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July 11, 2011

VIA HAND DELIVERY

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

RECEIVED

JUL 11 2011

PUBLIC SERVICE
COMMISSION

RE: PSC Case No. 2010-00447

Dear Mr. DeRouen:

Enclosed for filing in this case please find an original and ten copies of Petitioner's Response to Request for Hearing. Please place your file stamp on the extra copy and return to me via our office runner.

If you have any questions concerning this filing, please do not hesitate to contact me. Thank you very much for your attention to this matter.

Sincerely yours,

C. Kent Hatfield

CKH: jms
Enclosures
cc: Parties of Record

112694.134900/673234.1

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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JUL 11 2011

PUBLIC SERVICE
COMMISSION

In the Matter of:

DANA BOWERS)
COMPLAINANT)
v.)
WINDSTREAM KENTUCKY EAST, LLC)
DEFENDANT)

CASE NO. 2010-00447

PETITIONER'S RESPONSE TO REQUEST FOR HEARING

Dana Bowers ("Petitioner"), by counsel, in response to Windstream Kentucky East, LLC's Request for Hearing ("Request"), states that the testimony and discovery filed in this case definitively establish that no evidentiary hearing is necessary for the Commission to rule on matters of state law pertinent to the federal lawsuit involving the parties. Plaintiffs' services, her status as a customer of Windstream, and Windstream's tariffs are of record. No facts pertinent to the Commission's role are in dispute.

Windstream's Request establishes nothing to the contrary. The following issues raised in the Request show only that the disputes in this part of the case are legal ones subject to briefs, not to sworn testimony by lay witnesses: [1] whether Petitioner's services are "jurisdictional" such that Windstream's filed tariff may specify a different rate for those services than the rate it charges; [2] whether Windstream's view of the legislative history of KRS 136.616 overrides the Commission's authority or the filed rate doctrine codified in KRS Chapter 278; and [3] whether the timing of an injured customer's complaint has any relevance to whether Windstream may charge, and continue to charge, a rate for its services not included in its filed tariff.

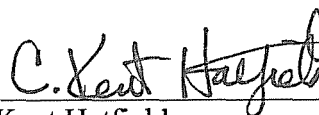
In addition, the Rebuttal Testimony and Materials Petitioner has filed in this case are not an effort to "cross examine Mr. Weeks" [Windstream Request at 3]. Mr. Weeks is not an

attorney, and the issues to which he “testifies” are legal ones to which Petitioner can (and will) respond in a brief. In addition, Mr. Weeks was not even listed as one who has “direct knowledge regarding any of the claims or defenses asserted in this action”¹ in Windstream’s response to Plaintiff’s Interrogatory No. 18 in the parties’ federal court proceeding. The Commission should take Windstream at its word: Mr. Weeks does not know anything about this case or its issues; nor do the “legal opinions” of this lay witness add any competent evidence at all to the record in this matter.

Rather than a “cross examination” of Mr. Weeks, Petitioner’s Rebuttal Testimony and Materials were filed simply to demonstrate that Windstream’s positions taken before the Court and the Commission are self-contradictory.

For the foregoing reasons, Petitioner respectfully requests that Windstream’s Request for Hearing be denied.

Respectfully submitted,



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Counsel for Petitioner

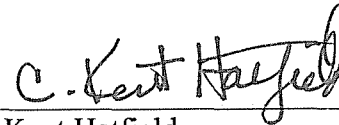
¹ See Windstream Response to Interrogatory No. 18, attached hereto. Windstream referred in its response to its answers to Interrogatory Nos. 5 and 6, in which it listed, respectively, eight and seven people. Mr. Weeks is not among them.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served by first class mail on those persons whose names appear below this 11th day of July 2011:

Mark R. Overstreet
Benjamin R. Crittenden
Stites & Harbison
421 West Main Street
P.O. Box 634
Frankfort, KY 40602-0634

Jeanne Shearer
Windstream Kentucky East, LLC
4139 Oregon Pike
Ephrata, PA 17522



C. Kent Hatfield

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

Dana Bowers and Sunrise Children's Services,
Inc., On Behalf of Themselves and Others
Similarly Situated,

PLAINTIFFS

CIVIL ACTION NO. 3:09-CV-440

v.

Windstream Kentucky East, LLC and
Windstream Kentucky West, LLC,

DEFENDANTS.

**ANSWERS TO FIRST SET OF INTERROGATORIES, REQUESTS FOR
PRODUCTION OF DOCUMENTS, AND REQUESTS FOR ADMISSIONS
PROPOUNDED TO DEFENDANT WINDSTREAM KENTUCKY EAST, LLC
BY PLAINTIFF DANA BOWERS**

Windstream Kentucky East, LLC ("Windstream East"), hereby serves its responses to Plaintiff Dana Bowers's first set of interrogatories, requests for production, and requests for admissions.

GENERAL OBJECTIONS

1. Windstream East objects to Plaintiff's discovery requests, including all definitions and instructions, to the extent that they seek to impose any obligations on Windstream East other than those provided for in the Federal Rules of Civil Procedure and the applicable law.

