COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WINDSTREAM COMMUNICATIONS, INC. FOR A DECLARATORY ORDER AFFIRMING THAT THE INTERCONNECTION REGIMES UNDER KRS 278.530 AND 47 U.S.C. § 251 ARE TECHNOLOGY NEUTRAL	))))))	CASE NO. 2015-00283

ORDER

On August 14, 2015, Competitive Carriers of the South, Inc. (CompSouth) filed with the Commission an application for a declaratory order. CompSouth requested an Order affirming that, regardless of the technology used to exchange voice traffic between carrier's networks, the interconnection regimes under 47 U.S.C §§ 251-252 and KRS 278.530 apply, and that a requesting carrier may file a petition with the Commission requesting an Order prescribing the rates, terms, and conditions of proposed interconnection with an incumbent local exchange carrier (ILEC).[1] The Commission subsequently granted intervention to Cincinnati Bell Telephone Company, LLC (Cincinnati Bell), BellSouth Telecommunications, LLC, d/b/a AT&T Kentucky (AT&T Kentucky), and MCI Communication Services, Inc., d/b/a Verizon Business Services (Verizon).

At the time of the filing of the application, the members of CompSouth were Birch Communications, Inc.; EarthLink Business, LLC; Level 3 Communications, LLC;

[1] Application of Competitive Carriers of the South, Inc. for a Declaratory Order (filed Aug. 14, 2015) (Application) at 1.

Windstream Communications, Inc.; and XO Communications, LLC. On December 27, 2017, CompSouth filed a motion notifying the Commission that all CompSouth would formally dissolve on December 31, 2017, and requested the Commission allow Windstream Communications, Inc. (Windstream), to substitute for CompSouth as a party in this matter. The Commission granted Windstream's request by Order on February 7, 2018. On August 6, 2018, the Commission issued an Order directing the parties to file supplemental briefs. This matter stands ripe for adjudication.

The Parties

In Kentucky, Windstream[2] and Verizon are competitive local exchange carriers (CLEC), and AT&T Kentucky and Cincinnati Bell are ILECs, as those respective terms are used in 47 U.S.C. §§ 251-252. The members of the now-defunct CompSouth, and some Windstream affiliates[3], have, or had, interconnection agreements with AT&T Kentucky and Cincinnati Bell governing the exchange of voice traffic. However, those interconnection agreements do not allow for the exchange of voice traffic in internet protocol (IP).[4] Verizon, as a CLEC, exchanges voice traffic with ILECs, but is also a

[2] AT&T Kentucky has raised the issue that Windstream is not registered with the Commission as a CLEC, and that Commission records do not list it as a utility. However, Commission records do show that Windstream Communications, LLC, is listed as a CLEC with the Commission, and it was so renamed from Windstream Communication, Inc., on November 18, 2015, after CompSouth filed the original petition. The Commission will assume that Windstream meant to file as "Windstream Communications, LLC" when it moved to substitute as a party and that use of "Inc." is a scriber's error.

[3] Windstream does not have a current interconnection agreement with AT&T Kentucky. Some of Windstream's affiliates may have interconnection agreements with AT&T Kentucky, but those do not allow for the exchange of voice traffic in IP format. *See e.g.,* AT&T Kentucky Amended Response p 3. (filed Oct. 14, 2015).

[4] Brief of Windstream (filed Mar. 27, 2017) at 12.

corporate affiliate of several ILECs around the country that provide voice over internet protocol (VoIP) in IP format.[5]

BACKGROUND

At the heart of Windstream's petition before the Commission is whether the regulatory interconnection scheme under 47 U.S.C. §§ 251-252 and KRS 278.530 govern all voice traffic, regardless of the underlying technology, transmission media, or protocol. In other words, is the Commission's approach to intercarrier interconnection for the exchange of voice traffic "technology neutral." In its Application, Windstream requests the Commission to declare that:

> [R]egardless of underlying technology, transmission media, or protocol that may be used for the exchange of voice traffic between two carriers' networks, (a) the interconnection regimes under 47 U.S.C. §§ 251-252 and KRS 278 .530 apply and (b) these statutes permit (among other things) a requesting carrier to file a petition with the KPSC requesting an Order prescribing the rates, terms, and conditions of proposed interconnection with an incumbent local exchange carrier.[6]

Windstream stated that it would be substantially affected by the Commission's decision in a declaratory order and that absent a declaration from the Commission that the interconnection regimes were technologically neutral, the uncertainty would hinder the transition from time-division multiplexing (TDM) to IP based services and that IP interconnection is a more efficient and cost-effective method for handling traffic.[7] Windstream asserted that KRS 278.530 and 47 U.S.C. §§ 251 and 252 provide for an

---

[5] Verizon Motion to Intervene (filed Oct. 12, 2015) at 2.

