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JAN 17 2007

PUBLIC SERVICE
COMMISSION

January 16, 2007

VIA HAND DELIVERY TO OVERNIGHT DROP-BOX

Beth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

RE: Case Number 2005-00186

Dear Ms. O'Donnell:

Attached please find an original and 10 copies of Windstream's comments for Case Number 2005-00186: An Inquiry Into Limitations of Use for Tariffed Services Designated or Otherwise Referred to As Unlimited. A copy of this filing is also being provided to the Kentucky Attorney General's Office of Rate Intervention.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Logsdon", with a horizontal line extending to the right.

Daniel Logsdon

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

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JAN 17 2007

PUBLIC SERVICE
COMMISSION

In the Matter of:

AN INQUIRY INTO LIMITATIONS)
OF USE FOR TARIFFED SERVICES) ADMINISTRATIVE
DESIGNATED OR OTHERWISE) CASE NO. 2005-00186
REFERRED TO AS UNLIMITED)

COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

Windstream Communications, Inc. ("Windstream") submits these comments in the above referenced proceeding. Windstream did not operate in Kentucky at the time that this proceeding was initiated, is not a party hereto, and was not one of the original carriers that prompted the generic investigation.¹ However, Windstream has since begun operating in Kentucky and maintains a residential unlimited long distance calling plan in Kentucky ("Residential Unlimited Plan"). Windstream appreciates the opportunity to comment in this proceeding consistent with the Kentucky Public Service Commission's ("Commission") December 15, 2006 Order.

INTRODUCTION

The Commission initiated this proceeding as a result of several customer complaints. The customers alleged they had been assessed additional charges for excessive usage under "unlimited" plans.² The complaints were dismissed, although the Commission initiated an investigation to determine whether long distance carriers were offering unlimited plans that imposed minute limitations and, therefore, were not unlimited.³

Despite its lack of party status in this proceeding, Windstream has answered data responses to the Attorney General pertaining to its Residential Unlimited Plan. As set forth therein, Windstream very clearly does not impose volume or minute limitations on its Residential Unlimited Plan. Windstream confines its plan to permitted residential uses, and customers using the Residential Unlimited Plan for the

¹ Prior to the recent Alltel spin/Valor merger transactions, Windstream was affiliated for a short time with Alltel Communications, Inc., which is a party to this proceeding. However, Alltel Communications, Inc. is now a separate entity unaffiliated with Windstream.

² *In the Matter of: An Inquiry into Limitation of Use for Tariffed Services Designated or Otherwise Referred to as Unlimited, Administrative Case No. 2005-00186, Order (released June 22, 2005).*

residential uses may do so without any per-minute usage restrictions. For example, a customer abusing the Residential Unlimited Plan for commercial purposes or to aggregate calls to an Internet service provider ("ISP") would be notified and moved to an alternative calling plan. In contrast, a grandmother subscribing to the Residential Unlimited Plan would be permitted to telephone her grandchildren anywhere in the continental United States for an endless number of hours each day without restrictions, ramifications, changes, fees, *etc.*

Windstream's Residential Unlimited Plan does not violate Kentucky law or mislead subscribers. To the contrary, Windstream's Residential Unlimited Plan has been popular throughout the many states in which Windstream operates and offers consumers a viable competitive alternative to cable/VoIP and wireless calling plans. Windstream has received no customer complaints pertaining to its Residential Unlimited Plan.

KENTUCKY LAW

The Kentucky Consumer Protection Act (K.R.S. §367.170) provides as follows:

- (1) Unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.
- (2) For the purposes of this section, unfair shall be construed to mean unconscionable.

The question then becomes one of a fact-specific inquiry as to whether the ultimate consumer was misled and what was reasonable to that consumer.

In this instance, the question arises as to what a customer's reasonable understanding is with respect to an "unlimited" calling plan. Kentucky statutes do not define the term "unlimited". The American Heritage Dictionary defines "unlimited" as "having no restrictions or controls; *an unlimited travel ticket.*" As discussed below and as supported by the comments submitted in this proceeding by the Kentucky Attorney General, unlimited residential calling plans which do not contain minute or volume

³ Id.

restrictions but which do contain parameters to ensure proper use of the plans for residential purposes do not violate Kentucky law.

WINDSTREAM'S RESIDENTIAL UNLIMITED PLAN

Windstream's Residential Unlimited Plan is called "Connect Unlimited." As set forth in Windstream's tariffs and quarterly bill messages provided to customers, Windstream's Residential Unlimited Plan is designed for customary residential usage (*i.e.*, residential 1-plus direct-dialed calls for voice use only). The residential plan may not be used for other purposes such as Internet services, facsimiles, softphones or data devices, transcription services, business services, telemarketing, auto-dialing, multi-party conference calls, party lines, chat lines, adult entertainment lines, calls to 900 and 976 numbers, and calls to access information services. Customers are also notified that if Windstream determines that usage is inconsistent with residential voice service, they may be immediately restricted or moved to another calling plan. As set forth below, Windstream uses factors such as excessive usage or usage predominantly during business hours to investigate whether a customer is utilizing the Residential Unlimited Plan for proper residential purposes. For those customers properly using Windstream's Residential Unlimited Plan within the residential parameters (*i.e.*, typical residential usage), their usage is unlimited and without restriction.

