

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Brandenburg Telephone Company; Duo County )  
Telephone Cooperative Corporation, Inc.; Highland )  
Telephone Cooperative, Inc., Mountain Rural )  
Telephone Cooperative Corporation, Inc.; North )  
Central Telephone Cooperative Corporation; South )  
Central Rural Telephone Cooperative Corporation, Inc.)  
And West Kentucky Rural Telephone Cooperative )  
Corporation, Inc. )

Complainants

) Case No.  
) 2007-00004

v. )

Windstream Kentucky East, Inc.; and )  
Windstream Kentucky West, Inc. )

Defendants )

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PUBLIC SERVICE  
COMMISSION

MOTION FOR REHEARING

Windstream Kentucky East, LLC moves the Commission pursuant to KRS 278.400 for rehearing in part with respect to the Commission's July 24, 2009 Orders granting in part and denying in part Windstream Kentucky East, LLC's motion for confidential treatment.

Windstream Kentucky East, LLC also moves for rehearing in part on the Commission's Order granting in part and denying in part the motion for confidential treatment filed by the Complainants. In support thereof, Windstream states:

Background

The Information For Which Rehearing is Sought.

Windstream seeks rehearing with respect to so much of the Commission's July 24, 2009 Orders as denied confidential treatment to the following information:

<b>Document</b>	<b>Reference</b>	<b>Basis for Denial of Motion for Confidential Treatment</b>
Prefiled Rebuttal Testimony of Kerry Smith	Page 10, Lines 1-2	“Public knowledge of this information would not qualify as permitting an unfair commercial advantage to competitors if disclosed. KRS 61.878(c)(2).”
Windstream Kentucky East, LLC Responses to RLEC Supplemental Data Requests (May 19, 2009)	Request No. 13	“Public knowledge of this information would not qualify as permitting an unfair commercial advantage to competitors if disclosed. KRS 61.878(c)(2).”
Windstream Kentucky East, LLC Responses to RLEC Supplemental Data Requests (May 19, 2009)	Request No. 14	“Public knowledge of this information would not qualify as permitting an unfair commercial advantage to competitors if disclosed. KRS 61.878(c)(2).”
Windstream Kentucky East, LLC Responses to RLEC Supplemental Data Requests (May 19, 2009)	Request No. 15	“Public knowledge of this information would not qualify as permitting an unfair commercial advantage to competitors if disclosed. KRS 61.878(c)(2).”
Windstream Kentucky East, LLC Responses to RLEC Supplemental Data Requests (May 19, 2009)	Request No. 17	“Public knowledge of this information would not qualify as permitting an unfair commercial advantage to competitors if disclosed. KRS 61.878(c)(2).”
Windstream Kentucky East, LLC Responses to RLEC Supplemental Data Requests (May 19, 2009)	Request No. 18	“Public knowledge of this information would not qualify as permitting an unfair commercial advantage to competitors if disclosed. KRS 61.878(c)(2).”
Windstream Kentucky East, LLC Responses to RLEC Supplemental Data Requests (May 19, 2009)	Request No. 22 (statement regarding cost study exhibit)	“Public knowledge of this information would not qualify as permitting an unfair commercial advantage to competitors if disclosed. KRS 61.878(c)(2).”