[6] Application at 1.

[7] *Id.* at 2.

interconnection regime that is technology neutral. AT&T Kentucky, Verizon, and Cincinnati Bell all opposed the application for reasons that would be discussed in more detail below.

Staff Opinion 2013-015

Commission Staff informally addressed this issue in a 2014 Staff Opinion filed in response to a request from Carolyn Ridley on behalf of CompSouth. Staff notes in a letter dated October 24, 2013, that its opinion was not binding on the Commission, and concluded that:

> KRS 278.530 does not specifically define the types of technology that may be utilized for the connecting of lines or the routing and switching of calls. In fact, KRS Chapter 278 neither specifies nor exempts types of interconnection dependent upon the underlying technology used. Therefore it follows that if a petition for the connecting of lines is filed pursuant to KRS 278.530, the Commission may entertain the petition regardless of the technology involved.
>
> The Commission, however, has interpreted KRS 278.530 to apply to situations where interconnection does not already exist. The Commission has also noted that KRS 278.530 establishes a "procedure to be followed by aggrieved utilities, but does not prescribe the means by which the Commission must investigate and determine fair, just and reasonable rates." Therefore, Commission Staff concludes that while KRS 278.530 is "technology neutral," it only applies in the absence of an existing contract or interconnection and does not guarantee what procedure or standard the Commission should apply to reach a determination regarding the terms of interconnection. In short, even if a telephone company files a petition under KRS 278.530 (which has not occurred since 1983), interconnection is not guaranteed.
>
> With regard to the interconnection regime under 47 U.S.C. § 251, Commission Staff agrees with Ms. Ridley's characterization that the FCC has declared the interconnection regime under that statute to be "technology neutral." However, the FCC has not determined if the regime under 47 U.S.C. § 251 is also service neutral or if it varies with

> the type of service offered or what portions of the interconnection regime should apply to IP services or interconnection. As Mr. Harris states in his letter, the FCC has established an ongoing proceeding to address how IP interconnection and services should be addressed in an interconnection framework.
>
> Commission Staff concludes that the current interpretation of 47 U.S.C. § 251 allows a carrier to file a petition for arbitration under 47 U.S.C. § 252 and seek interconnection regardless of the underlying technology. Kentucky law does not prohibit this result, nor does the current state of the FCC or federal law. However, each petition for arbitration stands on its own, and each case is "tied to factual circumstances or otherwise circumscribed in various ways" and does not guarantee interconnection with an IP network.
>
> Commission Staff notes that the FCC, by its actions, could preempt the Commission from acting on IP-enabled services, or provide that a different interconnection regime applies other than the traditional regime found in 47 U.S.C.§ 251. Therefore, while a carrier can currently file under 47 U.S.C. § 252 for interconnection to an IP network, FCC action could affect this right.
>
> Based on the foregoing, and with the limitations discussed, *supra*, Commission Staff concludes that the interconnection regimes under KRS 278.530 and 47 U.S.C § 251 are technology neutral. [8]

It is the conclusions in this Staff Opinion that Windstream requests the Commission affirm in a declaratory ruling.

Windstream's Position

Windstream asserts in its initial brief that nothing within state or federal law limits the Commission's jurisdiction to only one type of telecommunications technology.[9] Windstream stated that this is true, regardless of changes in telecommunications as the

[8] Staff Opinion 2013-015 (Citation omitted.)

[9] Brief of Windstream (filed Mar 27, 2017) (Windstream's Initial Brief) at 10.

