

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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|---|---|--------------------|
| Illinois Commerce Commission |) | |
| On Its Own Motion |) | |
| |) | |
| v. |) | |
| |) | |
| McLeodUSA Telecommunications Services, Inc. |) | Docket No. 09-0315 |
| d/b/a PAETEC Business Services |) | |
| |) | |
| Investigation into Whether Intrastate Access |) | |
| Charges Of McLeodUSA Telecommunications |) | |
| Services, Inc. d/b/a PAETEC Business Services |) | |
| are Just and Reasonable. |) | |
| |) | |

**JOINT MOTION FOR LIMITED RELIEF FROM OBLIGATION TO FILE
CERTAIN PUBLIC REDACTED DOCUMENTS PURSUANT TO PART 200.605**

The undersigned parties,¹ by their counsel, hereby submit this joint motion requesting an order granting them limited relief, under the circumstances described herein, from the obligation to file certain detailed public redacted exhibits or testimony attachments in this docket in the manner required by the Commission’s current application of Part 200.605 (83 Ill. Admin Code § 200.605), as reflected in a December 2009 Notice (“Notice”) from the Commission Clerk.² More specifically, this joint motion is limited to those instances in which an exhibit or attachment to prepared testimony being filed with the Commission in this docket includes material that was produced in discovery as confidential, without an accompanying public redacted version

¹ Staff does not join in this motion, but has authorized movants to represent that Staff does not oppose the motion.

² The Notice is attached. For purposes of this motion, movants do not concede that the application of Part 200.605 that the Commission began to enforce on or about January 1, 2010 is a correct or necessary application of that provision; however, for purposes of this motion, they recognize it as the current application.

of that material (a situation not addressed by the Notice³), thereby making it impossible for the party filing the exhibit or testimony attachment to file an accompanying public redacted version thereof.

In support of this joint motion, the parties state as follows:

1. Effective January 1, 2010, the Commission began interpreting Part 200.605 to require the filing of a detailed public redacted version of every confidential document filed with the Commission, with only the confidential information deleted. The Commission has stated that submitting a public version of a confidential document consisting of the document redacted in its entirety (which was the accepted practice for many years before the Commission) is not acceptable (even if the document at issue has been designated as confidential in its entirety).

2. In this proceeding, approximately 200 data request responses, documents and data files produced during the discovery process have designated by the producing party as confidential in their entirety, and have been produced without accompanying public redacted versions of same (which is neither required, nor would be proper to require, in this or other proceedings).⁴ Such confidential information includes, by way of example only, confidential network engineering design manuals, confidential contracts with third parties not involved in this docket, confidential network cost data, and other such highly-sensitive materials.

³ Nor does the Notice acknowledge situations in which the redaction process would be so impractical as to be virtually impossible. For example, the confidential cost model filed in this proceeding (prior to January 1, 2010) is a 1,000 page Excel spreadsheet. Redacting each individual cell on each page would be exceedingly onerous.

⁴ Requiring parties to prepare and provide, in discovery, detailed “public” redacted versions of confidential documents being produced in discovery would be extremely onerous, and would greatly increase the expense and time requirements of discovery in cases before the Commission, as well as lead to more discovery disputes and motions.

3. The Agreed Protective Order issued by the Administrative Law Judge in this docket (dated September 24, 2009) deems materials designated by the producing party as confidential to be confidential and subject to proprietary treatment, subject to each party's right to challenge such designation. No party has filed such a challenge to date. Thus, all confidential material produced to date has been held to be confidential and subject to proprietary treatment pursuant to the Agreed Protective Order, and no party may file any portion of it publicly.

4. Because discovery requests and responses are not filed with the Commission, parties wishing to incorporate discovery materials into the record must file the discovery materials with the Commission as attachments to their testimony or as hearing exhibits. However, in those instances in which confidential materials were produced during discovery without accompanying public redacted versions, the parties filing such confidential discovery materials are often not the "author" or "owner" of the documents at issue and do not possess public redacted versions thereof. Nor are such parties authorized by the Agreed Protective Order to make their own decisions about whether portions of the document or other material designated as confidential in its entirety may be filed publicly. Thus, recipients of such discovery materials cannot comply with the Commission's current application of Part 200.605.