<b>Document</b>	<b>Reference</b>	<b>Basis for Denial of Motion for Confidential Treatment</b>
Windstream Kentucky East, LLC Responses to RLEC Supplemental Data Requests (May 19, 2009)	Request No. 26	“Public knowledge of this information would not qualify as permitting an unfair commercial advantage to competitors if disclosed. KRS 61.878(c)(2).”
Windstream Kentucky East, LLC Responses to RLEC Supplemental Data Requests (May 19, 2009)	Request No. 29	“Public knowledge of this information would not qualify as permitting an unfair commercial advantage to competitors if disclosed. KRS 61.878(c)(2).”
Windstream Kentucky East, LLC Responses to RLEC Supplemental Data Requests (May 19, 2009)	Request No. 30	“Public knowledge of this information would not qualify as permitting an unfair commercial advantage to competitors if disclosed. KRS 61.878(c)(2).”
Windstream Kentucky East, LLC Responses to RLEC Supplemental Data Requests (May 19, 2009)	Request No. 31	“Public knowledge of this information would not qualify as permitting an unfair commercial advantage to competitors if disclosed. KRS 61.878(c)(2).”
Windstream Kentucky East, LLC Responses to RLEC Supplemental Data Requests (May 19, 2009)	Request No. 32	“Public knowledge of this information would not qualify as permitting an unfair commercial advantage to competitors if disclosed. KRS 61.878(c)(2).”
Windstream Kentucky East, LLC Responses to RLEC Supplemental Data Requests (May 19, 2009)	Request No. 33	“Public knowledge of this information would not qualify as permitting an unfair commercial advantage to competitors if disclosed. KRS 61.878(c)(2).”
Windstream Kentucky East, LLC Responses to RLEC Supplemental Data Requests (May 19, 2009)	Request No. 34	“Public knowledge of this information would not qualify as permitting an unfair commercial advantage to competitors if disclosed.” KRS 61.878(c)(2).”
Prefiled Direct Testimony of Douglas Duncan Meredith	Page 10, lines 26-27 Page 11, lines 1, 7 and 23	“Public knowledge of this information would not qualify

Document	Reference	Basis for Denial of Motion for Confidential Treatment
(April 21, 2009)		as permitting an unfair commercial advantage to competitors if disclosed.” KRS 61.878(c)(2).”
Prefiled Supplemental Testimony of Douglas Duncan Meredith (July 3, 2009)	Page 5, Line 15 Page 7, Lines 12-23 Page 8, Line 22 Page 9, Line 1 Page 9, Line 23	“Public knowledge of this information would not qualify as permitting an unfair commercial advantage to competitors if disclosed. KRS 61.878(c)(2).”

These items include information that was the subject of motions for confidential treatment by both the Complainants and Windstream. The information for which the Complainants’ sought confidential treatment was not their property. Instead, it was provided to Complainants by Windstream pursuant to a Non-disclosure agreement. In fact, Windstream would not have been disclosed the information to the Complainants in the absence of such an agreement. Because the confidential information that was the subject of the Complainants’ motion is Windstream’s property, it is Windstream’s rights that the Complainants, in conformity with the non-disclosure agreement, sought to protect, and it is Windstream, and not the Complainants, that will be harmed by the public disclosure of the information. As a result, Windstream is the real party in interest with respect to the Complainants’ motions, and has standing to seek rehearing with respect to the Commission’s orders with respect to those motions. *See, e.g.* 6 K. Philips, D. Kramer & D. Burleigh, KENTUCKY PRACTICE at 435 (6<sup>th</sup> ed. 2005) (defining real party in interest as the person “who, by substantive law, possesses the right to be enforced.”)

#### The Commission’s Orders

On July 24, 2009, the Commission issued five orders addressing the parties’ pending motions for confidential treatment. Significantly, the Commission granted confidential treatment

to the transit services cost studies filed by Windstream. The information in the transit services cost study formed the basis of the data request responses or testimony at issue in this motion. For example, in their motion for confidential treatment the RLECs described the subject matter of their motion as “certain highlighted information contained in the supplemental prefiled direct testimony of Douglas Duncan Meredith (“Meredith”) *regarding the cost study which Windstream Kentucky, LLC (“Windstream”) submitted to the Commission ...*”<sup>1</sup>

With respect to each item at issue, the Commission denied confidential treatment based upon its determination without elaboration that “[p]ublic knowledge of this information would not qualify as permitting an unfair commercial advantage to competitors if disclosed.”<sup>2</sup>

