

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WINDSTREAM  
KENTUCKY EAST, LLC AND  
WINDSTREAM KENTUCKY WEST, LLC  
(1) FOR A DECLARATORY RULING THAT  
APPROVAL IS NOT REQUIRED FOR THE  
TRANSFER OF A PORTION OF THEIR  
ASSETS; (2) ALTERNATIVELY FOR  
APPROVAL OF THE TRANSFER OF  
ASSETS; (3) FOR A DECLARATORY  
RULING THAT COMMUNICATIONS SALES  
AND LEASING, INC. IS NOT SUBJECT TO  
KRS 278.020(1); AND (4) FOR ALL OTHER  
REQUIRED APPROVALS AND RELIEF

RECEIVED

OCT 08 2014

PUBLIC SERVICE  
COMMISSION

CASE NO. 2014-00283

**WINDSTREAM'S RESPONSE IN OPPOSITION TO  
SPRINT'S MOTION FOR FULL INTERVENTION**

Windstream Kentucky East, LLC and Windstream Kentucky West, LLC (collectively, "Windstream") oppose the motion for full intervention filed by Sprint Communications Company, L.P., SprintCom, Inc. and Sprint Spectrum, L.P. (collectively, "Sprint") because it fails to satisfy the requirements of 807 KAR 5:001, Section 4(11) for four reasons: (1) Sprint's motion is untimely; (2) Sprint has not identified a special interest in the proceeding; (3) Sprint's proposed intervention will not aid the Commission; and (4) Sprint's intervention will disrupt the proceeding. Accordingly, the Commission should deny Sprint's motion for full intervention.

A. Sprint's Motion is Untimely.

The Commission's regulations allow that "a person who wishes to become a party to a proceeding before the commission may, **by timely motion**, request that leave to intervene be granted."<sup>1</sup> Sprint's motion is not timely. Windstream filed its Application on August 7, 2014.

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<sup>1</sup> 807 KAR 5:001, Section 4(11)(a) (emphasis added).



Despite Windstream's Application being posted on the Commission's website since on or about August 7, 2014, and the transaction being widely publicized within the telecommunications industry and investment community since at least a week before that,<sup>2</sup> Sprint failed to move to intervene in this proceeding until October 3, 2014. A nearly two-month delay without explanation is not "timely" by any definition of the word. To the extent Sprint possesses some special interest in this proceeding—and it does not as addressed below—that interest has existed from the date Windstream filed its Application and it has not changed or developed over time.

Sprint offers no reason why it waited almost two months after the date Windstream filed its Application to seek full intervention in this proceeding. Indeed, Sprint's motion was filed after Windstream had responded to the Commission Staff's information requests only days before the expiration of the original 60-day deadline for the Commission to rule on Windstream's Application under KRS 278.020(6).<sup>3</sup> While the Commission's regulation, 807 KAR 5:001, Section 11(4)(a), does not define "timely" it should be clear that waiting until the last possible moment to move to intervene does not meet that standard. Accordingly, the Commission should deny Sprint's motion as untimely.

B. Sprint has not Identified a Special Interest in this Proceeding.

Even those persons making timely motions to intervene must demonstrate that they have "a special interest in the proceeding not otherwise adequately represented."<sup>4</sup> Sprint offers little

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<sup>2</sup> See e.g., <http://www.bloomberg.com/news/2014-07-29/windstream-to-spin-off-telecom-assets-into-publicly-traded-reit.html> ; <http://online.wsj.com/articles/windstream-to-spin-off-assets-into-reit-1406637025> ; [http://markets.on.nytimes.com/research/stocks/news/press\\_release.asp?docTag=201407290700PRIMZONEFULLFEEED10091524&feedID=600&press\\_symbol=22015529](http://markets.on.nytimes.com/research/stocks/news/press_release.asp?docTag=201407290700PRIMZONEFULLFEEED10091524&feedID=600&press_symbol=22015529)

<sup>3</sup> KRS 278.020(6) provides, in pertinent part, that "[t]he commission shall grant, modify, refuse, or prescribe appropriate terms and conditions with respect to every such application within sixth (60) days after the filing of the application therefor, unless it is necessary, for good cause shown, to continue the application for up to sixty (60) additional days." The original 60-day period was set to expire on October 6, 2014, only a few days after Sprint's filing. By Order dated September 30, 2014, the Commission extended the deadline for a ruling by an additional 60 days.

