

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

Ballard Rural Telephone Cooperative Corp., Inc.,)
et al., Complainants)

vs.)

BellSouth Telecommunications, Inc. d/b/a AT&T)
Kentucky Defendant and BellSouth)
Telecommunications, Inc. d/b/a AT&T)
Kentucky, Third Party Complainant)

Case No. 2011-00199

vs.)

Halo Wireless, Inc., Third Party Defendant)

In the Matter of:

AT&T Corp., Complainant)

vs.)

Mountain Rural Cooperative Corp. and)
Thacker-Grigsby Telephone Co., Inc.,)
Defendants;)

Case No. 2013-00392

In the Matter of:

South Central Telcom, LLC, Complainant)

vs.)

BellSouth Telecommunications, Inc. d/b/a)
AT&T Kentucky, Defendant)

Case No. 2006-00448

In the Matter of:

Petition of Cumberland Cellular, Inc. d/b/a Duo)	
County Telecom for Arbitration of Certain Terms)	
and Conditions of Proposed Interconnection)	
Agreement with BellSouth Telecommunications,)	Case No. 2012-00529
Inc., d/b/a AT&T Kentucky, Pursuant to the)	
Communications Act of 1934, as Amended by the)	
Telecommunications Act of 1996)	

In the Matter of:

Cumberland Cellular, Inc., d/b/a Duo County)	
Telecom, Complainant)	
)	
v.)	Case No. 2013-00168
)	
BellSouth Telecommunications, Inc., d/b/a AT&T)	
Kentucky, Defendant)	

Joint Petition For Confidential Treatment

Ballard Rural Telephone Cooperative Corporation, Inc., Brandenburg Telephone Company, Inc., Duo County Telephone Cooperative Corporation, Inc., Foothills Rural Telephone Cooperative Corporation, Inc., Gearheart Communications Company, Inc. d/b/a Coalfields Telephone Company, Highland Telephone Cooperative, Inc., Logan Telephone Cooperative, Inc., Mountain Rural Telephone Cooperative Corporation, Inc., North Central Telephone Cooperative Corporation, Peoples Rural Telephone Cooperative Corporation, Inc. South Central Rural Telephone Cooperative Corporation, Inc., Thacker-Grigsby Telephone Company, Inc., West Kentucky Rural Telephone Cooperative Corporation., Inc. d/b/a WK&T, South Central Telcom LLC, Cumberland Cellular, Inc., d/b/a Duo County Telecom, North Central Communications, BellSouth Telecommunications, LLC d/b/a AT&T Kentucky (“AT&T

Kentucky”), and AT&T Corp. (collectively the “Movants”) jointly move the Public Service Commission of Kentucky pursuant to 807 KAR 5:001, Section 13 and KRS 61.878(1)(c)(1) to enter an Order granting confidential treatment to the identified portions of the Settlement Agreement tendered to the Commission as **EXHIBIT 1** to the Movants’ October 10, 2014 “Joint Motion to Approve Settlement Agreement and to Dismiss Actions With Prejudice as Settled.” The identified portions of the Settlement Agreement reflect the Movants’ agreement concerning the monetary consideration to be paid in connection with the Settlement Agreement. In support of their Joint Petition the Movants state:

1. On October 9, 2014, the Movants entered into a Settlement Agreement that, *inter alia*, settled five actions¹ currently pending before the Commission. Among the settlement terms are those requiring the payment of monetary consideration in connection with the settlement and dismissal of the five proceedings.

2. Section 8 of the Settlement Agreement expressly recognizes the confidential nature of the information for which confidential treatment is requested:

The Parties agree that the terms and conditions reflecting payment of any monetary consideration under this Agreement (the “Confidential Information”) are confidential and proprietary and that the public disclosure of such terms would permit an unfair commercial advantage to competitors of the Parties.

3. The Movants operate in a highly competitive environment. Their competitors include, *inter alia*, other competitive local exchange carriers, wireless carriers, cable television providers, competitive access providers, and other carriers, many of which already operate in various portions of Kentucky, others which may have plans to enter Kentucky, and still others

¹ The proceedings that are being settled are: Case No. 2006-00448; Case No. 2011-00199; Case No. 2012-00529; Case No. 2013-00168; and Case No. 2013-00392.

which may be evaluating whether to offer services in Kentucky. Providing such competitors and potential competitors unwarranted insights into private financial matters between other carriers could create unfair and inappropriate market advantages not otherwise available. By preserving the confidentiality of the financial aspects of the Settlement Agreement, the Commission will avoid inadvertently providing one group of competitors with an undue advantage over the Movant parties to the Settlement Agreement.

