

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO TRAFFIC DISPUTE)	
BETWEEN BRANDENBURG TELEPHONE)	CASE NO.
COMPANY, WINDSTREAM KENTUCKY EAST)	2008-00203
AND VERIZON ACCESS)	

O R D E R

On August 26, 2009, the Commission issued its Order in this matter which, among other things, ordered the parties to file certain information with the Commission. In response to those filings, the parties to this case have filed three motions that the Commission will address in this Order. The motions are as follows:

1. Windstream Kentucky East, LLC's ("Windstream") Motion for Informal Conference or Procedural Order;
2. Windstream's Motion for Leave to File a Sur-reply in Response to the Reply Brief Filed by Brandenburg Telephone Company ("Brandenburg Telephone"); and
3. Brandenburg Telephone's Response to Windstream's Motion for Leave to File a Sur-reply (in which Brandenburg Telephone requests that the Commission deny Windstream's Motion to File a Sur-reply).

As discussed below, the Commission will grant Windstream's Motion for an Informal Conference, as well as Windstream's Motion for Leave to File a Sur-reply. Accordingly, the Commission will not grant Brandenburg Telephone's request that the Commission deny Windstream's Motion to File a Sur-reply.

Motion for Informal Conference or Procedural Order

Windstream requests that the Commission schedule an informal conference “at which the parties and the Commission staff can identify what additional facts are necessary for the record, and can propose a procedural order”¹ In the alternative, Windstream requests that the Commission issue a procedural schedule and schedule a hearing on compensation due Windstream.

No party to this proceeding has objected to this request. From its inception, this case has been procedurally complicated. An informal conference to discuss needed additional information and future procedure would be beneficial to all parties and may result in a more efficient procedural schedule.

Additionally, and unrelated to Windstream’s request for an informal conference, Brandenburg Telephone and MCIMetro Access Transmission Services, LLC d/b/a Verizon Access (“Verizon”) have yet to reach a consensus on a traffic exchange agreement as required by the Commission’s August 26, 2009 Order. Brandenburg Telephone has filed an Issues Matrix with the Commission, listing the issues of contention between it and Verizon, and no further action has occurred. However, due to the unique nature of this proceeding, the Commission believes that it is necessary for Brandenburg Telephone and Verizon to be prepared to discuss at the informal conference the procedure for the negotiations and what role the Commission may play in those negotiations, such as arbitrator or mediator. Windstream’s participation in this portion of the informal conference will be voluntary.

¹ Windstream’s Motion for Informal Conference or Procedural Order at 1.

Windstream's Motion for Leave to File a Sur-reply

Windstream has also moved for leave to file a sur-reply to Brandenburg Telephone's Reply Brief filed on October 12, 2009. As grounds for its motion, Windstream states that Brandenburg Telephone's Reply "contains factual misrepresentations which could erroneously influence the Commission's decision in this proceeding regarding compensation owed to Windstream East by Brandenburg telephone and/or [Verizon]."² Windstream asserts that it is filing the sur-reply to ensure that the record is "accurate."³

Brandenburg Telephone opposes the filing of Windstream's sur-reply. Brandenburg Telephone alleges that Windstream mischaracterizes the facts and arguments set forth in Brandenburg Telephone's Reply. Brandenburg Telephone asserts several times that its Reply was legally and factually accurate and consistent with its previous filings and offers refutations of the alleged mischaracterizations.

Brandenburg Telephone asserts that its discussion of evidence not yet in the record was in direct response to the Commission's previous Order in this case requiring the parties to assist the Commission in further developing the record relating to the costs owed to Windstream (if any). Brandenburg Telephone also alleges that Windstream's proposed sur-reply misrepresents critical facts relating to the time during which Brandenburg Telephone was aware of the alleged misuse of Windstream's network.

² Windstream's Sur-reply in Response to the Reply Brief Filed by Brandenburg at 1.

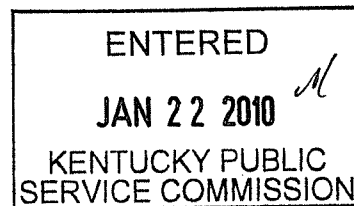
³ Id.

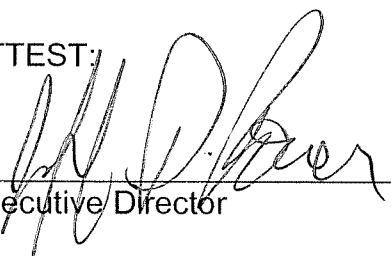
The Commission is confident that it is capable of winnowing the proper arguments and factual representations from the filings. Accordingly, Windstream will be allowed to file its sur-reply.

Based on the foregoing, IT IS THEREFORE ORDERED that:

1. Windstream's Motion for Leave to File a Sur-reply in Response to the Reply Brief Filed by Brandenburg Telephone is granted.
2. Pursuant to 807 KAR 5:001, Section 4(4), all parties shall appear for an informal conference on February 2, 2010 at 10:00 a.m., Eastern Standard Time, in Conference Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky to discuss future procedural steps in this case.
3. Immediately following the conclusion of the informal conference discussing procedural matters, Verizon and Brandenburg shall participate in an informal conference.

By the Commission



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