between counsel into some sort of admission that Windstream does not believe any document it produces should be held confidential. This is disingenuous as it is apparent from the face of the email, attached at Exhibit A, that the parties were then referring to specific documents that were mutually held by them, not to all documents that would eventually be produced. As such, this communication is irrelevant to the issue at hand and should not now be considered.

WHEREFORE, Windstream requests the PSC to grant its Supplemental Petition for Confidential Treatment of Confidential Contracts.

Respectfully submitted,



CASEY C. STANSBURY
TIA J. COMBS
MAZANEC, RASKIN & RYDER CO., LPA
230 Lexington Green Circle, Suite 605
Lexington, KY 40503
(859) 899-8499
(859) 899-8498 – Fax
cstansbury@mrrlaw.com
tcombs@mrrlaw.com
*Counsel for Respondent,
Windstream Kentucky East LLC*

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing was served on September 19, 2018 upon the following:

Katherine K. Yunker, Esq.
McBrayer, McGinnis, Leslie & Kirkland, PLLC
201 East Main Street, Suite 900
Lexington, KY 40507
kyunker@mmlk.com
*Counsel for Complainant,
CMN-RUS, Inc.*



*Counsel for Respondent,
Windstream Kentucky East, LLC*

Combs, Tia J.

From: Combs, Tia J.
Sent: August 24, 2018 9:39 AM
To: 'Katie Yunker'; Stansbury, Casey C.
Subject: RE: Ky. PSC 2018-00157; no confidentiality request

oCaseID: 53613

Ms. Yunker-

We are not seeking confidential treatment of any of those documents either. Thank you for bringing it up.

Also, I just wrote Mr. Bellamy about producing my 10,000+ page production on disk or USB. Do you want production in paper or on a disk of some sort?

Thanks
Tia

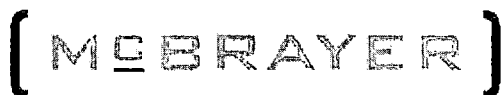
From: Katie Yunker [mailto:kyunker@mmlk.com]
Sent: August 23, 2018 1:53 PM
To: Combs, Tia J. <TCombs@mrrlaw.com>; Stansbury, Casey C. <CStansbury@mrrlaw.com>
Subject: Ky. PSC 2018-00157; no confidentiality request

Counsel:

I've slogged through enough of the communications and agreements related to the KDL/invoice issue and Lexington pole attachments (negotiations, applications, etc.) to be able to say that CMN is not planning to ask for confidential designation of anything it will produce. Production will be of PDFs for the service copies, and paper print-outs for the filed copies. This includes PDF or paper prints of email attachments which we can open (e.g., .xlsx, .doc, and .pdf files); it will not include, for example, the GIS files ("esri shapefiles") provided by Windstream to CMN early this year.

Particularly given the evident overlap in the PSC staff requests to the two parties, I'm telling you of CMN's plans so that you can **alert me** if there's something in the parties' communications or agreements which Windstream thinks must be kept confidential or for which it plans to seek confidential treatment.

Katie Yunker (859) 231-8780 x1137



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