

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

In the Matter of:

TOUCHSTONE, D/B/A ALEC, INC.                    )  
    Complainant                                    )  
    v.   )  
ALLTEL COMMUNICATIONS, INC.                 )  
    Defendant                                     )

CASE NO. 2005-00482

**OBJECTIONS AND RESPONSES TO DATA REQUESTS**

Windstream Kentucky East, Inc. (“Windstream”) files the following objections and responses to the requests submitted by TOUCHSTONE, d/b/a ALEC, Inc. ("ALEC"). Except as to Data Request No. 18, the Data Requests are overly broad and not likely to lead to the discovery of admissible evidence. Any response provided along is done so without any waiver of and with full reservation of Windstream’s rights with respect to said request, including any specific objections made in the Response to the Request. Further, despite the definitions set forth in ALEC’s data requests, Alltel Communications, Inc. is not a predecessor to Windstream, and Windstream cannot respond on behalf of Alltel Communications, Inc., which is an entity unaffiliated with Windstream.

1. In reference to numerical paragraph 44 of Windstream's Answer, state each and every factual basis for your denial of the allegations in Paragraph 3 of the Complaint.

**RESPONSE NO. 1:** Windstream refers ALEC to Windstream's Motion to Dismiss (for example, Paragraphs 1, 7 through 9, and 12 through 23), all Windstream pleadings filed in this proceeding (particularly those setting forth that the appropriate party in interest was compensated for all claims prior to November 2002), and the parties' Interconnection Agreement (particularly the sections setting forth that local and ISP-bound traffic are subject to bill and keep).

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2. In reference to numerical paragraph 44 of Windstream's Answer, state each and every factual basis for your denial of the allegations in Paragraph 5 of the Complaint.

**RESPONSE NO. 2:** See Response to No. 1 above.

3. In reference to numerical paragraph 46 of Windstream's Answer, please identify in detail all steps taken by Windstream to resolve the dispute between the parties. In your answer, please identify the substance of any communication between you and the Complainants; the names of the people involved; the dates upon which such communication took place and the result, if any, of each such communication. If the communication was in writing, transmitted electronically or otherwise, please provide a copy of all such correspondence with your response.

**RESPONSE NO. 3:** Windstream objects to this request which is overly broad and seeks communications between the parties with respect to settlement which are not properly discoverable or admissible in this proceeding. Additionally, any such communication between Windstream and ALEC is already in ALEC's possession and, therefore, not subject to discovery.

4. In reference to numerical paragraph 49 of Windstream's Answer, please state each and every factual basis denial of the assertion that the parties will assume that traffic is 95% local.

**RESPONSE NO. 4:** Windstream refers ALEC to Paragraphs 3 and 26 through 34 of Windstream's Motion to Dismiss and the parties' Interconnection Agreement (for example, Appendix A and Section 4.3.5).

5. In reference to numerical paragraph 51 of Windstream's Answer, please state each and every factual basis for your denial of the assertions referenced therein. Further, please provide all evidence, documentary or otherwise, supporting your assertion that you have compensated ALEC per the parties' Interconnection Agreement.

**RESPONSE NO. 5:** Windstream refers ALEC to Windstream's Motion to Dismiss (including the paragraphs addressing that periods prior to November 2002 were compensated) and the parties' Interconnection Agreement (including the sections setting forth that local and ISP-bound traffic are exchanged on a bill and keep basis).

6. In reference to numerical paragraph 53 of Windstream's Answer, please state each and every factual basis for your denial of the allegations contained in paragraphs 20, 21, 22, 23, 25, and 26 of the Complaint.

**RESPONSE NO. 6:** Windstream refers ALEC to Windstream's Motion to Dismiss and other pleadings filed in this proceeding, the FCC's *ISP Remand Order* (particularly Paragraphs 78 and 81 which produce the result that ISP compensation under the interconnection agreement adopted by ALEC would be \$0 or subject to bill and keep), and the parties' Interconnection Agreement (particularly sections of the agreement setting forth that local and ISP-bound traffic are to be exchanged on a bill and keep basis).

7. In reference to numerical paragraph 61 of Windstream's Answer, please state each and every factual basis for your denial of the allegations contained in paragraph 42 of the Complaint

**RESPONSE NO. 7:** Windstream states that it does not operate and never "operated as" Alltel Florida, Inc. or Alltel Communications, Inc. Further, to Windstream's knowledge, Alltel Florida, Inc. was not a party to the Joint Stipulation cited by ALEC, nor has Alltel Florida, Inc. or Alltel Communications, Inc. agreed that the FCC's *ISP Remand Order* is final, binding, and nonappealable which is the standard set forth in the Interconnection Agreement which ALEC adopted.



