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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MOUNTAIN RURAL TELEPHONE)	
COOPERATIVE CORPORATION)	
)	
COMPLAINANT)	
)	
V.)	CASE NO. 2006-00198
)	
KENTUCKY ALLTEL, INC.)	
)	
RESPONDENT)	

**WINDSTREAM KENTUCKY EAST, INC.'S MOTION TO COMPEL RESPONSES TO
THE FIRST SET OF DATA REQUESTS TO MOUNTAIN RURAL TELEPHONE
COOPERATIVE CORPORATION AND MOTION TO HOLD PROCEDURAL
SCHEDULE IN ABEYANCE**

Comes now Windstream Kentucky East, Inc. f/k/a Kentucky Alltel, Inc. ("Windstream"), by counsel and, in support of this Motion to Compel Responses to the First Set of Data Requests to Mountain Rural Telephone Cooperative Corporation ("Mountain Rural"), states as follows:

1. On September 14, 2006, Windstream served on Mountain Rural its First Set of Data Requests ("First Data Requests") seeking various information pertaining to the disputes at issue in this proceeding.
2. On September 27, 2006, Mountain Rural filed its responses to the First Data Requests and provided only limited information pertaining essentially to its access line counts for 2004, 2005, and 2006. Mountain Rural stated that this is a "simple collections case" and objected to and did not respond to a majority of the First Data Requests.
3. Windstream's First Data Requests are not harassing and seek specific information pertinent to the issues at the heart of this proceeding. This proceeding is not simply a "collections

case" as asserted by Mountain Rural. As Windstream explained in its Motion to Dismiss, For Discovery, and for Injunctive Relief and Answer ("Answer"), non-traffic sensitive rate elements include carrier common line ("CCL") charges that are determined on a per-line basis in Kentucky. Mountain Rural appears to calculate a CCL revenue requirement by multiplying its rate per line by the number of lines in service and states that it then divides the CCL revenue requirement by the number of minutes for the relevant time period to arrive at a resulting rate which it assesses on a per-minute-of-use basis. These inputs to the calculation change over time. Without sufficient responses to Windstream's data requests, it cannot be determined, for example, which minutes for which types of traffic Mountain Rural includes in its calculations (*i.e.*, and therefore, whether it is entitled to bill Windstream for access on certain alternative calling traffic minutes) and whether Mountain Rural altered the way it calculates a CCL rate since the time that Mountain Rural began recording its traffic. Additionally, Mountain Rural has requested that this Commission issue a declaratory ruling that Windstream pay Mountain Rural's tariffed switched access rates prospectively. Therefore, Mountain Rural has placed at issue the reasonableness of its tariffed rates, the Filed Rate Doctrine has no applicability, and the Commission and Windstream are entitled to review whether those rates which may be imposed prospectively are still reasonable.

4. Based on the foregoing concerns and in an effort to validate the relief requested by Mountain Rural in its Complaint and Windstream's defenses thereto, Windstream propounded the First Data Requests to Mountain Rural. Mountain Rural refused to answer most of the questions and provided only a summary of limited access line information.

5. The following include Windstream's First Data Requests and explanations of the reasons why the particular information is being requested:

- **Request No. 1:** Provide full 210 character usage EMI records for one current month's time period and include, at a minimum, the following fields with respect to each record:
 - a. All carrier usage and not just that usage that is specific to Windstream;
 - b. "From" telephone number (Positions 15 through 24 of an 11-01-01 EMI Record);
 - c. "To" telephone number (Positions 30 through 39 of an 11-01-01 EMI Record);
 - d. Date of call (Positions 7 through 12 of an 11-01-01 EMI Record);
 - e. Minutes (Positions 61 through 67 of an 11-01-01 EMI Record);
 - f. Carrier Identification Code ("CIC") (Positions 46 through 49 of an 11-01-01 EMI Record);
 - g. "From" Local Routing Number ("LRN") (Positions 157 through 166 of an 11-01-01 EMI Record);
 - h. "To" LRN (Positions 172 through 181 of an 11-01-01 EMI Record);
 - i. Method of Recording Field (Positions 68 and 69 of an 11-01-01 EMI Record); and
 - j. Connect Time (Positions 55 through 60 of an 11-01-01 EMI Record).