WINDSTREAM'S COMPLIANCE WITH KENTUCKY LAW

Windstream's Residential Unlimited Plan is consistent with Kentucky law. As noted above, Windstream does not restrict a customer's calling volume under the Residential Unlimited Plan. Specifically, Windstream does not disconnect authorized residential users for using large numbers of minutes. Additionally, Windstream clearly and conspicuously advises its customers in advance, through its tariffs and in quarterly bill messages, of the parameters that consumers must meet in order to qualify for the residential plan. Therefore, Windstream's Residential Unlimited Plan satisfies the plain dictionary definition of "unlimited" similar to the example of unlimited travel tickets, which generally may be exercised within certain parameters such as on non-holidays or domestic flights.

Windstream's customers are not misled by Windstream's unlimited calling plan. Customers are accustomed to wireless "anywhere/anytime" calling plans which operate within parameters such as calling scopes, roaming areas, and allowable minutes. Windstream's Residential Unlimited Plan, therefore, satisfies the reasonable expectation of the average consumer by establishing residential parameters within which subscribers may make unlimited residential calls anywhere in the continental United States.

To ensure that subscribers are using the Residential Unlimited Plan for the prescribed residential purposes, Windstream monitors its network traffic to identify instances of potential abuses of the plan (*i.e.*, non-residential uses). Examples of such non-residential uses may be revealed by investigating factors like high traffic volumes during business hours, distinct calling patterns like in the case of auto-dialers, or calls to known dial-up Internet Service Providers ("ISPs"). These factors indicate that a subscriber *may* be abusing Windstream's network by subscribing to Windstream's Residential Unlimited Plan for business or commercial purposes, which clearly fall outside the scope of the plan's "acceptable use policy." Again, this acceptable use policy describes the residential uses of the plan, is printed on all advertisements promoting Windstream's Residential Unlimited Plan, and is provided to the plan's subscribers in quarterly bill messages. To be clear, however, in instances where Windstream's investigation determines that high traffic volumes are attributed to proper residential calling, Windstream takes no action and does not consider such cases to be abuses of the Residential Unlimited Plan.

High traffic volume is merely one indicator of potential abuse, and to the extent that such volumes are confirmed to be within the residential uses of the plan, no action is taken. As stated previously, Windstream's Residential Unlimited Plan contains no minutes of use limitations, and Windstream does not consider instances of high volume residential calling to be abuse of the Connect Unlimited plan. Indeed, it is an accepted industry practice for companies to monitor call volumes in order to ensure that acceptable use policies are not being violated. In fact, the Attorney General's December 11, 2006 filing in this docket acknowledged that "a certain threshold of minutes of usage to trigger additional investigation" as to whether an end user is using the residential unlimited plan for "prohibited commercial uses" is acceptable. Windstream's practices are consistent with the Attorney General's interpretation and

Kentucky law. Windstream merely monitors call volumes as that is one indication as to whether customers subscribed to the Residential Unlimited Plan are using the plan for commercial purposes. In instances where Windstream confirms commercial use of the plan, Windstream contacts a customer and advises him/her of alternative Windstream long distance calling plans that are appropriate for his/her intended use. In instances where Windstream confirms proper residential use of the plan, no action is taken.

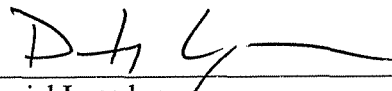
CONCLUSION

As recognized by the Attorney General, the issue is whether a plan is misleading to the ultimate consumer. Subscribers to Windstream's Residential Unlimited Plan are not misled and instead are advised and reminded quarterly of the acceptable residential uses of the plan. For customers using the plan for proper residential purposes, calling volumes are unlimited. Windstream has not received any customer complaints regarding its Residential Unlimited Plan in general or complaints indicating customer confusion about the prohibited commercial uses under the residential plan. In fact, the plan has been popular throughout Windstream's areas of operation. In today's marketplace, telecommunications consumers are accustomed to wireless "anywhere/anytime" calling plans, which operate within parameters such as calling scopes, roaming areas, and allowable minutes. Calling plans such as Windstream's Residential Unlimited Plan are not misleading to reasonable consumers and serve the public interest by providing a viable competitive alternative to both wireless and VoIP providers who offer both nationwide and worldwide "unlimited" calling.

As supported by the Attorney General's comments in this proceeding, Windstream's Residential Unlimited Plan is consistent with Kentucky law and acceptable industry practices. Consequently, Windstream believes that neither the Commission nor the Attorney General should take any action that would impact adversely Windstream's Residential Unlimited Plan. To the extent that it may be made a party to this proceeding, Windstream requests that it be dismissed as its Residential Unlimited Plan clearly is not violative of the Kentucky Consumer Protection Act and as Windstream is not one of the

actors which prompted the initiation of the Commission's investigation. Windstream appreciates the opportunity to comment in this matter.

Dated this 16th day of January 2007.



Daniel Logsdon
Vice President, State Government Affairs
Windstream Communications

Cc: Office of the Kentucky Attorney General