4. The monetary consideration to be paid in connection with the Settlement Agreements represents the parties' assessment of their claims and defenses, as well as the value accorded the other terms of the Settlement Agreement. The Movants from time to time are involved in other regulatory and commercial litigation with other entities not party to the Settlement Agreement, and the public disclosure of the amounts of monetary consideration paid could provide insight into the manner in which the Movants evaluate such claims and defenses. Moreover, public disclosure of the financial terms of the Settlement Agreement could inadvertently result in other service providers engaging in practices similar to those that gave rise to many of the matters at issue here, in the hopes that they might profit from those practices. By protecting the financial information from disclosure, the Commission could help preclude the recurrence of such activity.

5. Public disclosure of the amount of the monetary consideration to be paid and accepted by the Movants could provide their competitors, including some who may from time to time be involved in related or similar litigation with the Movants, with an unfair commercial advantage concerning the Movants' motives and strategies for settling such litigation. As such, the information is exempt from public disclosure under KRS 61.878(1)(c)(1).

6. The monetary consideration to be paid under the Settlement Agreement is strictly a commercial matter among private business entities. The amounts to be paid will not affect the rates or service of the Movants.

7. The Commonwealth of Kentucky long has maintained a strong public policy fostering the settlement of disputes.² Although that public policy does not trump³ the requirements of the Open Records Act,⁴ the protection of the identified information is fully consistent with the Open Records Act because its disclosure could result in competitive commercial injury to the Movants. Moreover, unlike the situations presented in *Lexington-Fayette Urban County Government v. Lexington Herald-Leader Co.*⁵ or *Central Kentucky News-Journal v. George*,⁶ where the Court required the disclosure of the settlement terms, a governmental entity is not a party to the Settlement Agreement and the settlement does not involve the expenditure of public funds.⁷

8. The Movants are seeking confidential treatment only with respect to the amount of monetary compensation being paid under the Settlement Agreement information. The remaining terms of the Settlement Agreement are being filed in the public file, thereby affording

² *Wehr Constructors, Inc. v. Assurance Company of America*, 384 S.W.3d 680, 689 (Ky. 2012).

³ *Lexington-Fayette Urban County Government v. Lexington Herald-Leader Co.*, 941 S.W.2d 469, 472-473 (Ky. 1997).

⁴ KRS 61.870 *et seq.*

⁵ 941 S.W.2d at 472-473.

⁶ 306 S.W.3d 41, 46-47 (Ky. 2010).

⁷ *See Lawson v. Office Of The Attorney General*, 415 S.W.3d 59, 70 (Ky. 2013) (“The public’s keen interest in knowing the terms of the settlements—the amount of public funds paid out by the agencies in compensation for what injuries to whom—easily outweighed, we explained, the recipients’ interest in keeping the settlements private.”)

the public the full opportunity to review the manner in which the Commission is carrying out its functions and exercising its discretion.⁸

9. The Movants request that the information for which confidential treatment is sought be protected from public disclosure in perpetuity because the terms of the Settlement Agreement require it and because public disclosure of the amounts of monetary consideration paid (even at a later date) could provide insight into the manner in which the Movants evaluate claims and defenses. As a result, the disclosure of this information even at a much later date would still result in competitive harm by providing competitors and potential competitors with an unfair commercial advantage concerning the Movants' motives and strategies for settling litigation.⁹

10. Dissemination of the information for which confidential treatment is being requested is restricted by the Movants. The Movants take all reasonable measures to prevent its disclosure to the public as well as persons within the Movants who lack a need for the information. The information is not disclosed to persons outside the Movants. Within the Movants, the information is available only upon a confidential need-to-know basis that does not extend beyond those employees with a legitimate business need to know and act upon the identified information.

⁸ *Cf. id.*

⁹ See *In the Matter of an Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company from May 1, 2013 through October 1, 2013*, Kentucky Public Service Commission Case No. 2013-00446 at pp. 3-4 (recognizing litigation settlement information as subject to indefinite confidential treatment); see also *In the Matter of an Examination of the Application of the Fuel Adjustment Clause of Louisville Gas and Electric Company from May 1, 2013 through October 31, 2013*, Kentucky Public Service Commission Case No. 2013-00447 at pp. 3-4 (holding the same); see also *In the Matter of Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates, a Certificate of Public Convenience and Necessity, Approval of Ownership of Gas Service Lines and risers, and a Gas Line Surcharge*, Kentucky Public Service Commission Case No. 2012-00222 at pp. 3-4 (holding that data requests seeking detailed information regarding litigation claims and settlements was subject to confidential treatment indefinitely).

WHEREFORE, the Movants respectfully and jointly request that the Public Service Commission of Kentucky enter an Order:

(a) According perpetual confidential status to the identified information and withholding the identified information from public inspection and the public record in this proceeding.

(b) Granting the Movants all further relief to which they may appear entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by U.S. mail this 10th day of October, 2014, on the following individuals:

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