5. For this reason, the undersigned parties jointly and respectfully request an order relieving them of an obligation under Part 200.605, as currently being applied by the Commission, to file certain detailed public redacted exhibits and testimony attachments under the limited circumstances described herein; namely, where material being filed with the Commission as an exhibit or testimony attachment was produced in discovery as confidential, without an accompanying public redacted version of that

material, making it impossible for the party filing it to file an accompanying public redacted version thereof. Instead, the parties request that they be allowed to file public redacted versions of such exhibits or hearing attachments consisting of a "cover sheet" stating that the exhibit or attachment is designated as confidential in its entirety.

WHEREFORE, for all the reasons stated herein, the undersigned parties respectfully request an order granting their request for limited relief from the obligation to file a detailed public redacted version of confidential documents filed with the Commission in this docket in those instances in which the confidential material being filed was produced in discovery without an accompanying public redacted version of that material, making it impossible for the party filing the exhibit or attachment to file an accompanying detailed public redacted version thereof.

Dated: February 25, 2010

**MCI Communications Services, Inc. d/b/a
Verizon Business Services, Verizon
Enterprise Solutions LLC and Verizon
Long Distance LLC**

By: _____


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NOTICE OF FILING

Please take notice that on February 25, 2010, I caused the "Joint Motion for Limited Relief from Obligation to File Certain Public Redacted Documents Pursuant to Part 200.605" in the above-captioned matter to be filed electronically with the Illinois Commerce Commission via its E-Docket system.



Deborah Kuhn

CERTIFICATE OF SERVICE

I, Deborah Kuhn, certify that I caused the "Joint Motion for Limited Relief from Obligation to File Certain Public Redacted Documents Pursuant to Part 200.605," together with a Notice of Filing, to be served upon all parties on the attached service list on this 25th day of February, 2010 by electronic mail or by U.S. Mail, as noted.



Deborah Kuhn

ICC DOCKET NO. 09-0315
SERVICE LIST
Updated: February 25, 2010

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MEMORANDUM

TO: All persons and entities that may request proprietary treatment of information submitted to the Commission

FROM: Elizabeth A. Rolando
Chief Clerk, Illinois Commerce Commission

DATE: December 2009

SUBJECT: Requests for proprietary treatment of information submitted to the Commission

Various statutory provisions and Commission rules establish that persons and entities submitting sensitive information to the Commission may request that such information be kept from the public and accessible only to the Commission and Commission Staff until such time that public disclosure of the information is no longer harmful to the person or entity that submitted it. These provisions and rules apply whether a person or entity is submitting the sensitive information in a docketed proceeding or simply submitting an annual filing to the Commission. Regardless of the circumstances giving rise to the submission of information for which proprietary treatment is sought, all persons and entities submitting such information must bear in mind the following four points:

- 1) When submitting information that one requests to keep from the public, both a public redacted version and proprietary unredacted version of the document must be submitted. The public redacted version of the document shall clearly indicate those portions of the document which have been redacted through shading (ie: "██████") or some other means (ie: "XXXXX"). Redacting the public version of a document in its entirety is not acceptable.
- 2) A motion must accompany any public redacted document requesting proprietary treatment of the redacted information. The motion must contain an explanation of why proprietary treatment is warranted. A simple assertion that the information is sensitive is not acceptable. In other words, the specific harm that would result from public disclosure of the redacted information must be clearly set forth.
- 3) The motion seeking proprietary treatment should specify the period for which proprietary treatment is sought and an explanation of why that period is appropriate.
- 4) The motion seeking proprietary treatment must also identify any other state or federal agency that has received or will receive the information for which proprietary treatment is sought at the Commission and indicate whether proprietary treatment has been or is typically granted by such other agency and for what duration.