

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

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PETITION FOR CONFIDENTIALITY  
OF TDS TELECOM

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Comes now, TDS Telecommunications Corp., on behalf of Leslie County Telephone Company, Lewisport Telephone Company, and Salem Telephone Company (collectively “TDS Telecom” or “TDS Companies”), by and through counsel, and hereby requests that certain information submitted by the TDS Companies in response to discovery pursuant to Appendix A of the Order, entered March 10, 2011, in the above captioned matter, be provided confidential treatment by the Kentucky Public Service Commission (the “Commission”) pursuant to KRS 61.870 *et seq.* and Commission Rule 807 KAR 5:001, Section 7, *et seq.* In support of its Petition, the TDS Companies state as follows:

1. The Commission entered an Order in this docket on March 10, 2011, attached to which was an Appendix A setting forth a procedural schedule (“Procedural Schedule”).

2. Pursuant to that Procedural Schedule, ILECs were to provide the amount of access revenue shift they would experience if their Intrastate Switched Access Rates mirror their Interstate Switched Access Rates. The Procedural Schedule also provided for the filing of data requests, direct testimony, additional data requests, and rebuttal testimony.

3. Petitioner has previously submitted financial worksheets providing such requested information as well as direct testimony and responses to data requests. Petitioner has previously sought confidential treatment of portions of such information that Petitioner deemed to be proprietary and confidential and which should be afforded confidential treatment by the Commission.

4. In this current Petition, TDS Telecom seeks to correct the procedural error that occurred with the filing of certain data by cover letter dated September 8, 2011, and received by the Commission on September 12, 2011. Specifically, on that date, the TDS Companies filed a revised response to AT&T's First Set of Data Requests, No. 11 on behalf of Leslie County Telephone Company, Lewisport Telephone Company, and Salem Telephone Company. The information filed was a one page document clearly marked "Confidential" and also identified as "Confidential" in the accompanying cover letter. While referencing the confidentiality of the filed data, the TDS Companies failed to include with that filing a Petition for Confidentiality.<sup>1</sup>

5. Consequently, by letter dated September 20, 2011 from Executive Director Jeff Derouen, confidential treatment was denied, but the TDS Companies were provided twenty (20) days from the date of that letter to file an Application for Rehearing seeking confidential treatment.

6. By a separate filing made contemporaneously with this Petition for Confidentiality, the TDS Companies have filed an Application for Rehearing, attaching thereto a copy of this Petition, seeking the Commission's reversal of the denial of confidential

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<sup>1</sup> The filing also failed to include a public copy, an error that was addressed by a subsequent telephone call between the Commission and TDS Telecom.

treatment on the bases asserted herein and the correction of the September 8, 2011 procedural deficiency effectuated by the filing of this Petition.

7. By this Petition, the TDS Companies seek confidential treatment of that information that TDS Telecom deems to be proprietary and confidential and which should be afforded confidential treatment by the Commission.

8. Pursuant to KRS 61.870, *et seq.*, public agencies within the Commonwealth are required to make available for inspection all public records. However, KRS 61.878 contains certain exceptions to that general requirement, which includes an exception for confidential or proprietary information. To qualify for this exception under KRS 61.878(1)(c), a party must demonstrate that disclosure of its commercial information would permit an unfair commercial advantage to its competitors. The procedure for requesting confidential treatment from the Commission is set forth in Commission Rule 807 KAR 5:001, Section 7.

9. The information provided on a confidential basis on September 8, 2011 includes data that the TDS Companies believe contains proprietary and commercial information that would permit an unfair advantage to competitors, including competitors who are not be involved in this docket. As such, the TDS Companies request the Commission to afford confidentiality to this information pursuant to the exception provided in KRS 61.878(1)(c). The data included confidential billing units and confidential revenues related to those units. This financial information, if disclosed, would provide an unfair commercial advantage to the TDS Companies' competitors, thereby causing irreparable harm to TDS Telecom. The information contained in the TDS Companies' discovery responses would provide a competitor the opportunity to obtain market information about TDS Telecom. In addition, TDS Telecom is unable to receive such information about its competitors. In a competitive market, any

information learned about a competitor can be used to that competitor's detriment. Unfair competitive advantages hinder the development of true competition and skew the marketplace, all of which ultimately negatively impacts the consumer.


10. Each of the parties to this proceeding has agreed to a single Non-Disclosure Agreement ("NDA"), which limits the disclosure of the protected information. Because of the sensitive nature of significant details of the operations of the parties, each has entered into the NDA to facilitate the exchange of information and to assure its non-disclosure. Confidential information provided to parties, including the discovery that is subject to this Petition, has been provided pursuant to the NDA.

11. Because the filed revised discovery response contains data that is not otherwise available to the competitors of TDS Telecom, disclosure of confidential information of this nature would be detrimental to the TDS Companies. The information sought to be protected is not known outside TDS Telecom, nor is it provided to the public. TDS Telecom controls the dissemination of this information through all reasonable means, and TDS Telecom's internal use of the information is restricted to only those employees who have a legitimate business reason for reviewing it.

12. If this petition is granted, the public interest will be served because competition will be protected and enhanced. No public purpose is served by the disclosure of such information, and the regulations of the Commission contemplate the filing of such information under Confidentiality Order.

13. The subject of the discovery for which confidential treatment is sought is clearly identified in the revised discovery response filed September 8, 2011.

WHEREFORE, TDS Telecommunications Corp., on behalf of Leslie County Telephone Company, Lewisport Telephone Company, and Salem Telephone Company, respectfully request that the honorable Kentucky Public Service Commission enter an order granting confidential treatment of the information contained in the revised response to AT&T's First Set of Data Requests, No. 11 on behalf of Leslie County Telephone Company, Lewisport Telephone Company, and Salem Telephone Company.

  
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