

**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	)	

**WINDSTREAM KENTUCKY EAST, LLC AND WINDSTREAM KENTUCKY WEST,  
LLC’S PETITION FOR THE CONFIDENTIAL TREATMENT OF CERTAIN  
RESPONSES TO THE SECOND DATA REQUESTS FROM THE CLECs**

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Windstream Kentucky East, LLC (“Windstream East”) and Windstream Kentucky West, LLC (“Windstream West”), pursuant to 807 KAR 5:001 §7 and KRS 61.878(1)(c), hereby petition the Kentucky Public Service Commission (“Commission”) for an order granting confidential treatment to certain of their responses to the second set of data requests served by tw telecom of kentucky, llc, Level 3 Communications, LLC, and US LEC of Tennessee L.L.C. d/b/a PAETEC Business Services, (collectively, the “CLECs”) (such responses being the “Information”). In support of their Petition, Windstream East and Windstream West 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 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 East and Windstream West’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 information, or information from sensitive financial information can be derived, as well as network information. The Information includes the

expected amount of revenue shift that Windstream East and Windstream West expect to experience under the AT&T Plan, as well as revenue associated with their dedicated transport services. The Information also includes usage data, if combined with information in publicly-available documents, could be used to derive the quantities of specific sources of revenue.

The disclosure of this highly sensitive financial and network Information would result in an unfair commercial advantage to Windstream East and Windstream West's competitors, which would, likewise, result in a compromised competitive position for Windstream East and Windstream West. The Information has the potential to allow Windstream East and Windstream West's competitors "to ascertain the economic status of [Windstream East and Windstream West] without the hurdles systematically associated with acquisition of such information." *Marina Management Servs.*, 906 S.W.2d at 319. The Information for which Windstream East and Windstream West 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. Finally, Windstream East and Windstream West note that Confidential Attachment 1 to their response to CLEC Data Request No. 1 is a document to which the Commission has already afforded confidential treatment in this docket by letter of May 25, 2011 and Confidential to their response to CLEC Data Request No. 5 is the electronic file from which such information was derived.

### **III. Conclusion.**

For these reasons, the Commission should classify the Information in Windstream East and Windstream West'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.

WHEREFORE, Windstream East and Windstream West respectfully request that the **Commission enter all necessary orders granting confidential treatment as requested herein.**

Respectfully submitted,

s/Robert C. Moore  
HAZELRIGG & COX, LLP  
415 West Main Street, 1st Floor  
P. O. Box 676  
Frankfort, Kentucky 40602-0676  
(502) 227-2271