

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MCI COMMUNICATIONS SERVICES, INC.,)
BELL ATLANTIC COMMUNICATIONS, INC.,)
NYNEX LONG DISTANCE COMPANY, TTI)
NATIONAL, INC., TELECONNECT LONG)
DISTANCE SERVICES & SYSTEMS COMPANY)
AND VERIZON SELECT SERVICES, INC.)

COMPLAINANTS)

CASE NO.
2007-00503

V.)

WINDSTREAM KENTUCKY WEST, INC.,)
WINDSTREAM KENTUCKY EAST, INC. –)
LEXINGTON, AND WINDSTREAM KENTUCKY,)
EAST, INC. – LONDON)

DEFENDANTS)

O R D E R

By Order dated January 25, 2010, the Commission issued a procedural schedule in this matter. The schedule provided that the third requests for information would be exchanged no later than March 19, 2010 and responses would be filed no later than April 9, 2010. On March 18, 2010, the complainants, MCI Communications Services, Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company, TTI National, Inc., Teleconnect Long Distance Services & Systems Company, and Verizon Select Services, Inc. (collectively, "Verizon"), moved for an extension of time to submit additional requests for information to the defendants, Windstream Kentucky West, Inc.,

Windstream Kentucky East, Inc. – Lexington, and Windstream Kentucky East, Inc. -- London (collectively, “Windstream” or, individually, “Windstream West” or “Windstream East”). Specifically, Verizon requested:

[A]n extension of time to submit additional requests for information to [Windstream] until ten business days after Windstream provides its confidential responses to the initial data requests served by Verizon on March 30, 2009. Verizon also proposes that Windstream be required to respond to Verizon’s additional data requests two weeks after they are served, but in no event later than April 16, 2010.¹

In support of the motion, Verizon states that Windstream has delayed providing complete responses to Verizon’s prior data requests, which, in turn, has prevented Verizon from identifying the areas where additional discovery is required. Many of Windstream’s responses have been redacted from public view, and Windstream has petitioned the Commission for confidential treatment of those responses.² Verizon states that Windstream wants Verizon to enter into a non-disclosure agreement prior to exchanging the confidential versions of certain responses, although Verizon states that an agreement was entered into by the parties in December 2007. Verizon states that parties are continuing to discuss whether an additional non-disclosure agreement is required. However, Verizon contends that it will require additional time to serve and respond to the third round of information requests and hopes to resolve the non-disclosure agreement issues during the course of that time.³

¹ Motion for Extension of Time at 2.

² The Commission’s decision on those petitions will be addressed in another section of this Order.

³ Motion for Extension at 2, 3.

Having reviewed the motion and in consideration of the timeline for the current procedural schedule, the Commission finds that Verizon's motion should be granted in part. However, the Commission finds that it is in the best interest of this proceeding and all parties that the extension of time for the issuance and responses for the third round of discovery should be applied to everyone. Therefore, the Commission shall revise the procedural schedule issued on January 25, 2010. The revision is contained in the Appendix to this Order. The parties will note that, also by this Order, the Commission hereby revises the date for the submission of pre-filed rebuttal testimony. In the January 25, 2010 Order, that testimony was ordered to be filed on July 10, 2010, which is a Saturday. As the Commission is not open for business on Saturdays, the Commission hereby modifies the submission date to the prior business day, July 9, 2010. By this Order, the Commission also modifies the date for the submission of pre-filed direct testimony. Potential dates for the formal hearing shall be addressed at the informal conference scheduled for April 28, 2010.

MOTIONS FOR CONFIDENTIALITY

On March 5, 2010, the Commission received three separate motions for confidentiality as to portions of individual party responses to certain data requests. Each of the petitioners seeks confidential protection pursuant to 807 KAR 5:001, Section 7, which is the Commission's confidentiality procedure, as well as KRS 61.870, *et seq.*, which is Kentucky's open records law.