Public Switched Telecommunications Network (PSTN) shifts from TDM to IP, and that the direct conclusion is that: (1) ILECs are subject to Commission jurisdiction for arbitration of IP-based voice interconnection in the same way as TDM-based agreements; and (2) the agreements must be filed with the Commission allowing carriers to "opt-in" to the agreements. Windstream asserts that this will facilitate the deployment of advanced and more efficient telecommunications service.[10] However, Windstream asserts that regulatory uncertainty has hindered the rollout of IP interconnection in Kentucky, and notes that a motion for a declaratory order regarding IP interconnection has been before the Federal Communication Commission (FCC) since 2011, with little or no progress made towards a final decision.[11]

Windstream asserts that a formal declaration is necessary because, in its absence, carriers such as Windstream will be unsure of their rights as the PSTN converts from TDM to IP-interconnection.[12] Windstream also notes that during discovery it became apparent that AT&T Corporation, an affiliate of AT&T Kentucky but not subject to the Commission's jurisdiction, had entered into contracts slowing for the use of IP format voice traffic that originated, or terminated to, end users in Kentucky, including some customers of AT&T Kentucky.[13] Windstream argues that without a declaratory ruling, agreements like these (that AT&T Kentucky and Verizon have) will not be filed with the Commission, and,

---

[10] *Id.* at 10–11.

[11] *See In the Matter of tw telecom, inc.'s Petition for Declaratory Ruling Regarding Direct IP-to-IP Interconnection Pursuant to Section 251(c)(2) of the Communications Act*, WC Dkt. No. 11–119 (filed June 30, 2011).

[12] Windstream's Initial Brief at 21.

[13] *Id.* at 23, *citing*, AT&T Kentucky's Supplemental Responses Nos. 3, 4, 5, 8 and 9 to CompSouth's Information Requests (filed Jan. 12, 2017).

consequently competitors like Windstream will not be able to review the agreements when they are negotiating with the ILECs for IP-interconnection.

Windstream argues that the principles of statutory construction support its position that KRS 278.530 and 47 U.S.C. §251 are technologically neutral. With regard to KRS 278.530, enacted in 1978, Windstream argues that the obvious purpose of the legislation was to grow the telecommunications network and eliminate unreasonable delays in doing so.[14] Windstream notes the unique nature of KRS 278.530 in which both the Commission and the circuit court (in the county where interconnection is sought) have the jurisdiction to determine what constitutes reasonable interconnection. Windstream also asserts that Commission Staff was correct to conclude that nothing in KRS 278.530 limits or exempts certain types of technology from interconnection.[15]

Windstream asserts that the interconnection obligations under 47 U.S.C. § 251 are technologically neutral, noting that 47 U.S.C. § 251 imposes a duty on telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[16] Windstream further argues that the only limitations on interconnection are in 47 U.S.C. § 251(c)(2)(B), which requires interconnection at any technically feasible point on the carrier's network, and 47 U.S.C. § 251(c)(2)(D), which requires that such interconnection should be on just, reasonable, and nondiscriminatory terms.[17]

---

[14] *Id.* at 26-27.

[15] *Id.* at 30.

[16] 47 U.S.C. § 251.

[17] *Id.* at 32–35.

Windstream next argues that the negotiation and arbitration procedures in 47 U.S.C. § 252 are technology neutral.[18] Windstream dismisses the arguments of the other parties that, in the absence of an unambiguous FCC interpretation that 47 U.S.C. §§ 251 and 252 are technology neutral, the Commission cannot act. Windstream asserts that the Commission and courts have the duty to interpret the statutes according to canons of statutory construction. Windstream likewise dismisses the arguments of other parties that FCC inaction should be interpreted that the FCC does not believe the statutes are technology neutral and points out that the FCC has concluded that several types of calls originating or terminating in VoIP are subject to the interconnection regime in 47 U.S.C. § 251 (and by implication 47 U.S.C. § 252). Windstream notes that the FCC in the ICC Transformation Order, while not classifying VoIP-PSTN traffic as "telecommunication services" or "information services," it determined that "VoIP-PSTN traffic can be encompassed by section 251(b)(5)."[19]

Windstream states that Commission Staff's interpretation of 47 U.S.C. § 251 is consistent with other jurisdictions. Specifically, Windstream points to three cases from the United States Court of Appeals' Third[20], Fifth[21], and Eighth Circuits[22] that Windstream claims to uphold states' authority to require IP-interconnection.

