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May 25, 2012

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

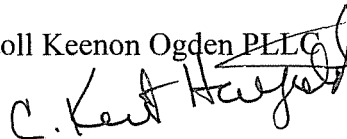
RE: PSC Case No. 2010-00447

Dear Mr. DeRouen:

Enclosed for filing in this case please find an original and ten copies of Petitioner's Motion to Amend Order. Please place your file stamp on the extra copy and return to me via our 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,

Stoll Keenon Ogden PLLC


C. Kent Hatfield

CKH:jms
Enclosures
cc: Parties of Record

RECEIVED

MAY 25 2012

**PUBLIC SERVICE
COMMISSION**

112694.134900/673234.1

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAY 25 2012

In the Matter of:

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

PUBLIC SERVICE
COMMISSION

CASE NO. 2010-00447

MOTION TO AMEND ORDER *NUNC PRO TUNC*

Pursuant to KRS 278.400, Petitioner Dana Bowers, through counsel, moves the Commission to correct an error of fact that appears in the *Declaratory Order* issued in this case on May 4, 2012.

* * * * *

KRS 278.400 allows any party to apply for rehearing with respect to “any of the matters” determined by the Commission. Among other things, rehearing is the means by which a party may request amendment of an order in light of alleged errors and omissions.¹ When the Commission learns it has issued an order containing a mistake of fact, it corrects the order.² The Commission should clarify an order, particularly one issued at the request of a court, when a party identifies a factual error that can be proven by the Commission’s official records that were part of the proceeding but overlooked in the Commission’s order.

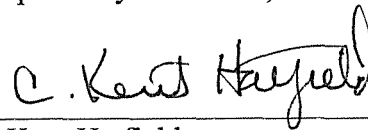
In Footnote 8, the *Declaratory Order* states that Petitioner’s nonbasic services (Feature Pack A) were “removed” from Windstream’s tariff on December 1, 2008. They were not.

¹ See, e.g., *Kentucky-American Water Co.*, Case No. 2000-00120, Order at 2-4 (February 29, 2001).

² See, e.g., *Certification of the Carriers Receiving Federal Universal Service High Cost Support*, Adm. Case No. 381, Order at 1 (September 28, 2011) (amending order *nunc pro tunc* to add the name of an eligible carrier omitted in error).

Windstream Tariff No. 7, Original Page 20, remains on file with the Commission, continues to include Feature Pack A, and is attached hereto as Exhibit 1.³ The Commission can correct this error by removing from footnote 8 the words “but was removed by Windstream on December 1, 2008. (Weeks Direct testimony pp. 8-9.)” and by removing the final sentence in the second paragraph of page 17, which refers to Ms. Bowers’ service.⁴

Respectfully submitted,



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Counsel for Petitioner

³ The error was apparently based on prefiled testimony of a Windstream employee who did not include any tariff pages with his testimony.

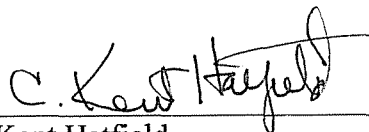
⁴ Although the claims at issue are not adversely affected, as they concern services that were tariffed before July 2006 and remain tariffed today, the Commission errs in concluding that a carrier may file “non-binding” tariffs for new services after July 12, 2006 [Order at 14]. The statute unambiguously states that rates for nonbasic services are “valid” and “effective” *whenever* they are filed. KRS 278.544(1). It is not possible for rates to be simultaneously “valid” and “non-binding.” *See* Black’s Law Dictionary (9th ed. 2009) (in which the first definition of “valid” includes the synonymous word “binding”). KRS 278.544 states it is to “be enforced equally to all telephone utilities.” *See also* KRS 13A.130(1)(b). Nevertheless, if the Commission merely meant that it is jurisdictionally powerless to regulate Windstream’s departure from some of its own filed tariffs for nonbasic services, it should clarify its order so to state. The Commission should not imply that it blesses or condones the practice of filing one rate with the Commission and charging a different rate to the ratepayer.

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 25th day of May, 2012:

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

GENERAL CUSTOMER SERVICES TARIFF

WINDSTREAM KENTUCKY EAST, INC.

**P.S.C. KY. No. 7
Original Page 20**

ISSUED: July 17, 2006
BY: Vice President
Lexington, Kentucky

EFFECTIVE: August 1, 2006

S13. MISCELLANEOUS SERVICE ARRANGEMENTS

S13.4 Custom Calling Services (Continued)

S13.4.4 Rates and Charges (Continued)

b. Packaged Services

		<u>Monthly Rate</u>	
		Residence	Business
(1)	Feature Pack Calling Service Option A* ** (Includes Anonymous Call Rejection, Automatic Busy Redial, Call Return, Call Block, Call Forwarding, Call Waiting, Caller ID on Call Waiting, Caller ID-Name and Number, Cancel Call Waiting, Ring Plus, Selective Call Acceptance, Preferred Call Forwarding, Speed Calling 8-Number, Three-Way Calling and VIP Alert	\$16.00	-
	Feature Pack Calling Service Option A-1 ** (Includes all features in Feature Pack Calling Service Option A excluding Ring Plus)	\$16.00	-
(2)	Feature Pack Calling Service Option B* ** (Includes Call Return, Selective Call Rejection, Call Forwarding, Call Waiting, Cancel Call Waiting and Three Way Calling)	9.00	-
(3)	Feature Pack Calling Service Option C (Includes Caller ID Deluxe, Call Waiting, Cancel Call Waiting and Voice Mail Link)	\$8.95	
(4)	Windstream Basic Pack		
	1 year	\$15.30	
	2 year	14.03	
	3 year	12.75	
	Windstream Complete Pack		
	1 year	15.60	
	2 year	14.30	
	3 year	13.00	
	Windstream Deluxe Pack		
	1 year	22.80	
	2 year	20.90	
	3 year	19.00	

* Nonrecurring charges, specified in Section S4.3, are not applicable when Feature Pack Calling Services are established or discontinued.

** These services are grandfathered and are only available to existing customers at existing locations.

