

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

An Investigation into the Intrastate
Switched Access Rates of All Kentucky
Incumbent and Competitive Local
Exchange Carriers

Adm. Case No. 2010-00398

**Joint Motion by
TWTC, Level 3 Communications, and PAETEC
for Extension of Time**

tw telecom of kentucky, llc (“TWTC”), Level 3 Communications, LLC (“Level 3”), and US LEC of Tennessee L.L.C. d/b/a PAETEC Business Services (“PAETEC”) through their undersigned counsel, hereby jointly move for a two-week extension of time in which to respond to data requests propounded on them. In support of this request, these intervenor-CLECs state as follows:

1. Among the data requests served in this proceeding on May 2, 2011, were sets propounded on TWTC, Level 3, and PAETEC by Windstream Kentucky East, LLC and Windstream Kentucky West, LLC (collectively, “Windstream”) and by BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky, AT&T Long Distance Services, and TCG Ohio (collectively “AT&T”). The Windstream 5/2/11 requests seek recent counts of each company’s residential and business access lines. The AT&T 5/2/11 requests seek detailed access line, MOU, revenue, pricing, and operational data, often over a 10-year period.

2. Most if not all of the Windstream and AT&T data requests are objectionable. As has been pointed out in Verizon’s Response to Windstream’s First Set of Data Requests filed May 16, 2011, requests by a party for MOUs, bills, or payments seek information about a particular

competitor's use of switched access services that is irrelevant to the issues in this Commission investigation. As noted in the Response of SE Acquisitions, LLC d/b/a Southeast Telephone to the First Data Requests of AT&T, filed June 9, 2011, requests for information about a particular competitor's access lines, revenues, MOUs, billings, expenditures, and internal operations are also not relevant. Additionally, the Windstream and AT&T data requests are not addressed to any of the comments or other informational filings made by these intervenor CLECs in this proceeding or in AT&T's attempted complaint case (Case No. 2010-00162), *e.g.*, about the effect of competitive pressures or a transitional "glide path." In brief, the data requests may reflect the requesters' general concerns and agendas, but are not focused on the issues that the Commission has expressly highlighted for its investigation.

3. The data requests are also unduly burdensome in several ways. First, and foremost, they seek what is obviously confidential information that is of a sensitive financial and operations nature,¹ but the requesters did not therein make any representations, assurances, or undertakings that they would treat such information as confidential and restrict its use to protect the disclosing party from any competitive disadvantage thereby. Second, the requests are generally not for existing data as maintained by the respective movants, but would require special study to provide in the categories, format, and detail requested. Such a task — which is inappropriate for another party to request — is complicated by differences in record-keeping over time or as between predecessor and successor organization or between formerly separate or independent constituent entities. Third, particularly as to many of the AT&T requests, the data requests (a) are unduly broad in scope, (b) contain objectionable or arguable assumptions or premises, or (c) de-

¹ This requested data is the same or similar to that for which Windstream and the RLECs have earlier sought and received confidential designation and treatment by the Commission. *See* 5/25/11 J. Derouen letters granting confidential protection.

spite the length and specificity of the instructions and definitions given, are ambiguous, confusing, or indeterminate.

4. TWTC, Level 3, and PAETEC request the two-week extension so that each of them may make an individualized determination of how to respond to the Windstream and AT&T requests, and to complete the special studies required for those requests on which responsive data will be provided. In the absence of such an extension, one or more of the movants would object and decline to provide responsive information to most (if not all) of the requests. Furthermore, any confidential information sought which was provided would be filed only with the Commission, with a petition for confidential treatment. The parties to this proceeding are now in general discussions to allow limited disclosure of such confidential information through a protective agreement or general Protective Order entered by the Commission. Until there is such an arrangement, however, neither TWTC nor Level 3 nor PAETEC would be serving such confidential information on any other party — including the requesting party. Thus, even if taken in full, the requested two-week extension is unlikely to actually delay Windstream's or AT&T's receipt of responsive data, particularly as to confidential information.

5. Through counsel, the movants have given AT&T and Windstream advance notice of their intent to request this extension. To mitigate expressed concerns, movants have represented that they will file their respective responses to AT&T or Windstream as they are completed, and will not necessarily wait until June 24, 2011, to file and serve such responses. TWTC, Level 3, and PAETEC make a similar undertaking to the Commission in requesting this extension.

6. These intervenor CLECs note also that they have a request pending before the Commission, the grant of which would obviate this request (and the subject deadline). On

March 17, 2011, the movants herein filed a Joint Motion to Suspend Procedural Schedule; there has been no ruling on that motion.

WHEREFORE, TWTC, Level 3, and PAETEC respectfully request a two-week extension of the deadline in which to respond to the data requests propounded by Windstream and AT&T, up to and including June 24, 2011.

Respectfully submitted by an attorney of record on behalf of TWTC, Level 3, and PAETEC

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