Response to Objection:

Request No. 1 is not overly broad or unduly burdensome and is critical to the issues in this proceeding. Windstream requested that Mountain Rural provide only one current month's set of records and also cited the particular position of the records to which each section is referring (e.g., Positions 15 through 24 for "from" telephone number). Attached as Exhibit A for demonstration purposes is a sample EMI record showing the various positions. In its Formal Complaint ("Complaint"), Mountain Rural requested relief in the form of a declaration that Windstream pay Mountain Rural for switched access charges. As Windstream explained in its Answer, application of these types of charges cannot be gleaned merely from a tariff but involve review of Mountain Rural's rate calculation and the inclusion/exclusion of certain types of minutes. (See, e.g., Paragraph 4 of the Answer.) Accordingly, Request No. 1 is seeking records - which are commonly exchanged between carriers in the industry in the event of such billing disputes - to validate the actual usage for all traffic (including

Windstream's traffic) which Mountain Rural is recording and using in the calculation of its non-traffic sensitive rates. Request No. 1 seeks the EMI records (or traffic recordings by Mountain Rural) to validate the usage on which Mountain Rural bases its dispute against Windstream in the Complaint.

Mountain Rural also objected to Request No. 1 on the "grounds that the data request seeks confidential and proprietary information." Section 7 of the Commission's rules provides as follows in 5(a): "No party to any proceeding before the commission shall fail to respond to discovery by the commission or its staff or any other party to the proceeding on grounds of confidentiality. If any party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, it shall follow the procedures for petitioning for confidentiality contained in this administrative regulation...."

Therefore, confidentiality is not a valid basis for objecting to Request No. 1.

Request No. 2: With respect to usage records prior to June 2004, identify where and how you obtained all minutes for such usage and provide all supporting documentation showing, at a minimum, the source of the data, the time periods covered, and the type of minutes included (*e.g.*, area calling service minutes, toll minutes, *etc.*).

Response to Objection:

Request No. 2 is not overly broad or unduly burdensome and is important to the issues in this proceeding for the same reasons set forth above under Request No. 1. Specifically, Request No. 2 seeks the sources of the usage relied upon by Mountain Rural in its calculations for periods prior to 2004 to compare the

usage after 2004 to the prior period of time during which the parties considered only the assessment of intraLATA toll minutes in the calculation of carrier common line charges. (See, *e.g.*, Paragraphs 4 and 5 of the Answer.)

- **Request No. 3:** Provide the detail and all supporting documentation of your billing and collection with respect to carrier common line ("CCL") charges by month from 2000 to 2005. With respect to your billing detail, provide the following by carrier:
 - a. Rate charged;
 - b. Billable minutes-of-use; andRevenue collected.

Response to Objection:

Request No. 3 is not overly broad or unduly burdensome and is important to the issues in this proceeding for the same reasons set forth above. Specifically, Request No. 3 seeks billing information verifying that Mountain Rural is not over collecting its revenue requirement from multiple carriers. Information for years prior to 2004 is important to compare on which types of traffic Mountain Rural assessed the applicable charges prior to the time that Mountain Rural initiated its own traffic recordings to the types of traffic on which Mountain Rural is now seeking to assess the applicable charges.

Request No. 4: Provide the access line counts you used to calculate your CCL revenue requirement for each year from 2000 to 2005.

