

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF WINDSTREAM KENTUCKY)	
EAST, LLC FOR ARBITRATION OF AN)	CASE NO.
INTERCONNECTION AGREEMENT WITH NEW)	2009-00246
CINGULAR WIRELESS PCS, LLC D/B/A AT&T)	
MOBILITY)	

O R D E R

This matter is now before the Commission on two issues: first, the motion of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility ("AT&T Mobility") to take the depositions, pursuant to KRS 278.340, of certain witnesses of the petitioner, Windstream Kentucky East, LLC ("Windstream"), and second, Windstream's objections to the submission of certain follow-up data requests by AT&T Mobility.

As to the motion to compel depositions, AT&T Mobility seeks an Order from the Commission allowing it to take the depositions of the witnesses who will file written testimony in support of the cost studies produced by Windstream. AT&T Mobility also seeks to depose Windstream's non-testifying witnesses who can answer in-depth questions regarding the current discovery responses that have been submitted by Windstream in this proceeding.

Windstream initially objected to AT&T Mobility's request to take depositions and then qualified its opposition to request that, if the Commission allowed depositions, the depositions be limited to Windstream's witnesses who would be testifying at the

hearing. Subsequently, Windstream requested that it be allowed to take depositions of AT&T Mobility's witnesses who would file written testimony, in the event the Commission granted AT&T Mobility's motion to take depositions.

Windstream also raised numerous objections to several of AT&T Mobility's interrogatories and requests for production of documents. Windstream has subsequently provided responses to many of the interrogatories to which it initially objected but has still maintained objections to several of the interrogatories. However, the parties recently informed the Commission that all discovery disputes have been satisfactorily resolved.

As discussed below, the Commission will conditionally grant AT&T Mobility's motion to take depositions and grant in part and deny in part Windstream's motion to take depositions.

MOTION TO TAKE DEPOSITIONS

AT&T Mobility moves the Commission to allow it to "take the depositions of witnesses that will file written testimony in support of the cost study . . . and who, if not a testifying witness, can answer in-depth questions regarding the current discovery responses" ¹ In support of its motion, AT&T Mobility states that written discovery has its limitations when used to discuss formulating Total Element Long Run Incremental Cost ("TELRIC") and that written discovery "precludes an in-depth exploration of issues necessary to a broad understanding of the . . . methodology employed by a carrier in producing a proposed TELRIC rate."² AT&T Mobility argues

¹ AT&T Mobility's Motion to Take Depositions at 1.

² Id. at 2.

that, with the use of written testimony, most discovery regarding TELRIC rates occurs at the hearing during cross-examination and that the use of depositions could reduce the length of a hearing and even “obviate the need for any cross-examination at all.”³ Specifically, AT&T Mobility argues that Windstream’s witness designated to testify as to Windstream’s costs is not an employee of Windstream and may not have participated in compiling the data. AT&T Mobility asserts that, because of this, the witness may have little or no knowledge about how the data was gathered for the cost study, and AT&T Mobility requests that it be allowed to depose the people responsible for gathering and compiling the data.⁴

AT&T Mobility also claims that depositions will “almost certainly eliminate the need for further written discovery”⁵ and eliminate written discovery disputes because the attorneys can ask follow-up questions that help to clarify the issues. AT&T Mobility also asserts that depositions will allow Commission Staff a better understanding of the issues and has offered to take the depositions by phone to minimize the costs to the parties.

Windstream objects to the taking of depositions of any witnesses, arguing that the procedural schedule allows ample opportunity for discovery. Windstream argues that, in the event that the Commission grants permission to take depositions, they should be limited to the witnesses who have been designated to file written testimony in

³ Id.

⁴ Reply of AT&T Mobility to Windstream’s Response to Motion to Take Depositions at 2.

⁵ AT&T Mobility’s Motion to Take Depositions at 2.

the hearing. Windstream, while still maintaining its objections to the taking of depositions, subsequently filed a motion to take depositions of AT&T Mobility's witnesses, regardless of whether the witnesses will testify or not.

The Commission finds that allowing depositions of those witnesses designated to file testimony with the Commission falls under the scope of admissible discovery under CR 26.02. Commission Staff will also participate in the depositions, and the parties should file the original and three copies of the transcript of the deposition with the Commission. However, the Commission does not believe that either party has currently made its case that deposing witnesses who are not to file written testimony will lead to the discovery of admissible evidence. If any party, after deposing a witness, believes that the responses are inadequate, insufficient, or incomplete, it may petition the Commission under KRS 278.340, on specific grounds, to take further deposition of those witnesses not filing written testimony. The Commission will grant each petition on a case-by-case basis.

WINDSTREAM'S OBJECTIONS TO AT&T MOBILITY'S DATA REQUESTS

Windstream raised objections to several of AT&T Mobility's data requests; however, the parties have informed Commission Staff that they have resolved all such disputes. Accordingly, the Commission need not address Windstream's objections.

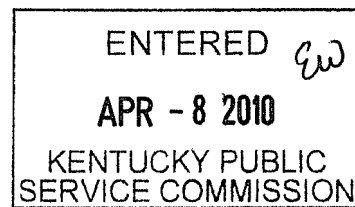
The Commission, being sufficiently advised, HEREBY ORDERS that:

1. AT&T Mobility and Windstream may take the depositions of witnesses designated to file testimony with this Commission. The original and three copies of each transcript shall be filed within 20 days of each deposition.

2. AT&T Mobility and Windstream may petition the Commission on a case-by-case basis if they seek further depositions of witnesses not designated to file testimony with the Commission. Such petitions must state the specific grounds for which the deposition is sought.

3. Windstream's objections to the submission of certain follow-up data requests by AT&T Mobility are overruled as moot.

By the Commission



ATTEST:


Executive Director

Honorable Mary K Keyer
General Counsel/Kentucky
BellSouth Telecommunications, Inc. dba AT&T
601 W. Chestnut Street
4th Floor East
Louisville, KY 40203

Honorable Stacy Majors
Windstream Kentucky East, LLC
4001 Rodney Parham Road
Little Rock, AR 72212-2442

Honorable Robert C Moore
Attorney At Law
Hazelrigg & Cox, LLP
415 West Main Street
P.O. Box 676
Frankfort, KY 40602