

BEFORE THE COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

In the Matter of:

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| AN INVESTIGATION INTO THE INTRASTATE |) | ADMINISTRATIVE |
| SWITCHED ACCESS RATES OF ALL |) | CASE NO. |
| KENTUCKY INCUMBENT AND COMPETITIVE |) | 2010-00398 |
| LOCAL EXCHANGE CARRIERS |) | |

**PETITION FOR THE CONFIDENTIAL TREATMENT OF THE ICC ACCESS
REDUCTION FORM OF US LEC OF TENNESSEE, LLC, WINDSTREAM KENTUCKY
EAST, LLC, WINDSTREAM KENTUCKY WEST, LLC, WINDSTREAM NORLIGHT,
INC., WINDSTREAM NUVOX, INC.**

US LEC of Tennessee, LLC, Windstream Kentucky East, LLC, Windstream Kentucky West, LLC, Windstream Norlight, Inc., and Windstream Nuvox, Inc. (“Windstream”) pursuant to 807 KAR 5:001 §7 and KRS 61.878(1)(c), move the Public Service Commission of the Commonwealth of Kentucky (the “Commission”) to accord confidential treatment to their ICC Access Reduction Forms filed in response to the Commission’s Order dated May 30, 2012. In support of their Petition, Windstream states as follows.

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 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(1)(c)(1) provides as follows:

[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 present an unfair commercial advantage to competitors of the entity that disclosed the records.

Id. Applying this provision to the financial information of a corporation, the Supreme Court of Kentucky has held that “disclosure of [this financial information] would unfairly advantage competing operators. The most obvious disadvantage may be the ability to ascertain the economic status of the entities without the hurdles systematically associated with acquisition of such information.” *Marina Management Servs. v. Cabinet for Tourism, Dep't of Parks*, 906 S.W.2d 318, 319 (Ky. 1995); *see also Hoy v. Kentucky 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’ and falls within the wording of KRS 61.878(1)(c).”)

II. Windstream’s ICC Access Reduction Forms Should Be Classified Confidential.

Read in conjunction, 807 KAR 5:001 §7(2)(a)(1) and KRS 61.878(1)(c) provide that the Commission may classify the Information as confidential if the open disclosure of the Information “required by the [Commission] to be disclosed to it, [is] 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.” See KRS 61.878(1)(c). The overwhelming majority of the information contained in the ICC Access Reduction Forms is sensitive financial information that the Commission has required Windstream to file as part of the current proceeding. Such information is related to or derived from Windstream’s company-specific data regarding local and switched access minutes of use and revenues. This data

contains market sensitive information that could compromise Windstream in its competitive position in its respective markets.

The disclosure of this highly sensitive financial and network information would result in an unfair commercial advantage to Windstream's competitors, which would, likewise, result in a compromised competitive position for Windstream. The information has the potential to allow Windstream's competitors "to ascertain the economic status of [Windstream] without the hurdles systematically associated with acquisition of such information." *Marina Management Servs.*, 906 S.W.2d at 319. The information for which Windstream seeks confidential treatment is of such a sensitive nature that it is not known outside of their respective companies, and even within their respective companies it is known only by those of their employees who have a legitimate business need to know and act upon the information. "[S]uch information concerning the inner workings of a corporation is 'generally recognized as confidential or proprietary' and falls within the wording of KRS 61.878(1)(c)(2)." *Hoy*, 907 S.W.2d at 768.

III. Conclusion.

For these reasons, the Commission should classify the Information in Windstream's ICC Access Reduction Forms as confidential pursuant to 807 KAR 5:001 §7 and KRS 61.878(1)(c), and accordingly prevent the public disclosure of the Information.

Respectfully submitted,

/s/Robert C. Moore
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