Response to Objection:

Request No. 4 is not overly broad or unduly burdensome and is important to the issues in this proceeding for the same reasons set forth above. Specifically, Request No. 4 relates to Request No. 3 and pertains to calculation of Mountain

Rural's applicable revenue requirement which is developed using Mountain Rural's rate per access line and the information sought in Request No. 4. Although Mountain Rural did provide limited information in response to Request No. 4 (which is the subject of Windstream's Second Set of Data Requests), Mountain Rural failed to provide information requested for years 2000 through 2003. Information for these time periods is critical to compare how the rate was developed prior to the time that Mountain Rural initiated its CAB recordings. With respect to all years, Mountain Rural also failed to provide the supporting documentation verifying the information summarized in its Attachment regarding Request No. 4.

Request No. 5: Explain in detail and provide all supporting documents related to how you calculated your CCL per minute rate for each year from 2000 to 2005. Identify the type of minutes you included in your per minute CCL calculation and the sources thereof (*e.g.*, a BellSouth report, your CAB report, *etc.*), specifically whether the minutes were ACS, ITORP, or some other kind of minutes, and provide all supporting documents.

Response to Objection:

The same explanation above for Request No. 4 applies to Request No. 5.

- **Request No. 6:** Explain in detail and provide all supporting documents related to the process you use to calculate your annual CCL true-up.
 - a. If you perform the calculation monthly, provide supporting documents for twelve (12) months; or
 - b. If you perform the calculation annually, provide supporting documents for three (3) years.

Response to Objection:

The same explanation above for Request No. 4 applies to Request No. 6.

- **Request No. 7:** Provide all data you supplied to the Kentucky Public Service Commission ("Commission") or otherwise relied upon to satisfy the Commission's 1990 Supplement to the Joint Motion of a Coalition of Local Exchange Companies and Interchange Carriers in Administrative Case 323 to establish your per line CCL rate. Indicate which of those data have changed since 1990 and identify what the current values of those data are.

Response to Objection:

Request No. 7 is not overly broad or unduly burdensome and requests very specific information related to the establishment of and changes to Mountain Rural's per line CCL rate. Mountain Rural requested relief in this proceeding in the form of a declaration that Windstream is liable to Mountain Rural for "all past and future switched access service charges (including NTSR charges) incurred pursuant to Mountain Telephone's tariff on file with the Commission." (See 1. of Mountain Rural's request for relief in the Complaint.) Although Mountain Rural objects to "rate case" requests in this proceeding, the objection is without merit. Windstream has not requested that Mountain Rural's tariffed rates (to the extent that any are applicable to the traffic in this proceeding) be amended retroactively. To the contrary, as Mountain Rural itself has requested that the Commission issue declaratory relief in the form of application of Mountain Rural's tariffed rate prospectively, Windstream is entitled to question whether that tariffed rate (which was established fifteen years ago) is still reasonable and justifiable and should continue to be charged. The Commission also should have that information available to it prior to issuing any such declaratory relief regarding Mountain Rural's rates. Thus, Mountain Rural has made the reasonableness of its tariffed rates an issue in this proceeding, and

Windstream and this Commission should be entitled to review the reasonableness of the rates. To the extent that Mountain Rural objects to that analysis being conducted in the context of this proceeding, the matter may be considered in the context of a separate Mountain Rural rate case proceeding provided that no declaratory relief in this case should be granted until such rate analysis is complete.

