

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

**PAETEC Petition for Confidential Treatment
re response to Windstream data requests**

US LEC of Tennessee L.L.C. d/b/a PAETEC Business Services (“PAETEC”), pursuant to 807 KAR 5:001 § 7 and KRS 61.878(1)(c), hereby petitions the Commission to classify and protect as confidential certain information filed with the Commission as part of PAETEC’s response to data requests propounded by Windstream in this proceeding on May 2, 2011. In support of its Petition, PAETEC states as follows:

1. As the party seeking confidential treatment of certain information, PAETEC herein “sets 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). PAETEC attaches to the original of this Petition one (1) copy of the material which identifies by highlighting those portions of the response (to Windstream’s 5/2/11 Data Request # 2) which — unless deleted — would disclose confidential material; to the paper copy of this Petition, PAETEC attaches a copy of the Response with redaction of those portions for which confidentiality is sought. The electronically filed Response, which PAETEC understands to be part of the public record, is the redacted version.

2. The Kentucky Open Records Act, KRS 61.870 *et seq.*, exempts certain records from public inspection. In particular, KRS 61.878(1)(c)(1) exempts:

Records 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.

Applying this provision to confidential information of a corporation, the Supreme Court of Kentucky has held that “disclosure ... 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 Mgmt. Servs. v. Cabinet for Tourism, Dept. of Parks*, 906 S.W.2d 318, 319 (Ky. 1995).

3. Information contained in the response to Windstream’s 5/2/11 Data Request #2, about number and location of access lines, is being confidentially disclosed to the Commission and by the Commission’s procedural rules is required to be disclosed to the Commission. The information is of a sensitive financial and operations nature such that, if the Commission grants public access to it, existing and potential competitors would gain an unfair commercial advantage and PAETEC’s competitive position in the industry would be compromised. Knowing the information could allow competitors “to ascertain the economic status of [PAETEC] without the hurdles systematically associated with the acquisition of such information.” *Marina Mgmt.*, 906 S.W.2d at 319. In addition, the information for which PAETEC is seeking confidential treatment is sufficiently sensitive that it is not known outside the company and even within the company is known only by those 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 v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995).

4. The parties to this proceeding have negotiated a protective agreement to allow limited disclosure of confidential information to parties with a legitimate interest in reviewing

the same for the purpose of participating in this proceeding. Under the classification system in that agreement, the information for which confidential treatment is sought is “Highly Confidential Information.”

5. The confidential information has not been requested by the Commission, but by another party and competitor to PAETEC. On grounds of relevance and undue burden, PAETEC could have interposed an objection to the corresponding data request and declined to provide responsive information at all. Therefore, if the Commission should determine that all or part of the information for which confidential treatment is requested should be open to public inspection if filed in this proceeding, PAETEC requests that it be allowed to withdraw that portion of its response and interpose an objection instead.

WHEREFORE, PAETEC respectfully requests that the Commission classify and protect as confidential the specific information described herein and highlighted in the attachment hereto, pursuant to 807 KAR 5:001 § 7 and KRS 61.878(1)(c), and accordingly maintain the information as a nonpublic part of the Commission’s file in this proceeding and otherwise prevent public disclosure of the confidential information.

Respectfully submitted on behalf of
US LEC of Tennessee L.L.C. d/b/a PAETEC
Business Services

/s/ Katherine K. Yunker

Katherine K. Yunker
yunker@desuetude.com
Oran S. McFarlan, III
omcfarlan@desuetude.com
YUNKER & PARK PLC
P.O. Box 21784
Lexington, KY 40522-1784
Phone: 859-255-0629
Fax: 859-255-0746