

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

On April 9, 2010, defendants Windstream Kentucky West, LLC and Windstream Kentucky East, LLC (collectively, “Windstream,” or individually “Windstream West” or “Windstream East”) moved to have the Commission compel the complainant 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” or “Verizon IXCs”) answer several data request questions. The questions were submitted to Verizon as data requests on February 12, 2010, pursuant to the procedural schedule included within the Commission’s January 25, 2010 Order. Verizon submitted its responses on March 5, 2010, wherein it objected to Request Nos. 1, 2, 6, 10 and 11 on the ground that “they sought information and materials that are irrelevant to the claims and issues

in this proceeding.”¹ The parties have each submitted responses and replies to the motion and the matter is now ripe for Commission decision.

FACTS

The requests, as posed by Windstream, are as follows:

No. 1

Identify in details (including call volumes, dates, and details of each claimed incident) all claims made by any carrier other than Windstream West or Windstream East that you or your affiliate cause intrastate switched access traffic from your end user customers to appear to be interstate in nature.

No. 2

Produce all documents relating to your response to No. 1 above.

No. 6

Identify all of your affiliates', including your wireless affiliate(s), local services, offerings, calling plans, products, bundles, or promotions made available only to your long distance customers from 2006 to the present.

No. 10

For each year from 2006 to the present, provide, by local exchange carrier (“LEC”) in Kentucky, the originating access minutes of use (“MOUs”) for which you compensated each LEC or, in a case where you did not remit the compensation, for which you were billed by each LEC.

No. 11

For each year from 2006 to the present, provide, by local exchange carrier (“LEC”) in Kentucky, the terminating access minutes of use (“MOUs”) for which you compensated each LEC or, in a case where you did not remit the compensation, for which you were billed by each LEC.

As to Request Nos. 1 and 2, Windstream states that the requested information it

¹ Verizon’s Opposition to Windstream’s Motion to Compel Responses to First Data Requests at 2. Filed April 19, 2010.

seeks would allow Windstream to determine if Verizon is engaging in its own version of “self-help” access reductions and/or not paying the types of intrastate switched access charges of which Verizon complains in this proceeding. Windstream argues that this information is relevant as Verizon alleges that it is suffering damage due to Windstream’s rates.² As to Request No. 6, Windstream argues that the information is relevant as it mirrors similar questions posed to Windstream regarding its long distance affiliate’s calling plans. Windstream states that the request is related to Verizon’s claim that Windstream’s rates have rendered Verizon unable to compete in Kentucky’s long-distance market. Additionally, Windstream says the question is reasonable as wireless national calling plans and wireless providers are primary competitors to long distance carriers and it seeks information for Verizon’s wireless affiliate Kentucky operations only to show whether the applicable markets in Kentucky are competitive.³ Lastly, as to Request Nos. 10 and 11, Windstream contends the requested information will be useful in determining the levels at which Verizon is providing long distance service to customers in various areas of Kentucky served by other local exchange carriers with rates that may be the same or higher than Windstream.⁴

In response, Verizon states that Windstream has failed to argue why it is specifically entitled to the requested information, in addition to misunderstanding that

² Windstream’s Motion to Compel at 2, 3. Filed April 9, 2010. The parties have admitted that they attempted to address Verizon’s objections to those data requests informally prior to Windstream’s filing of this motion to compel with the Commission. However, the parties were unable to reach a resolution. Id. at Attachments A and B.

³ Id. at 3.

⁴ Id. at 4.

this proceeding centers on whether Windstream's rates are unjust or unreasonable and not the nature of Verizon's business activities, particularly since Verizon is not seeking monetary relief. In sum, Verizon argues that determining precisely how Verizon's ability to compete in the Kentucky long distance market has been affected will not help the Commission ascertain if Windstream's switched access rates are unjust and unreasonable and, therefore, answers to the named questions are not relevant for the purposes of discovery.⁵

DECISION

As enunciated by the Commission in the March 11, 2009 Order, Verizon has raised a compelling argument that Windstream's current non-traffic sensitive revenue requirement rates have not been modified by Windstream to actively reflect its most recent revenue results and, therefore, are not specifically cost-based and are adversely affecting the provision of access services by carriers within the Windstream territories. From the Commission's perspective, the central issue in this proceeding is not whether Verizon is competing in Kentucky's long distance market, as clearly Verizon still exists and still has end-users, but whether Verizon's allegation that Windstream's switched access rates in Kentucky are artificially high. The Commission expects that Windstream's defenses would center on the provision of evidence and testimony demonstrating that its rates are reasonable based upon its business and performance needs in Kentucky – not Verizon's business and performance needs in Kentucky. The Commission notes that Data Request Nos. 1, 2, 6, 10 and 11 were also posed by Windstream to the intervenors, AT&T and Sprint, and each intervenor submitted

⁵ Verizon's Opposition to Windstream's Motion, *supra*, at 5, 6.

responses to those questions.⁶ However, the decisions by different companies to submit responses to those identical questions are irrelevant. Each carrier is free to exert its rights and defenses as it legally sees fit and the Commission finds that there is no legal basis to render a comparison between companies on this issue.

Having reviewed the pleadings, the Commission finds Windstream's motion to compel Verizon to answer Data Request Nos. 1, 2, 6, 10 and 11 should be denied. The scope of this proceeding is the reasonableness of the rates and compensation that Windstream receives for intra-state wholesale switched access services provided to interexchange carriers. While Windstream's tacit allegation that Verizon's complaint of harm in the market may not be genuine because Verizon is likely performing at a fairly healthy competitive level is interesting, it is not vital to the central questions of the complaint. At this point in the long-life of this proceeding, the Commission will not sanction tangential discovery solely for its own sake. A complaint action of this magnitude and age must be subject to an orderly procedural administration, including a focus on proper and necessary questions during discovery.⁷ It is a long-recognized legal principle⁸, with regard to discovery, that such proceedings must be kept within reasonable bounds and restricted to questions having substantial and material relevancy. The Commission finds that Data Request Nos. 1, 2, 6, 10 and 11 are not

⁶ AT&T and Sprint have each moved for confidential protection of either a portion or all of their respective answers to those particular requests. The Commission will issue decisions on those motions separately.

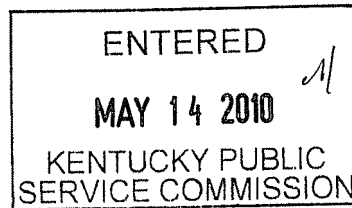
⁷ *Grant Mut. Ins. Co. v. Trude*, 151 S.W. 3d 803, 811 (Ky., 2004) (citations omitted)

⁸ *Humana, Inc. v. Fairchild*, 603 S.W. 2d 918, 922 (Ky. App., 1980).

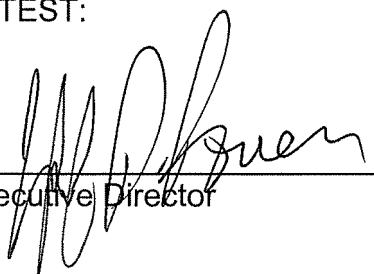
relevant to the question of the reasonableness of Windstream's rates and the motion to compel Verizon to submit answers to those requests is denied.

The Commission, being sufficiently advised, HEREBY ORDERS that Windstream's motion to compel Verizon to respond to certain discovery is denied.

By the Commission



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