Windstream next asserts that declaring 47 U.S.C. §§ 251 and 252 technology neutral fulfills an important public policy as telecommunications networks are the

---

[18] *Id.* at 35–36.

[19] *Id.* at 38, quoting *In the Matter of Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 954 (Nov. 18, 2011).

[20] *AT&T Corp. v. Core Comm'ns, Inc.*, 806 F.3d 715 (3rd Cir. Nov. 25, 2015).

[21] *CenturyTel of Chatham, LLC v. Sprint Commc'ns Co., L.P.*, 861 F.3d 566 (5th Cir. 2017).

[22] *Sprint Commc'ns Co., L.P. v. Lozier*, 860 F.3d 1051 (8th Cir. 2017).

background of a sound economy and a legitimate government interest. Windstream argues that because the existing interconnection agreements that many CLECs have with AT&T Kentucky are for TDM interconnection, and are in evergreen status, upon notice from AT&T Kentucky that the agreements will be terminated, any CLEC without an IP interconnection agreement will be unable to deliver traffic of their customers to those of AT&T Kentucky. The absence of Commission authority in negotiating an IP agreement under these circumstances results in negotiating a contract with no leverage. Windstream claims that this is not the result that the General Assembly or Congress contemplated in drafting KRS 278.530 or 47 U.S.C. § 251.[23] The absence of a declaratory order, Windstream argues, makes it unlikely that any ILEC will negotiate an IP interconnection agreement, and further inaction from the Commission will force Windstream to delay its deployment of IP voice networks or to accrue unnecessary costs and inefficiencies to convert IP traffic to TDM technology.

Windstream argues that the Commission has the jurisdiction to enter a declaratory order in this case. Windstream states that 47 U.S.C. § 252 confers jurisdiction to the Commission to implement and enforce the interconnection components of the 1996 Telecommunications Act, and thus the subject matter of the dispute is within the jurisdiction of the Commission (unless and until the FCC acts through a final, non-appealable order). Further, Windstream argues, 807 KAR 5:001, Section 19, the regulation authorizing the Commission to enter a declaratory order, authorizes the Commission to "issue a declaratory order with respect to the jurisdiction of the

[23] Windstream's Initial Brief at 48.

commission. . . ."[24] Windstream asserts that even in the absence of a proceeding under 807 KAR 5:001, Section 19, KRS Chapter 278, and common law affirm the Commission's authority to decide this case.[25]

AT&T Kentucky

AT&T Kentucky's first, and primary, objection to the application for a declaratory order is that the Commission is not authorized under the 1996 Telecommunications Act or 807 KAR 5:001, Section 19 to issue a declaration relating to federal law.[26] AT&T Kentucky also argues that the Commission should only address the issue of IP interconnection via an arbitration proceeding filed under 47 U.S.C. § 252.[27] AT&T Kentucky also urges the Commission to refrain from acting until the FCC rules on issues relating to IP interconnection.[28]

Verizon

Verizon primarily asserts that the FCC has not mandated VoIP interconnection, leaving the negotiation of IP interconnection to commercial agreements, which are not filed with state commissions.[29] Verizon also argues that VoIP traffic is not subject to 47 U.S.C. §§ 251-252.[30]

---

[24] *Id.* at 51

[25] *Id.*

[26] AT&T Kentucky's Amended Response to Application of CompSouth for a Declaratory Order (filed Oct. 14, 2015) (AT&T Kentucky's Amended Response) at 1.

[27] *Id.* at 8.

[28] *Id.* at 13.

[29] Verizon's Response to CompSouth Application for Declaratory Order (filed Oct. 12, 2015) (Verizon's Response) at 1, Verizon's Initial Brief in Opposition to CompSouth's Request for a Declaratory Order (filed Mar. 24, 2017) (Verizon's Initial Brief) at 1, 4.

[30] *Id.*at 5.

