

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
Case No. 2018-00157
In the Matter of

CMN-RUS, INC. COMPLAINANT
v.

WINDSTREAM KENTUCKY EAST, LLC, DEFENDANT

**PETITION FOR CONFIDENTIAL TREATMENT OF WINDSTREAM
KENTUCKY EAST, LLC'S ANSWERS TO FIRST SET OF REQUESTS FOR
INFORMATION FROM CMN-RUS, INC., REQUEST NO. 13**

Comes Windstream Kentucky East, LLC (“Windstream East”), by counsel, and pursuant to KRS 61.878(1), and 807 KAR 5:001, Sections 13 and 22, and hereby petitions the Kentucky Public Service Commission (“Commission”) for an order granting confidential treatment to a document inadvertently produced in Windstream East’s Answers to Request No. 13 of the First Set of Requests for Information from CMN-RUS, Inc.

In support of its Petition, Windstream East states as follows:

1. Request No. 13 of CMN-RUS, Inc.’s First Set of Requests for Information requested Windstream East to “Provide a copy of your currently effective joint-use agreement or other pole related agreement with Kentucky Utilities Company (KU), Louisville Gas and Electric Company (LG&E), or any affiliate of either such utility.” An un-redacted copy of the Joint Pole Use Agreement Between Kentucky Utilities Company (“KU”) and GTE South Incorporated (dated September 1, 1997) was inadvertently attached to Windstream East’s Answers filed on August 27, 2018 (See WIN0245-WIN0263).

2. Windstream East is now requesting confidential treatment for the Joint Pole Use Agreement Between KU and GTE South Incorporated (dated September 1,

1997)(WIN0245-WIN0263) that was inadvertently provided in an un-redacted format with its filing on August 27, 2018.

3. The requested copy of the Joint Pole Use Agreement Between KU and GTE South Incorporated (dated September 1, 1997)(WIN0245-WIN0263) contains proprietary, confidential information that would aid competitors of Windstream East, and KU, if not treated as confidential. Such confidential and proprietary trade secret information is also subject to protection from disclosure pursuant to Kentucky law.

4. KRS 61.878(1)(c)(1) exempts from release to the public, “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 permit an unfair commercial advantage to competitors of the entity that disclosed the records.”

5. The Joint Pole Use Agreement between KU and GTE South Incorporated contains confidential, proprietary information. This information is not available to the public, nor should it be. The requested Joint Pole Use Agreement is restricted to only those employees of Windstream East who have a legitimate business reason to access the information and is protected internally by the company as confidential and proprietary information. This information, if not deemed confidential, can be used by Windstream East’s competitors to gain detailed information about Windstream East’s inner-workings, and enable them to unfairly compete with Windstream East. Allowing this information to remain available to the public could also place Windstream East at a competitive disadvantage when negotiating future joint use agreements or when renewing already existing joint use agreements.

6. With respect to joint use agreements, Windstream East's joint use agreements contain information that is recognized as confidential and proprietary. The confidential information in joint use agreements includes detailed terms and rates negotiated by private parties in confidential discussions. Joint use agreements address numerous matters, including rates, fees, maintenance, access, risk allocation and insurance. If other users seeking pole attachments or seeking to renew an existing joint use agreement had access to this information, it would enable them to use the information to unfairly negotiate joint use agreements to the detriment of Windstream East and its other users. If Windstream East's competitors have access to this detailed information relating to Windstream East's risk tolerances, and financial arrangements they could use this information to the competitive disadvantage of Windstream East.

8. Providers of the services offered by Windstream East, including wireless, retail and wholesale telephone services and telephone-related services, operate in a highly competitive marketplace where confidential information such as that contained in joint use agreements is closely guarded to insure it is not disclosed to competitors.

9. The Commission has previously granted confidential treatment to similar pole attachment agreements between joint users and/or third-parties to avoid an unfair commercial advantage to a utility's competitors. See, *In the Matter of Application of Kentucky Utilities for an Adjustment of its Electric Rates*, Case No. 2014-00371, Order Regarding Request for Confidential Treatment to KIUC's Initial Request for Information (Ky. PSC Dec. 2, 2015) and *In the Matter of Application of Louisville Gas & Electric Company for an Adjustment of its Electric Rates*, Case No. 2016-00371, Order Regarding

Request for Confidential Treatment to KCTA's First Request for Information (Ky. PSC Dec. 10, 2018).

10. Continued disclosure of this joint use agreement would result in significant or irreparable harm to Windstream East and its vendors with whom it has contracts by providing their competitors with non-reciprocal competitive advantage. No public purpose is served by the public disclosure of such information and the regulations of the Commission contemplate the filing of such information under a confidentiality order.

11. Windstream East seeks confidential treatment for the entirety of the Joint Pole Use Agreement Between KU and GTE South Incorporated (dated September 1, 1997) that was attached to Windstream East's Answers filed on August 27, 2018 (See WIN0245-WIN0263). All of the information contained in the same is highly confidential and proprietary information. Because Windstream East is seeking confidential treatment for the entirety of this joint use agreement, an un-redacted copy of the joint use agreement should not have been filed with Windstream East's Answers and Responses to First Set of Requests for Information from CMN-RUS, Inc. Furthermore, Windstream East requests permission to deviate from the applicable filing requirements as described in 807 KAR 5:001 Section 13, pursuant to 807 KAR 5:001 Section 22.

12. Windstream East requests that the Joint Pole Use Agreement Between KU and GTE South Incorporated (dated September 1, 1997) remain confidential for a period of ten (10) years from its expiration or termination, as the public disclosure of the proprietary and confidential information contained therein could be used to Windstream East's competitive disadvantage through that time period.

WHEREFORE, Windstream Kentucky East, LLC respectfully requests the Commission to enter all necessary orders granting confidential treatment of the Joint Pole Use Agreement Between KU and GTE South Incorporated (dated September 1, 1997), and the deviation from filing requirements with respect to the joint use agreement.

Dated: December 28, 2022

Respectfully submitted,

/s/ Robert C. Moore

Robert C. Moore

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CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2022, I electronically filed the foregoing document using the Kentucky Public Service Commission's electronic system for filing, which sent notice of filing to counsel of record.

/s/ Robert C. Moore