### Argument

1. Prefiled Rebuttal Testimony of Kerry Smith.

At issue are the rates Windstream could have proposed for transit traffic service through its tandem switches and its end offices based upon the results of its updated July, 2009 transit service cost study. Indeed, the tandem switch rates were identical to Windstream’s costs as identified by that study. Thus, the publication of the rates, particularly the tandem switch rates, is tantamount to publication of the results of the transit service cost study. Yet, the Commission properly determined that the disclosure of the same information would result in unfair commercial advantage to Windstream’s competitors and ordered that the study, including its results, be accorded confidential treatment. Moreover, even though the end office rate was set higher than Windstream’s cost as a deterrent to such traffic, disclosure of the end office rate

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<sup>1</sup> Petition for Confidential Treatment of Certain Information Contained in the Supplemental Prefiled Direct Testimony of Douglas Duncan Meredith (July 2, 2009) (emphasis supplied).

<sup>2</sup> See e.g., July 24, 2009 Letter addressed to John Selent regarding “Confidentiality Request dated April 21, 2009.”

establishes a “ceiling” with respect to Windstream’s costs and could be used to Windstream’s detriment in negotiations.

2. Other Requests Derived From Transit Cost Studies.

The remaining items, like Mr. Smith’s testimony, involve information derived from the transit cost studies. Both such studies were granted confidential treatment by the Commission, have been filed under seal with the Commission, and are the subject of non-disclosure agreements between Windstream and those parties provided access to the studies. Respectfully, there is no readily evident basis for treating the whole differently than the parts that compose that whole. Indeed, it is the specifics of the study, as well as its results, that makes the information so valuable to Windstream’s competitors.

Nor is it sufficient to suggest that standing alone the individual components do not provide information sufficient to yield a significant, non-trivial commercial advantage to Windstream’s competitors. Even if that were the case, which Windstream disputes, such a precedent would mean that a party filing information properly made confidential nevertheless risks having the information made public piecemeal. Indeed, the risk is exacerbated where the same body of information, a study for example, is at issue in successive proceedings before the Commission. In such a case, the Commission presumably would have no ready means of judging the cumulative effect of disclosing the information at issue in the case then before it, particularly in light of the prior disclosures. Nothing in KRS 61.878 suggests that the General Assembly intended such a disclosure by a thousand revelations.

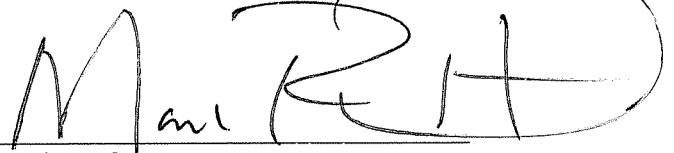
Disclosure of the confidential information for which confidential treatment is sought will result in a significant, non-trivial unfair commercial advantage to competitors of Windstream and

as such confidential treatment should be granted to it. *Southeastern United Medigroup, Inc. v. Hughes*, Ky. App., 952 S.W.2d 195, 199 (1997).

Wherefore, Windstream respectfully requests that the Public Service Commission of Kentucky grant rehearing, including further briefing and the submission of affidavits if deemed advisable, and following rehearing, grant confidential treatment to the items described above.

This 13<sup>th</sup> day of August, 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark R. Overstreet". The signature is written in a cursive style with a large, stylized "M" and "R".

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CERTIFICATE OF SERVICE

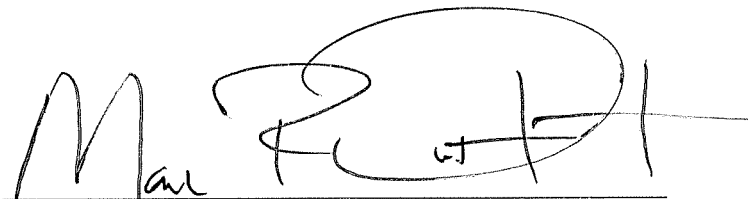
I hereby certify that a copy of the foregoing was served by United States First Class Mail, postage prepaid, on this 13<sup>th</sup> day of August, 2009 upon:

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A handwritten signature in black ink, appearing to read "Mark R. Overstreet", written over a horizontal line. The signature is stylized with large, sweeping letters.

Mark R. Overstreet