Cincinnati Bell

Cincinnati Bell, similar to Verizon and AT&T Kentucky, argues that Windstream is not entitled to a declaratory order because it has not met the standards for a declaratory order under 807 KAR 5:001, Section 19, because Windstream is not a party "substantially affected" by the issues for which a declaration is sought.[31] Cincinnati Bell also argues that Windstream has failed to prove that KRS 278.530 applies to it.[32]

Discussion

The Commission must first address whether it can rule on the issues raised in the petition for declaratory order. For the reasons discussed below, the Commission finds that it can address the issues that Windstream raises in its petition. Although 807 KAR 5:001, Section 19, might be limited to jurisdictional issues within KRS Chapter 278 and Commission orders, etc., the Commission's role in interpreting federal law relating to the interconnection regime under 47 U.S.C. § 251 is not circumscribed in general by that administrative regulation, and the Commission is within its jurisdiction to reach a determination regarding the interconnection obligations between carriers providing intrastate services in Kentucky.[33] The Commission would have to make this determination if presented with it in arbitration. Rather than wait for an arbitration to arise, at which the issues would have to be litigated under the time constraints of the 1996 Telecommunications Act, addressing the issues in the declaratory order is the most efficient vehicle for all parties to address these issues.

---

[31] Response of Cincinnati Bell to Application of CompSouth for a Declaratory Order (filed Oct. 12, 2015) at 6.

[32] *Id.* at 8.

[33] *See generally,* KRS 278.040. KRS 278.260.

The Commission has acted in similar circumstances to address broad issues of interconnection when asked by a carrier to visit the respective rights of ILECs and CLECS. In Case No. 2004-00427[34] AT&T Kentucky requested, pursuant to KRS 278.040 and KRS 278.260, that the Commission establish a docket to address interconnection in light of decisions from the FCC and the United States Court of Appeals for the District of Columbia. The Commission, in order to resolve generic issues of federal law, which then applied to the specific interconnection agreements between ILECs and CLECs in Kentucky, had to undertake interpretations of federal law and FCC regulations, some of which, ultimately, were upheld by the United States Court of Appeals for the Sixth Circuit.[35] The Commission, in Case No. 2004-00427, established a procedural schedule that allowed for substantially the same procedural steps (discovery, testimony, briefs etc.) that the Commission provide for in this action. In the instant case, the parties are fully aware of the issues, have had the opportunity to conduct discovery, and have briefed (twice) the issue. There is essentially no discernible distinction between this action brought under the administrative regulation, and a petition from a carrier for the Commission to establish a generic docket to address interconnection issues. Therefore, the Commission finds that it may address in this case the issues raised in Windstream's application.

It is clear from the reactions of AT&T Kentucky, Verizon, and Cincinnati Bell that disagreement over this issue is likely to recur, and addressing it in this proceeding will

---

[34] *Petition of BellSouth Telecommunications, Inc. to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting From Changes in Law*, (filed Nov. 1, 2004).

[35] *See BellSouth Telecommunications, Inc. v. Kentucky Public Service Com'n*, 669 F.3d 704, 713 (6th Cir. 2012)

resolve it. The Supreme Court of the United States has approved of this procedural posture, and the Commission adopts the same.[36] Deciding the issue now will save all parties to an arbitration, time and money in the future. Therefore, we will address the issue of IP-interconnection under 47 U.S.C. § 251 and KRS 278.530.

KRS 278.530(1) provides that:

> Whenever any telephone company desires to connect its exchange or lines with the exchange or lines of another telephone company and the latter refuses to permit this to be done upon reasonable terms, rates and conditions, the company desiring the connection may proceed as provided in subsection (2) or as provided in subsection (3) of this section.

KRS 278.530 does not specifically define the types of technology that may be utilized for the connecting of lines or the routing and switching of calls. In fact, KRS Chapter 278 neither specifies nor exempts types of interconnection dependent upon the underlying technology used. Therefore, it follows that if a petition for the connecting of lines is filed pursuant to KRS 278.530, the Commission may entertain the petition regardless of the technology involved.

The Commission, however, has interpreted KRS 278.530 to apply to situations in which *interconnection does not already exist.*[37] The Commission has found that KRS 278.530 establishes a "procedure to be followed by aggrieved utilities, but does *not* prescribe the means by which the Commission must investigate and determine fair, just

---

[36] *See Sprint Communications, Inc. v. Jacobs,* 571 U.S. 69, 74, (2013). ("Because the conflict between Sprint and Windstream over VoIP calls was "likely to recur," however, the IUB decided to continue the proceedings to resolve the underlying legal question, i.e., whether VoIP calls are subject to intrastate regulation. The question retained by the IUB, Sprint argued, was governed by federal law, and was not within the IUB's adjudicative jurisdiction. The IUB disagreed, ruling that the intrastate fees applied to VoIP calls.")