8. In reference to numerical paragraph 63 of Windstream's Answer, please state each and every factual basis for your denial of "inconsistency between the positions of the separate Alltel affiliates listed in ALEC's Complaint." Please describe and explain in detail the positions taken by the affiliates listed in the Complaint as referenced.

**RESPONSE NO. 8:** Windstream objects to this request as it is unlikely to lead to properly discoverable material. The documents applicable to ALEC's request are a matter of public record and already available to and/or in the possession of ALEC and, therefore, not subject to discovery. Without waiving such objection, Windstream refers ALEC to Paragraph 22 of Windstream's Motion to Dismiss and Response No. 7 above.

9. In reference to numerical paragraph 64 of Windstream's Answer, please state each and every factual basis for your denial of the assertion in Paragraph 45 of the Complaint, and further provide a detailed explanation as to your allegation that "it is an incomplete summary of the traffic involved."

**RESPONSE NO. 9:** Without waiving such objection, Windstream states that ALEC's indication that the parties' Interconnection Agreement merely "allocates between local and non-local traffic" is incorrect as it ignores other types of traffic provided for in the Interconnection Agreement. Windstream refers ALEC to the parties' Interconnection Agreement (including Article V Sections 1.31, 3.1, 3.2.2, 3.2.3, and 3.2.4 all of which reference more than four distinct types of traffic including local, ISP-bound, toll, and wireless).

10. In reference to numerical paragraph 65 of Windstream's Answer, please state each and every factual basis for your denial of *every* allegation contained in Paragraphs 46, 47, and 48 of the Complaint.

**RESPONSE NO. 10:** Windstream states that ALEC's assertions and conclusions are false and refers ALEC to Windstream's Motion to Dismiss and the parties' Interconnection Agreement (including sections addressing the parties' use of factors and updated factors and establishing the exchange of local and ISP-bound traffic on a bill and keep basis).

11. In reference to numerical paragraph 66 of Windstream's Answer:

- (a) Have you provided ALEC with semi-annual factor updates? If so, please include all documents and other evidence supporting this answer.
- (b) Please state each and every factual basis for your assertion that the allegations of Paragraph 49 of the Complaint are misleading.

**RESPONSE NO. 11:** Windstream objects that (a) is an improper request for admission. Without waiving such objection, Windstream states that this proceeding concerns traffic terminated by Windstream to ALEC in which case ALEC is responsible for updating any factors. Windstream states further that it has not provided ALEC with factors since any traffic terminated by ALEC to Windstream is billed on actuals and not on factors.

12. In reference to numerical paragraph 67 of Windstream's Answer, please state each and every factual basis for your denial of the allegations in Paragraph 50 of the Complaint.

**RESPONSE NO. 12:** Windstream states that the parties' Interconnection Agreement was negotiated between Windstream's predecessor and a third party and that ALEC was not a party to those negotiations. ALEC subsequently adopted the agreement and cannot speak to the original contracting parties' discussions or prior negotiations. What is evident with respect to ALEC is the language in the agreement itself which ALEC adopted and which clearly sets forth that compensation for local and ISP-bound traffic is bill and keep.

13. Do you reduce toll fees or extended service fees to your customers for calls made by your customers to the Internet? If so, for what percentage of your customers do you do this? Also, please provide the number of such customers and their location broken down by state.

**RESPONSE NO. 13:** Windstream objects to this request as an improper request for admission. Without waiving such objection and to the extent that Windstream understands the question, Windstream states that it does not reduce toll fees or extended service fees to its customers for the purpose of making dial-up ISP-bound calls.

14. How many CLECs are you compensating for ISP traffic or at the FCC ISP traffic rate? Please provide a list of all CLECs by name and location that you are compensating for such traffic within Kentucky and your operating footprint.

**RESPONSE NO. 14:** Windstream objects to this request as it is overly broad and vague and seeks information that is not properly discoverable. Without waiving such objection, Windstream states that its agreements with CLECs are publicly available and on file with the Kentucky Public Service Commission.

15. Did you provide an offer to ALEC, or propose an amendment to the ICA, to exchange traffic as dictated by FCC (all or split rate) as specified by the FCC in paragraph 89 of the *ISP Remand Order*? Please provide copies of any and all communications or documents sent by you in this regard.

