

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

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

tw telecom Kentucky, llc (“TWTC”), 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 TWTC’s response to data requests propounded by Windstream in this proceeding on May 2, 2011. In support of its Petition, TWTC states as follows:

1. As the party seeking confidential treatment of certain information, TWTC 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). TWTC attaches to the original of this Petition one (1) copy of the material which identifies by highlighting those portions of the response (to Data Request # 2) which — unless deleted — would disclose confidential material; to the paper copy of this Petition, TWTC attaches a copy of the Response with redaction of those portions for which confidentiality is sought. The electronically filed Response, which TWTC 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 TWTC’s competitive position in the industry would be compromised. Knowing the information could allow competitors “to ascertain the economic status of [TWTC] 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 TWTC 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. Through counsel, TWTC is engaged in discussions with other parties to this proceeding to allow limited disclosure of the confidential information to parties with a legitimate

interest in reviewing the same for the purpose of participating in this proceeding — through an acceptable protective agreement or general Protective Order entered by the Commission.

5. The confidential information has not been requested by the Commission, but by another party and competitor to TWTC. On grounds of relevance and undue burden, TWTC 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, TWTC requests that it be allowed to withdraw that portion of its response and interpose an objection instead.

WHEREFORE, TWTC 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  
tw telecom of Kentucky, llc

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