[37] Case No. 8727, *General Telephone Company of Kentucky v. South Central Bell Telephone Company* (KY PSC May 12, 1983) at 5.

and reasonable rates."[38] Therefore, the Commission finds that while KRS 278.530 is "technology neutral," it *only* applies in the absence of an existing contract or interconnection and does not guarantee what procedure or standard the Commission should apply to reach a determination regarding the terms of interconnection. In short, even if a telephone company files a petition under KRS 278.530 (which has not occurred since 1983), interconnection is not guaranteed.[39]

With regard to interconnection under Federal law, it is important to revisit the purpose of the 1996 Telecommunications Act and the role that the Commission plays within the statutory scheme.

> In enacting the Telecommunications Act of 1996, Pub.L. No. 104–104, 110 Stat. 56 (codified at 47 U.S.C. § 151 *et seq.*), Congress sought to enhance competition in the telecommunications industry. To that end, the Act requires incumbent providers of local phone service to offer "interconnection" services—to share their network, in other words—with other telecommunications companies, 47 U.S.C. § 251(a)(1), and provides three mechanisms for doing so: The incumbent and the competitor may negotiate the terms of an interconnection agreement, § 252(a); they may go through arbitration to establish the terms of an interconnection agreement, § 252(b); or a carrier may adopt an existing interconnection agreement between the incumbent and another telecommunications company, § 252(i). Once the parties have reached an agreement via one of these paths, the Act "entrusts state commissions with the job of approving interconnection agreements."[40]

---

[38] *Id.*

[39] The Commission also notes that KRS 278.530 allows a telephone company to bring suit in Franklin Circuit Court, or the Circuit Court of the county in which the telephone company making the demand resides, and request interconnection with another telephone company.

[40] *BellSouth Telecommunications, Inc. v. Universal Telecom, Inc.,* 454 F.3d 559, 560 (6th Cir. 2006) *quoting AT & T Corp. v. Iowa Utils. Bd.,* 525 U.S. 366, 385, (1999), (citations omitted).

In the three scenarios listed above for achieving interconnection: negotiation; arbitration; or adoption, the Commission must approve the resulting interconnection agreement. It follows, therefore, that the Commission has the authority to determine what is properly within an interconnection agreement.

With regard to the interconnection regime under 47 U.S.C. § 251, the Commission finds that the FCC has declared the interconnection regime under that statute to be "technology neutral."[41] However, the FCC has not determined if the regime under 47 U.S.C. § 251 is also service neutral or if it varies with the type of service offered or what portions of the interconnection regime should apply to IP services or interconnection.[42] These issues will be addressed on a case-by-case basis in an arbitration proceeding. The Commission acknowledges that the FCC has established an ongoing proceeding to address how IP interconnection and services should be addressed in an interconnection framework and that subsequent FCC pronouncements may affect the findings herein.[43]

The Commission finds that the current interpretation of 47 U.S.C. § 251 allows a carrier to negotiate an interconnection agreement or file a petition for arbitration under 47 U.S.C. § 252 and seek interconnection regardless of the underlying technology. Kentucky law does not prohibit this result, nor does the current state of the FCC or federal law.

---

[41] The FCC has stated that "[w]e agree with commenters that "nothing in the language of [s]ection 251 limits the applicability of a carrier's statutory interconnection obligations to circuit-switched voice traffic"[2507] and that the language is in fact technology neutral." *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform: Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) at ¶ 1381.

[42] *Id.*

[43] *Id.* at ¶'s 1335 to 1403.

However, each petition for arbitration stands on its own, and each case is "tied to factual circumstances or otherwise circumscribed in various ways"[44] and does not guarantee interconnection with an IP network.

The Commission is also persuaded by the Federal appellate cases that Windstream has presented to the Commission.[45] In those cases, the Courts upheld interconnection based upon technology-neutral principles. Verizon provided a case from the Court of Appeals for the Eighth Circuit that held that *retail* VoIP service was an information service and, thus, the Minnesota Public Utilities could not regulate the service.[46] However, this case addressed the state's jurisdiction over a retail service, and not how IP technology should be addressed in the interconnection scheme under 47 U.S.C. §§ 251-251, the Commission, therefore, finds this case unpersuasive and not germane to the issue before it.