2. Windstream East objects to Plaintiff's discovery requests to the extent that they would require the disclosure of information or documents protected by the attorney-client privilege, work product doctrine, or other applicable privilege or doctrine. Windstream East states that it will produce a privilege log providing the information required by the Federal Rules of Civil Procedure for documents withheld that were generated prior to the commencement of

INTERROGATORY NO. 5: Identify any individuals, whether current or former employees, outside agents, representatives or contractors, who provided or were requested to provide any input into any decisions or actions by WKE or its parent company or affiliated companies with respect to the methods in which WKE or its parent would or would not attempt to recover any sums expended in connection with the 1.3% Kentucky tax on the gross revenues received for the provision of communications service.

ANSWER: Windstream East objects to this interrogatory as being unduly burdensome to the extent it would require Windstream East to attempt to identify every individual who provided or was requested to provide any input whatsoever to Windstream East or any affiliated company during a time period beginning more than four years ago. Windstream East objects to this interrogatory to the extent it would include individuals who served as legal counsel for Windstream East. Windstream East further objects to this interrogatory to the extent that it seeks information that is beyond Windstream East's possession, custody, or control, and information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's definition of the word "identify" would require Windstream East to provide information for each person that Windstream East may not have available to it and which may have no bearing on this action. Windstream East objects to this interrogatory to the extent that it would require the disclosure of information subject to the work product doctrine, insofar as it would require Windstream East's counsel to disclose their mental impressions. Subject to and without waiving its objections, Windstream East identifies the following persons:

- (1) Willis Kemp.
- (2) Dan Logsdon.

(3) Jennifer Marchal.

(4) Mickey Marshall.

(5) Angela Newell.

(6) Mike Rhoda.

(7) Tony Thomas.

(8) Mark Todd.

All persons identified above are employees or former employees of Windstream East or one of its affiliates and may be contacted through counsel for Windstream East.

INTERROGATORY NO. 6: Identify any individuals, whether current or former employees, outside agents, representatives or contractors, who provided or were requested to provide any input into any decisions or actions by WKE or its parent company or affiliated companies with respect to the methods in which WKE or its parents would or would not communicate with its customers about the “KY Gross Receipts Surcharge.”

ANSWER: Windstream East objects to this interrogatory as being unduly burdensome as it would require Windstream East to attempt to identify every individual who provided any input whatsoever to Windstream East or any affiliated company during a time period beginning more than four years ago. Windstream East objects to this interrogatory to the extent it would include individuals who served as legal counsel for Windstream East. Windstream East further objects to this interrogatory to the extent that it seeks information that is beyond Windstream East’s possession, custody, or control, and information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff’s definition of the word “identify” would require Windstream East to provide information for each person that

Windstream East may not have available to it and which may have no bearing on this action.

Windstream East objects to this interrogatory to the extent that it would require the disclosure of information subject to the work product doctrine, insofar as it would require Windstream East's counsel to disclose their mental impressions. Subject to and without waiving its objections, Windstream East identifies the following persons:

(1) Stephanie Anderson.

(2) Erin Ascione.

(3) Cesar Caballero.

(4) Megan Haller.

(5) Dan Logsdon.

(6) Julie Wax.

(7) Don Wilborne.

All persons identified above are employees or former employees of Windstream East or one of its affiliates and may be contacted through counsel for Windstream East.

INTERROGATORY NO. 7: For the month of December 2008, state the number of WKE customers who were sent bills using the same format as shown in Exhibit A to Defendant's Request for Production to Bowers.

ANSWER: CONFIDENTIAL RESPONSE. Windstream East objects to this interrogatory for vagueness, as it is unclear what Plaintiff Bowers means by the term "format." For example, very few, if any, Windstream East customers have the same suite of services subscribed to by Plaintiff Bowers, and, therefore, few, if any, Windstream East customers would have invoices in a "format" identical to those of Plaintiff Bowers' bills. Further, different

provided in whole or in part pursuant to any tariff. Windstream East further states that approximately 85% of its revenues from business retail customers are collected pursuant to negotiated business sales contracts.

INTERROGATORY NO. 16: For the most recent month available, state the number of WKE customers in Kentucky assigned an email address by Windstream.

ANSWER: 65,860 as of March 28, 2011, which may include residential and business customers.

INTERROGATORY NO. 17: For the most recent month available, state the number of WKE customers in Kentucky whose monthly bills are paid using “Windstream Auto Pay.”

ANSWER: 31,657 bills were paid using Windstream Auto Pay in February 2011, which may include residential and business customers.

INTERROGATORY NO. 18: Identify any individuals whom you believe to have direct knowledge regarding any of the claims or defenses asserted in this action, and summarize the subject matters) of direct knowledge you believe each individual to have.

ANSWER: Windstream East objects to this interrogatory to the extent that it would be unduly burdensome to require it to identify every person who has any knowledge pertaining to any claims or defenses in this action and summarize any facts that Windstream East believes would be known to each such person. Windstream East further objects to this interrogatory as it is unclear what Plaintiff Bowers considers to be “direct” knowledge. Windstream East objects to

this interrogatory to the extent that it would require the disclosure of information subject to the work product doctrine, insofar as it would require Windstream East's counsel to disclose their mental impressions. Subject to and without waiving its objections, Windstream East refers to its responses to Interrogatory Nos. 5 and 6, which identify persons who may have knowledge of the subject matter described in those interrogatories. Windstream East identifies Plaintiffs and any persons identified by either Plaintiff in their respective discovery responses as persons potentially having knowledge regarding the claims or defenses in this action.

INTERROGATORY NO. 19: For any request for admission not unequivocally admitted below, state the complete and specific basis for your denial or qualified admission.

ANSWER: See responses to individual requests for admissions.