

BEFORE THE COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

In the Matter of:

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 DATA CONTAINED
IN THE STATEMENT OF ACCESS REVENUE IMPACT OF REDUCING
INTRASTATE ACCESS RATES TO INTERSTATE LEVELS FILED BY
WINDSTREAM KENTUCKY WEST, LLC AND
WINDSTREAM KENTUCKY EAST, LLC**

Windstream Kentucky West, LLC (“Windstream West”) and Windstream Kentucky East, LLC (“Windstream East”) 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 the highlighted information (the “Information”) contained in their Statement of Access Revenue Impact of Reducing Intrastate Access Rates to Interstate Levels filing showing the amount of revenue loss they will experience if their intrastate switched access rates mirror their interstate switched access rates as AT&T¹ has proposed (the “Access Revenue Impact Filing”). In support of their Petition, Windstream West and Windstream East state 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

¹ BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky, AT&T Communications of the South Central States, LLC, BellSouth Long Distance, Inc. d/b/a AT&T Long Distance Service, and TCG Ohio (collectively “AT&T”).

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 West and Windstream East’s Information 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

Information is sensitive financial and network information that the Commission has required Windstream West and Windstream East to file as part of the current proceeding. The Information includes the expected amount of revenue shift that Windstream West and Windstream East expect to experience under the AT&T Plan, as well as revenue associated with their dedicated transport services.

The disclosure of this highly sensitive financial and network Information would result in an unfair commercial advantage to Windstream West and Windstream East's competitors, which would, likewise, result in a compromised competitive position for Windstream West and Windstream East. The Information has the potential to allow Windstream West and Windstream East's competitors "to ascertain the economic status of [Windstream West and Windstream East] without the hurdles systematically associated with acquisition of such information." *Marina Management Servs.*, 906 S.W.2d at 319. The Information for which Windstream West and Windstream East seek 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 West and Windstream East's Access Revenue Impact Filing 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,

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