

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)
)
Electronic Investigation of the Proposed)
Pole Attachment Tariffs of Incumbent Local) Case No. 2022-00108
Exchange Carriers)

**PETITION FOR CONFIDENTIAL TREATMENT OF WINDSTREAM
KENTUCKY EAST, LLC OF ANSWERS TO COMMISSION STAFF'S SECOND
REQUEST FOR INFORMATION**

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 Windstream East’s Response to Commission Staff’s Second Request for Information Nos. 3 and 13, and further requests for deviation from filing requirements. In support of its Petition, Windstream East states as follows:

1. Commission Staff’s Second Request for Information No. 3 requests detailed cost support for Windstream East’s One-Time Agreement Fee, Application for Pole License Fee, Pole Removal Verification Fee, and Additional Field or Engineering Fees. Request for Information No. 13 requests Windstream East to “Provide any current joint use agreement.”

2. Windstream East is requesting confidential treatment for its detailed cost support for its One-Time Agreement Fee, Application for Pole License Fee, Pole Removal Verification Fee, and Additional Field or Engineering Fees. Windstream East also requests confidential treatment for each joint use agreement listed on Attachment B to Windstream East’s Response to Commission Staff’s Second Request for Information.

3. The detailed cost support for Windstream East's One-Time Agreement Fee, Application for Pole License Fee, Pole Removal Verification Fee, and Additional Field or Engineering Fees contains proprietary, confidential information that would aid competitors of Windstream East, and such confidential and proprietary trade secret information is subject to protection from disclosure pursuant to Kentucky law.

4. The requested copies of joint use agreements contain proprietary, confidential information that would aid competitors of Windstream East, and vendors with whom they have entered into joint use agreements, if released, and such confidential and proprietary trade secret information is also subject to protection from disclosure pursuant to Kentucky law.

5. 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."

6. The detailed cost support for Windstream's fees is confidential, proprietary information. This information is not available to the public, nor should it be. The requested information 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 released, can be used by Windstream's competitors to gain detailed information about Windstream's inner-workings, including cost data, and enable them to unfairly compete with Windstream. The release of this information could also place Windstream at a competitive disadvantage

when negotiating future joint use agreements or when renewing already existing joint use agreements.

7. 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 the 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 information in joint use agreements is restricted to only those employees of Windstream East who have a legitimate business reason to access the joint use agreements, and is protected internally by the company as confidential and proprietary information.

10. 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).

11. Disclosure of the confidential and proprietary detailed cost support for Windstream's fees, and its joint use agreements 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 disclosure of such information and the regulations of the Commission contemplate the filing of such information under a confidentiality order.

12. Windstream East seeks confidential treatment for the entirety of the joint use agreements provided in its Responses to Requests for Information No. 13, because 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 the joint use agreements, redacted copies have not been filed with Windstream East's response to the Commission Staff's Second Requests for Information. 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. Instead, Windstream East has provided a list of the joint use agreements with its Response to Commission Staff's Second Request for Information.

13. Windstream East requests that the detailed cost support for its fees remain confidential for a period of ten (10) years from the date of the conclusion of this proceeding, and that each joint use agreement remain confidential until ten (10) years after 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.

WHEREFORE, Windstream East respectfully requests that the Commission enter all necessary orders granting confidential treatment of its detailed cost support for the above-described fees and its joint use agreements, and the deviation from filing requirements with respect to the joint use agreements.

Dated: June 3, 2022

Respectfully submitted,

/s/ Robert C. Moore

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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 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