First, Windstream East and Windstream West request confidential treatment for all information and exhibits labeled as confidential to the various data requests served on them by Verizon, Commission Staff, and the Intervenors, Sprint Communications

Company, L.P., Sprint Spectrum, L.P., Nextel West Corp., and NPCR, Inc. d/b/a Nextel Partners (collectively, "Sprint-Nextel") and BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky and AT&T Communications of the South Central States, LLC (collectively, "AT&T").

In support of its petition, Windstream states that the responses have been proprietary and confidential information that could cause competitive injury if made public. Windstream states that the responses contain details of dollar figures and minutes of use for its Kentucky operations. Windstream states that this financial information is based on network and traffic arrangement details disclosed only to Windstream managers and would harm its performance in the competitive market if released.

The second petition is by Sprint-Nextel. Sprint-Nextel seeks confidential treatment for portions of its responses to Request Nos. 10 and 11 submitted by Windstream East and Windstream West. The answer to Request No. 10 contains originating access minutes by year from 2006 to the present for Sprint-Nextel, and the answer to Request No. 11 contains terminating access minutes by year from 2006 to the present for Sprint-Nextel. Sprint-Nextel states that this information is proprietary and a trade secret, as it contains sensitive information regarding the company's performance in the Kentucky markets that would aid competitors if made public and result in significant harm to the company.

The third petition is by AT&T, wherein the company seeks, similarly to Sprint-Nextel, confidential treatment for portions of its responses to Request Nos. 10 and 11 submitted by Windstream East and Windstream West. The answer to Request No. 10

contains originating access minutes by year from 2006 to the present for the AT&T companies, and the response to Request No. 11 contains terminating access minutes by year from 2006 to the present for the AT&T companies. AT&T states that this information is proprietary and a trade secret, as it contains sensitive information regarding the company's performance in the Kentucky markets that would aid competitors if made public and result in significant harm to the companies.

Having reviewed each petition and the arguments contained therein, the Commission finds that the requests of Windstream East and Windstream West, Sprint-Nextel, and AT&T for confidential protection of their respective responses to data requests should be granted. The Commission finds that public knowledge of the information provided within each of those data request responses by each company, if disclosed, would qualify as causing competitive harm to each carrier.⁴

As each petition is granted confidential treatment, the Commission will withhold the protected information from public inspection. If the information that has been granted protection becomes publicly available or no longer warrants confidential treatment, Windstream East and Windstream West, Sprint-Nextel, and AT&T are required by 807 KAR 5:001, Section 7(9)(a), to inform the Commission so that the information may be placed in the public record.

The Commission, being sufficiently advised, HEREBY ORDERS that:

1. Verizon's motion for an extension of time is granted.

⁴ KRS 61.878(1)(c) (exemption to public records disclosure for information that would cause an unfair commercial advantage, if made generally available).

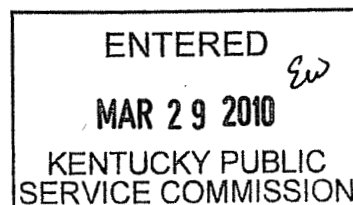
2. The January 25, 2010 procedural schedule is amended, as provided in the Appendix, and shall be followed by all parties to the proceeding.

3. Windstream East and Windstream West's Petition for Confidential Treatment, filed on March 5, 2010, is granted.

4. Sprint-Nextel's Petition for Confidential Treatment, filed on March 5, 2010, is granted.

5. AT&T's Petition for Confidential Treatment, filed on March 5, 2010, is granted.

By the Commission



ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2007-00503 DATED **MAR 29 2010**

AMENDED PROCEDURAL SCHEDULE

Third requests for information shall be exchanged between the parties and filed with the Commission no later than 04/02/10

Responses to the third requests for information shall be exchanged between the parties and filed with the Commission no later than 04/16/10

Informal conference to begin at 10:30 a.m., Eastern Daylight Time, at the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky 04/28/10

Pre-filed direct testimony, if any, shall be filed in verified prepared form no later than 06/04/10

Pre-filed rebuttal testimony, if any, shall be filed in verified prepared form no later than 07/09/10

Public Hearing is to be held in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, for the purpose of cross-examination of witnesses To be determined

Briefs, if any, shall be filed no later than To be determined

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