

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

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

**PETITION FOR CONFIDENTIAL PROTECTION**

MCImetro Transmission Access Transmission Services LLC, d/b/a Verizon Access Transmission Services, MCI Communications Services, Inc. d/b/a Verizon Business Services, Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions, TTI National, Inc., Teleconnect Long Distance Service & Systems d/b/a Telecom\*USA and Verizon Select Services, Inc. (collectively, “Verizon”) hereby petition the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 7, and KRS 61.878(1)(c) to grant confidential protection to certain information included in the direct testimony of Don Price (filed July 8, 2011) on the grounds that the information has already been granted confidential treatment, or is subject to a petition for confidential treatment filed by another party, or is otherwise confidential and proprietary and therefore protectable. Specifically, Verizon petitions the Commission to grant confidential treatment to the redacted portions of the direct testimony of Mr. Price. In support of this Petition, Verizon states as follows:

1. The Kentucky Open Records Act exempts from disclosure certain commercial information, including records 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. KRS 61.878(1)(c). To qualify for this exemption and, therefore, maintain

the confidentiality of the information, a party must establish that disclosure of the commercial information would permit an unfair advantage to competitors of the party seeking confidentiality. See *Southeastern United Medigroup v. Hughes*, 952 S.W. 2d 195, 199 (Ky. 1997).

2. The confidential and proprietary financial and business information for which confidential protection is sought in this case is precisely the sort of information meant to be protected by KRS 61.878 (1) (c) 1. In *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766 (Ky. 1995), the Kentucky Supreme Court held that financial information submitted by General Electric Company with its application for investment tax credits was not subject to disclosure simply because it had been filed with a state agency. The Court applied the plain meaning rule to the statute, reasoning that “[i]t 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.’” *Id.* at 768. Similarly, the Kentucky Supreme Court applied the KRS 61.878 (1) (c) 1. “competitive injury” exemption to financial information that was in the possession of Kentucky’s Parks Department in *Marina Management Services, Inc. v. Commonwealth, Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995): “These are records of privately owned marina operators, disclosure of which 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 about privately owned organizations.” The same reasoning applies here.

3. Verizon owns a telecommunications network which includes transmission facilities (including fiber-optic lines and microwave transmitters) and points of presence in various locations in Kentucky and in other states throughout the United States. In order to provide interexchange services to its customers, Verizon must purchase “switched access”

services under tariff from various local exchange carriers. The rates for those services are generally subject to state commission jurisdiction and are disclosed in publicly filed tariffs. However, some tariffed rates for switched access service are calculated on an access line basis, yet billed on a per-minute basis. Accordingly, reading the filed tariffs alone does not provide enough public information to determine the actual costs of access services to any one access customer.

4. To calculate its cost of purchasing access services from a particular carrier, Verizon calculates the aggregate charges—or average access revenues per minute (“ARPM”)—based on billings to Verizon. The ARPM calculation takes into account all of the relevant access rate elements that are billed on a per-minute-of-use basis.

5. This calculation and any associated documents reflect the business judgments and competitive analysis of Verizon. Verizon does not share this information with its various competitors<sup>1</sup> in the interexchange business unless required by lawful process or pursuant to a protective agreement in a rate case, and those competitors do not share their own internal studies with Verizon. Moreover, revealing the analysis in the public record will harm Verizon by providing to its competitors the methods and sources used to assess and evaluate access charge expense.

6. On December 5, 2007, Verizon filed a Petition for Confidential Treatment for all ARPM calculations that Verizon disclosed in its original complaint filed in Case No. 2007-00503.

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<sup>1</sup> Among the many interexchange carriers competing against Verizon in Kentucky are AT&T, Sprint, Level 3, and Windstream. AT&T, Sprint and Windstream are parties to this proceeding.

7. By letter dated January 30, 2008, the Commission's Executive Director notified Verizon that its ARPM calculations are entitled to protection on the grounds relied upon in the Petition.

8. The Commission has already agreed that disclosure of the ARPM information would enable competitors to infer or suggest the competitive position of Verizon, to Verizon's unfair competitive disadvantage. Thus, the Commission should protect the same information as disclosed here. Specifically, the information contained on page 30, line 19, and page 31, line 14 of the Price testimony clearly merits confidential protection pursuant to *Hoy, Marina Management*, and 61.878 (1) (c) 1.

9. If the Commission disagrees, however, it must hold an evidentiary hearing (a) to protect the due process rights of Verizon and (b) to supply the Commission with a complete record to enable it to reach a decision with regard to this matter. *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. Ct. App. 1982).

10. Verizon has disclosed the confidential information pursuant to a protective agreement with parties with a legitimate interest in this information. In accordance with the provisions of 807 KAR 5:001 Section 7, one copy of the confidential testimony was filed by mail, and a copy with confidential information redacted was filed electronically on July 8, 2011.

**WHEREFORE**, Verizon respectfully requests that the Commission grant confidential protection for the redacted portions of the testimony of Don Price, or in the alternative, schedule an evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing and the Commission's treatment of all pending petitions for confidential treatment.

July 19, 2011

Respectfully submitted,



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C. Kent Hatfield  
Douglas F. Brent  
STOLL KEENON OGDEN PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202-2828  
Telephone: (502) 333-6000

David Haga  
Assistant General Counsel  
Verizon  
1320 N. Courthouse Road, 9<sup>th</sup> Floor  
Arlington, VA 22201  
Telephone: (703) 351-3065

Counsel for MCImetro Transmission Access  
Transmission Services LLC, MCI Communications  
Services, Inc., Bell Atlantic Communications, Inc.,  
NYNEX Long Distance Company, TTI National,  
Inc., Teleconnect Long Distance Service & Systems  
and Verizon Select Services, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that the electronic version of this filing made with the Commission on July 19, 2011, is a true and accurate copy of the document filed herewith in paper form, and the electronic version of the filing has been transmitted to the Commission.

A handwritten signature in black ink, appearing to read "Douglas F. Brent", with a long horizontal stroke extending to the right.

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Douglas F. Brent