**RESPONSE NO. 15:** Windstream objects that this request is an improper request for admission. Without waiving such objection and to the extent it understands the question, Windstream states that it is unaware of any such offer. Additionally, any communication between Windstream and ALEC would be already in ALEC's possession and, therefore, not subject to discovery.



16. Are you utilizing the FCC internet reciprocal compensation scheme as specified by the ISP Remand Order for any other providers in KY and in other parts of U.S.? If so, please provide a list of all providers and the states in which those providers operate pursuant to an ICA with you..

**RESPONSE NO. 16:** Windstream states that this request is confusing since the *ISP Remand Order* set forth multiple compensation mechanisms for ISP-bound traffic, which mechanisms varied depending on factors such as whether a carrier was already being compensated for ISP-bound traffic prior to 2001. Any compensation arrangements between Windstream and other providers in Kentucky with respect to ISP compensation are set forth in the parties' applicable interconnection agreements which are publicly available and on file with the Kentucky Public Service Commission. As Windstream is not licensed to operate outside of Kentucky, the portion of the request referencing other parts of the United States is inapplicable.

17. Please provide a list of carriers to which you pay access charges and/or reciprocal compensation charges for which you apply the “ISP traffic setoff” as described by Stephen Weeks. For clarity, this “ISP traffic setoff” is a calculation whereby the ISP traffic is removed from the total compensable toll traffic prior to the 5% toll calculation.

**RESPONSE NO. 17:** Windstream objects to this request which is vague and confusing. Without waiving such objection, Windstream states that the term “ISP traffic setoff” is a term developed by ALEC, not Stephen Weeks. To the extent that Windstream understands the question, Windstream states that other carriers in Kentucky are billing for intraLATA toll based on actuals such that the use of factors is, therefore, unnecessary. Windstream states further that any calculations used by it to determine compensation due to ALEC are supported by the parties’ Interconnection Agreement.

18. Please provide a complete and detailed description of the data contained in invoices sent by other carriers to you sufficient for you to make timely payments on the invoices.

**RESPONSE NO. 18:** Applicable data may include identification of the billing carrier, usage dates, remittance contact information, adequate traffic designations, and accurate rates and traffic volumes necessary to validate invoiced charges. In the case that the data could not be validated, then call detail records and other supporting documentation would be required to support the invoiced charges.

19. Please provide copies of all evidence you intend to introduce at the formal hearing in this matter to support the allegations set forth in your Motion to Dismiss and Answer.

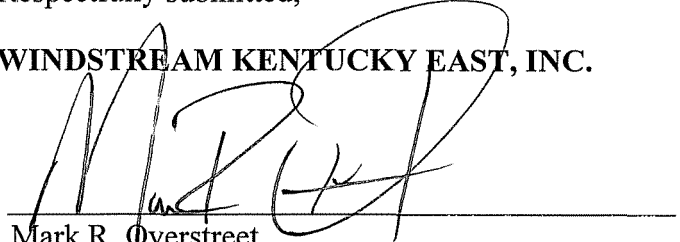
**RESPONSE NO. 19:** That decision has not been made. Windstream refers ALEC to all Windstream pleadings filed in this proceeding and the parties' Interconnection Agreement.

20. Please provide copies of all correspondence, whether written, electronic or otherwise, between you, your representatives/agents and any agent or person affiliated with Complainants..

**RESPONSE NO. 20:** Windstream objects to this request as it is overly broad and seeks improperly discoverable material. Any communication between Windstream and ALEC would be already in ALEC's possession and, therefore, not subject to discovery.

Respectfully submitted,

**WINDSTREAM KENTUCKY EAST, INC.**

A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', is written over a horizontal line. The signature is stylized and somewhat cursive.

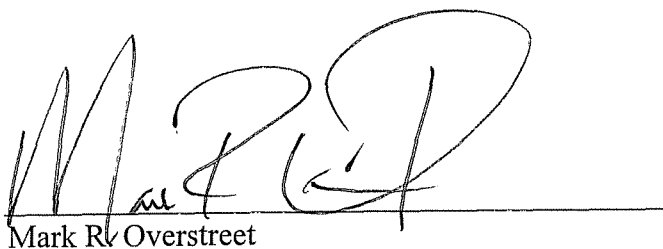
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by United States First Class Mail, postage prepaid, on this 12<sup>th</sup> day of January, 2006 upon:

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