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David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

Charles R. Borders
Commissioner

January 25, 2011

PARTIES OF RECORD

Re: Case No. 2010-00447

Attached is a copy of the memorandum which is being filed in the record of the above-referenced case. If you have any comments you would like to make regarding the contents of the informal conference memorandum, please do so within five days of receipt of this letter. If you have any questions, please contact Jeb Pinney at 502-564-3940, Extension 427.


Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Derouen".

Jeff Derouen
Executive Director

JP:kar
Attachments

INTRA-AGENCY MEMORANDUM
KENTUCKY PUBLIC SERVICE COMMISSION

TO: Case File
FROM: J.E.B. Pinney, Staff Attorney 
DATE: January 25, 2011
SUBJECT: Case No. 2010-00447
Dana Bowers v. Windstream Kentucky East, LLC

On January 11, 2011, representatives for Dana Bowers ("Complainant") and Windstream Kentucky East, LLC ("Windstream") participated with Commission Staff in an informal conference regarding the above styled case. A copy of the sign-in sheet of those who participated is attached.

Commission Staff began the conference by stating that because only legal issues were presented, settlement seemed unlikely. Windstream stated that it believed there were some factual disputes and that it would like to develop some facts in the record. To that end, Windstream proposed an abbreviated procedural schedule containing one round of discovery reserving the opportunity for a second round, taking of depositions, and the filing of simultaneous direct and rebuttal testimony.

Counsel for the Complainant stated that discovery was not required due to the fact that the United States District Court asked whether the Commission would rule on an issue in the same manner as the Federal Communications Commission ("FCC"). Counsel asserted that rounds of discovery would not contribute to the Commission's decision on the case. Counsel for Complainant suggested that, if anything, only simultaneous briefs and reply briefs were necessary.

Windstream contended that in order to address the legal issue, there were facts in dispute such as whether Kentucky law was different from Federal law and if the fee at issue was or was not a rate increase. Windstream also stated that Complainant's complaint contained a number of factual allegations to which Windstream should be entitled to respond. Windstream also listed several other factual allegations to which it argued it must respond.

Counsel for Complainant stated that some of the factual allegations were before the United States District Court and did not weigh on the case before the Commission. Counsel asserted that only legal issues were presented to the Commission, which could be addressed through the briefs and that the factual allegations would be resolved in Court.

Windstream stated that it had a lot of factual denials and it believed the Commission should take into account the factual background of the case. Windstream also proposed a procedural schedule with tentative dates.

Counsel for Complainant stated that the factual issues do not impact the legal issue presented to the Commission. Windstream disagreed, arguing that there were significant differences between the FCC case the Court referenced and the case presented to the Commission. Windstream asserted that Complainant had made significant claims for which Windstream wanted a chance to rebut.

Counsel for Complainant offered to stipulate the issues if Windstream would identify the issues that it contended.

Commission Staff suggested that the parties should file competing procedural schedules with the Commission, both laying out the respective arguments for and against discovery, the filing of testimony, etc. Commission Staff also suggested that prior to filing the procedural schedules, the parties try to reach an agreement on as many stipulated issues as possible and file that with the proposed procedural schedules. Commission Staff stated that it would then take the competing proposed procedural schedules to the Commission and allow the Commission to decide which procedural course it thought would best complete the record.

The parties agreed to tentative dates to contact each other as well as to file the procedural schedules with the Commission.

The conference then adjourned.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DANA BOWERS

COMPLAINANT

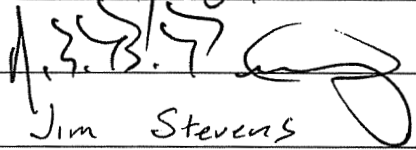
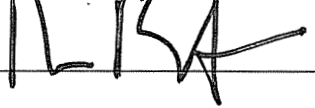
VS.

WINDSTREAM KENTUCKY EAST, LLC
~~D/B/A AT&T KENTUCKY~~

DEFENDANT

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) CASE NO. 2010-00447
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SIGN IN SHEET FOR JANUARY 11, 2011 INFORMAL CONFERENCE

<u>NAME</u>	<u>PARTY</u>
Kimberly Bennett } by phone	Windstream
Jeanne Shearer } by phone	Windstream
Debbie Eversole } by phone	Bowers
Randy Gibson } by phone	
	PSC
Jim Stevens	PSC
MARK Overstreet	STITES & HARRISON Re Windstream
Ben Cufflender	STITES & HARRISON
	SKO for D. Bowers