

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MCI COMMUNICATIONS SERVICES, INC.,)	
BELL ATLANTIC COMMUNICATIONS, INC.,)	
NYNEX LONG DISTANCE COMPANY, TTI)	
NATIONAL, INC., TELECONNECT LONG)	
DISTANCE SERVICES & SYSTEMS COMPANY,)	
AND VERIZON SELECT SERVICES, INC.)	
)	
COMPLAINANTS)	CASE NO.
V.)	2007-00503
)	
WINDSTREAM KENTUCKY WEST, INC.,)	
WINDSTREAM KENTUCKY EAST, INC. –)	
LEXINGTON, AND WINDSTREAM KENTUCKY,)	
EAST, INC. – LONDON)	
)	
DEFENDANTS)	

O R D E R

By Order dated June 12, 2009, the Commission stayed this proceeding pending the final resolution of *Windstream Kentucky West, LLC et al. v. Kentucky Public Service Commission*, Franklin Circuit Court Case No. 09-CI-00552. On May 29, 2009, the Franklin Circuit Court held that the Commission was enjoined from enforcing its March 11, 2009 Order in this proceeding. The March 11, 2009 Order included a procedural schedule to be followed by the parties. That procedural schedule included two separate rounds of data requests and responses and a timeline for the submission of pre-filed testimony. On March 30, 2009, the defendants, Windstream Kentucky West, LLC and Windstream Kentucky East, LLC (collectively, “Windstream” or individually

“Windstream West” or “Windstream East”), submitted notice that they would not participate in the data request portion of the procedural schedule, as they would seek appellate review of the Commission’s March 11 decision. The other parties to this proceeding submitted data requests. On April 23, 2009, Windstream moved for an extension of time to respond to the data requests and, on May 8, 2009, the defendants moved for a temporary stay of the procedural schedule.¹

On October 19, 2009, the Court issued an Opinion and Order finding that the Commission has subject matter jurisdiction over this proceeding. The Court dissolved the May 29, 2009 injunction. On October 22, 2009, Windstream moved the Court to reconsider a reinstatement of the injunction. On December 1, 2009, the Court denied the defendants’ motion to reinstate injunctive relief. On or about October 21, 2009, Windstream filed a Notice of Appeal of the Circuit Court ruling with the Kentucky Court of Appeals. On or about November 9, 2009, Windstream also filed with the Court of Appeals a Motion to Issue or Maintain Injunctive Relief and, on December 2, 2009, moved for expedited oral argument on the injunction request. As of the date of this Order, the Court of Appeals has not issued a ruling on Windstream’s injunction request or the request for oral arguments.

¹ On May 11, 2009, intervenor BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky and AT&T Communications of the South Central States, LLC also moved for an extension of time to file their second set of data requests to be served on the defendants.

On December 8, 2009, Verizon² moved to lift the Commission's stay and to have the Commission issue a revised procedural schedule. Verizon states that, since the Franklin Circuit Court matter has been resolved and the injunction has been dissolved, the Commission has the legal authority to resume this proceeding and allow the parties to move forward with discovery. On December 16, 2009, Windstream, in response to Verizon's motion, objected to the lift of the stay and the issuance of a new procedural schedule, arguing primarily that the Commission should defer taking any action until the Court of Appeals has issued a ruling on the injunction request to avoid any "ungainly procedural possibility."³

Having reviewed the arguments and having fairly considered other issues, such as the decision of the Franklin Circuit Court, the Commission finds that, as the Circuit Court's injunctive order was dissolved in October 2009, no legal impediments currently exist that prohibit the Commission from allowing this proceeding to move forward. As the complaining party, Verizon has the right to have its complaint heard; and the Commission is obligated to construct a fair process by which Verizon, Windstream, and the intervenors can have adequate opportunity to participate in discovery and prepare for a formal hearing. By this Order, the Commission shall lift the stay it placed on this matter through its June 12, 2009 Order and shall grant Verizon's request for the issuance of a revised procedural schedule. The Commission has reviewed the record

² MCI Communications Services, Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company, TTI National, Inc., Teleconnect Long Distance Services & Systems Company, and Verizon Select Services, Inc. (collectively, "Verizon").

³ Response in Opposition to Motion to Lift Stay and for Revised Procedural Schedule at 4. Filed December 16, 2009.

in this proceeding, including the data request and responses submitted by the parties. Although Commission Staff, Verizon, and the intervenors submitted discovery requests, Windstream declined to respond to certain discovery requests due to the filing of the action before the Franklin Circuit Court.⁴ Windstream specifically stated that it would not waive any rights with respect to the data requests. Verizon and the intervenors exchanged data request responses; however, Windstream submitted neither questions nor answers to requests. Windstream is the sole defendant in this proceeding and its responses to pertinent issues, such as (but not limited to) its switched access rates and access rate methodologies, are critical to the development of a complete and useful record. As Windstream did not participate in the initial rounds of discovery requests, the Commission finds that the procedural schedule should be revised to provide Windstream with the proper opportunity to respond to the data requests submitted to it by the parties in March, April, and May 2009. Additionally, this matter shall continue to move forward, and the parties shall be given time for the exchange of and response to a final round of data requests prior to the submission of pre-filed testimony.

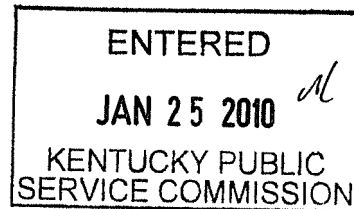
On April 23, 2009, Windstream moved for an extension of time to respond to the initial data requests. Due to the temporary injunction issued by the Franklin Circuit Court for this proceeding in May 2009, the Commission was unable to issue a ruling on that motion. By this Order, the Commission finds that Windstream's motion is moot, as the Commission shall issue a revised procedural schedule which will allow all of the parties to participate in discovery. All of the parties to this proceeding shall follow the revised procedural schedule provided in the Appendix to this Order.

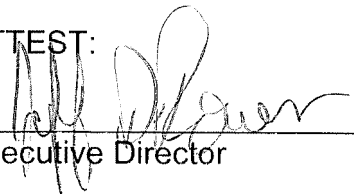
⁴ Windstream Discovery Letter, filed March 30, 2009.

The Commission, being sufficiently advised, HEREBY ORDERS that:

1. Verizon's motion to lift the stay and for the issuance of a new procedural schedule is granted.
2. Windstream's motion for an extension is moot.
3. All parties shall follow the revised procedural schedule provided in the Appendix to this Order.

By the Commission



ATTEST:

Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2007-00503 DATED JAN 25 2010

- Windstream shall submit data requests to the parties and file copies with the Commission no later than..... 02/12/10
- Windstream shall respond to all unanswered initial and second-round data requests and file copies with the Commission no later than 03/05/10
- Parties shall respond to Windstream's data requests and file copies with the Commission no later than 03/05/10
- Third requests for information shall be exchanged between the parties and filed with the Commission no later than 03/19/10
- Responses to the third requests for information shall be exchanged between the parties and filed with the Commission no later than 04/09/10
- Informal conference to begin at 10:30 a.m., Eastern Daylight Time, at the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky 04/28/10
- Pre-filed direct testimony, if any, shall be filed in verified prepared form no later than 05/14/10
- Pre-filed rebuttal testimony, if any, shall be filed in verified prepared form no later than 07/10/10
- Public Hearing is to be held in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, for the purpose of cross-examination of witnesses To be determined
- Briefs, if any, shall be filed no later than To be determined

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