<sup>4</sup> 807 KAR 5:001, Section 4(11)(a).



in the way of explanation concerning its interest in this case. Sprint briefly argues that it is an interconnecting carrier and customer of Windstream, that Windstream's Application does not explain how or if Windstream will offer future interconnection and access services after the proposed transfer occur, and that the Application makes it clear that the REIT created by the transactions at issue will not provide wholesale services. Sprint's basis for intervention is without merit.

Nothing could be clearer from Windstream's Application and responses to the Commission Staff's first set of data requests that the transactions at issue will have no impact on interconnecting carriers and customers.<sup>5</sup> To the extent Sprint presently has interconnection agreements with Windstream, those agreements will remain in effect after the transaction closes. Furthermore, Windstream hereby acknowledges again that it will continue to honor and be subject to all interconnection obligations under Sections 251 and 252 of the Telecommunications Act of 1996 after the transaction closes. Likewise, as set forth by Windstream in its Application, the transactions at issue will not impact rates charged by Windstream.<sup>6</sup> Given the fact that the outcome of this proceeding will have no impact on interconnection rates and that is the only basis offered for intervention, Sprint has failed to establish that it has any special interest in this proceeding and its motion should be denied.

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<sup>5</sup> See Application at pp. 25-26 ("Customers will receive at least the same high-quality local exchange and long distance service as they do today, subject to the same rules, regulations, and applicable tariffs. The Transaction will not affect existing price regulation plans, service quality obligations, or tariffs. Further, any subsequent end user rate changes will continue to be governed by the same rules and procedures. **Similarly, the terms and prices for existing wholesale services under applicable access tariffs or agreements will remain unchanged as a result of this Transaction. Finally, the Transaction will not impact the terms of any existing interconnection agreements or obligations under state and federal laws regarding interconnection.**") (emphasis added).

<sup>6</sup> *Id.*

C. Sprint's Proposed Intervention is not Likely to Present Issues or Develop Facts that will aid the Commission.

A timely motion intervene, which Sprint's is not, may also be granted where the entity seeking intervention is "likely to present issues or develop facts that assist the commission in fully considering the matter . . ." <sup>7</sup> Sprint offers no explanation about the issues or facts it expects to develop or how any such development might be beneficial to the Commission. Rather, Sprint simply repeats the language of the regulation and claims that it "is likely to present issues and develop facts that will assist the Commission." Sprint's naked assertion does not satisfy the requirement set forth in the Commission's regulation. The only issue addressed anywhere in Sprint's motion involves interconnection, and, as set forth above, the transactions at issue in this proceeding will have no impact on interconnecting carriers. Accordingly, Sprint's participation in this proceeding for the purpose of addressing interconnection will be of no benefit to the Commission, and Sprint's motion should be denied.

D. Sprint's Intervention will Unduly Complicate and Disrupt the Proceeding.

Sprint's proposed intervention comes at a time when substantial progress has been made toward a resolution of this case and limited time remains for the Commission to rule on Windstream's Application. As set forth above, Windstream has responded to the Commission Staff's data requests and presumably addressed all of the issues necessary for a resolution of this matter. Pursuant to KRS 278.020(6), less than two months remain for the Commission to rule on Windstream's Application. <sup>8</sup> By seeking to intervene so late in the proceeding, Sprint will make it unduly burdensome to reach a resolution in the time required by statute. Accordingly, the Commission should deny Sprint's motion to intervene.

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<sup>7</sup> 807 KAR 5:001, Section 4(11)(b).

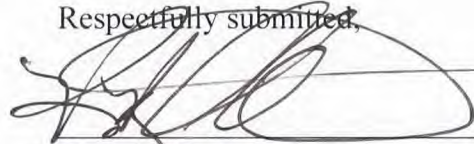
<sup>8</sup> Based on Windstream's August 7, 2014 filing date and the Commission's exercise of discretion in extending the period to rule by 60 days, the Application must be ruled upon on or before December 5, 2014.



E. Conclusion.

Sprint has not satisfied the requirements for intervention. Sprint's motion is untimely, it has no special interest in this case, it is unlikely to present issues or develop facts that will assist the Commission, and its involvement at this late hour will only complicate and disrupt the proceedings. Accordingly, Sprint's motion should be denied.

Respectfully submitted,



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### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by United States First Class Mail, postage prepaid, on this 8th day of October, 2014 upon:

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