As discussed, *supra*, there are three ways that a requesting carrier can obtain interconnection: (1) negotiation; (2) arbitration; and (3) adoption. After finding that 47 U.S.C. § 251 allows a carrier to negotiate an interconnection agreement or file a petition for arbitration under 47 U.S.C. § 252 and seek interconnection regardless of the underlying technology, the next logical finding is that interconnection agreements, regardless of the technology they employ, should be filed with the Commission so that they are available for adoption pursuant to 47 U.S.C. § 251(i). The Commission could

---

[44] *Id.*

[45] *AT&T Corp. v. Core Comm'ns, Inc.*, 806 F.3d 715 (3rd Cir. Nov. 25, 2015); *CenturyTel of Chatham, LLC v. Sprint Commc'ns Co., L.P.*, 861 F.3d 566 (5th Cir. 2017) and; *Sprint Commc'ns Co., L.P. v. Lozier*, 860 F.3d 1051 (8th Cir. 2017).

[46] *Charter Advanced Services (MN), LLC v. Lange*, 903 F.3d 715 (8th Cir. 2018).

not fulfill its duties under the 1996 Telecommunications Act if it found that negotiation and arbitration were subject to technology neutral principles, but not adoption.

The Commission notes that the FCC, by its actions, could preempt the Commission from acting on IP-enabled services, or provide that a different interconnection regime applies other than the traditional regime found in 47 U.S.C.§ 251. Therefore, while the interconnection regime under 47 U.S.C. §§ 251 and 252 is technology neutral, FCC action could affect this interpretation.

Based on the foregoing, and with the limitations discussed, *supra*, the Commission finds that: (1) regardless of the underlying technology, transmission media, or protocol the interconnection regimes under 47 U.S.C. §§ 251-252 and KRS 278.530 apply and permit a requesting carrier to file a petition with the Commission requesting an Order addressing requested interconnection with an ILEC; and (2) carriers must file with the Commission any existing agreements for the exchange of IP voice traffic so that the Commission may determine if they are available to be adopted by other telecommunications carriers.

IT IS THEREFORE ORDERED that:

1. Windstream's Application for a declaratory order is granted;

2. Regardless of the underlying technology, transmission media, or protocol the interconnection regimes under 47 U.S.C. §§ 251-252 and KRS 278.530 apply and permit a requesting carrier to file a petition with the Commission requesting an Order addressing requested interconnection with an ILEC;

3. Any existing agreements for the exchange of IP voice traffic must be filed with the Commission; and

4. This case is closed and removed from the Commission's docket.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

By the Commission

ENTERED

DEC 20 2018

KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Executive Director

*L Allyson Honaker
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*Ted Heckman
Managing Director, Regulatory & Government
Cincinnati Bell Telephone Company
221 E Fourth Street, Room 103-1080
Cincinnati, OH 45201-2301

*Cheryl Winn
Waters Law Group, PLLC
12802 Townepark Way, Suite 200
Louisville, KENTUCKY 40243

*Thomas M Payne, III
BellSouth Telecommunications, LLC dba AT&T
Meidinger Tower
462 S 4th Street, Suite 2400
Louisville, KY 40202

*David S Samford
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*Tony Taylor
BellSouth Telecommunications, LLC dba AT&T
Meidinger Tower
462 S 4th Street, Suite 2400
Louisville, KY 40202

*Dennis G Friedman
Mayer Brown LLP
71 South Wacker Drive
Chicago, ILLINOIS 60606

*Windstream Communications, LLC
4001 N Rodney Parham Road
Little Rock, AR 72212

*Douglas E Hart
441 Vine Street, Suite 4192
Cincinnati, OHIO 45202

*J. Tyson Covey
Mayer Brown LLP
71 South Wacker Drive
Chicago, ILLINOIS 60606

*Luke Morgan
McBrayer, McGinnis, Leslie and Kirkland, PLLC
201 East Main Street
Suite 900
Lexington, KENTUCKY 40507