- **Request No. 8:** Provide all data indicated on Attachment A, including the following for years ending 2000, 2001, 2002, 2003, 2004, and 2005:
 - a. 32.5000 Basic Area Revenue;
 - b. 32.5081 End User Revenue;
 - c. 32.5082 Switched Access Revenue - intrastate;
 - d. 32.5082 Switched Access Revenue - interstate;
 - e. 32.5083 Special Access Revenue - intrastate;
 - f. 32.5083 Special Access Revenue - interstate;
 - g. 32.5100 Long Distance Message Revenue - intrastate;
 - h. 32.5100 Long Distance Message Revenue - interstate;
 - i. 32.5200 Miscellaneous Revenue - intrastate;
 - j. 32.5200 Miscellaneous Revenue - interstate;
 - k. 32.5230 Directory Revenue;
 - l. 32.5300 Uncollectible Revenue - intrastate;
 - m. 32.5300 Uncollectible Revenue - interstate;
 - n. Plant specific Operations Expense;
 - o. Plant non-specific Operations Expense;
 - p. Customer Operations Expense;
 - q. Corporate Operations Expense;
 - r. Depreciation & Amortization;
 - s. Other Operating Income/Expense;
 - t. 36.631 Expense Adjustment;
 - u. 32.2001 Telecom Plant in Service;
 - v. 32.2002 Property Held for Future Use;
 - w. 32.2003 Telecom Plant Under Construction;
 - x. 32.2005 Telecommunications Plant Adjustment;
 - y. 32.2001 TPIS Additions (per general ledger);
 - z. 32.2001 TPIS Retirements (per general ledger);
 - aa. 32.2001 Broadband Specific Property Additions;
 - bb. 32.1120 Cash & Equivalents;
 - cc. 32.1170 Account Receivables;

- dd. 32.1406 Nonregulated Investments;
- ee. Message toll - intrastate;
- ff. Message toll - interstate;
- gg. Private line - intrastate;
- hh. Private line - interstate; and
- ii. Exchange.

Response to Objection:

Request No. 8 is not overly broad or unduly burdensome, and Windstream provided a spreadsheet for Mountain Rural's convenience in filling in the requested account information which should be readily available from Mountain Rural's accounting records. Additionally, Request No. 8 is not harassing and is entirely relevant due to the prospective declaratory relief requested by Mountain Rural in its Complaint as set forth above in the explanation for Request No. 7.

- **Request No. 9:** Provide a copy of all agreements, releases, exhibits, memoranda, records, or other documents between you and BellSouth or prepared internally by you that relate to the dispute referenced in Paragraphs 14 and 15 of your Formal Complaint received by the Commission on May 12, 2006 and also identify all payments or other compensation received by you from BellSouth related to such agreements or documents.

Response to Objection:

Request No. 9 is relevant to the issues in this proceeding. (See Paragraphs 14 and 15 of Mountain Rural's Complaint.) Mountain Rural's objection to the request on the basis that the request seeks confidential information is without merit pursuant to the Commission's rules as explained above in Request No. 1.

6. For the reasons explained herein, Windstream's First Data Requests are essential to Windstream and the Commission validating the relief requested in the Complaint, to

Windstream defending the Complaint, and to the parties continuing to try to reach settlement of these matters. Accordingly, Mountain Rural should be compelled to provide sufficient responses to the First Data Requests prior to the parties proceeding in this matter. Until that time, Windstream requests that the procedural schedule set forth in Appendix A of the Commission's September 1, 2006 Order be held in abeyance (including Direct Testimony on November 2, 2006).

WHEREFORE, Windstream requests that the Commission issue an order requiring Mountain Rural to provide sufficient responses to Windstream's First Data Requests; allowing opportunity for Windstream to review Mountain Rural's responses and propound supplemental questions as necessary; holding the current procedural schedule in abeyance pending resolution of discovery including suspending the November 2, 2006 Direct Testimony filing date; and granting all other necessary and proper relief.

Dated this 6th day of October, 2006.

Respectfully submitted,

Windstream/Kentucky East, Inc.

By: 

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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 6th day of October, 2006 upon:

John E. Selent
Holly C. Wallace
Edward T. Depp
Dinsmore & Shohl, LLP
1400 PNC Plaza
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e-mail: selent@dinslaw.com

A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', written over a horizontal line. The signature is stylized with large, rounded letters and a prominent circular flourish on the right side.

Mark R. Overstreet

KE242:00KE5:14808:1:FRANKFORT

EXHIBIT A

CARRIER ACCESS USAGE
NORTH AMERICAN ORIGINATED AND TERMINATED
MESSAGE TELEPHONE SERVICE

11 Category			01 Group			01 Record Type									
Pos	Field Description		Char	Pos	Field Description		Char	Pos	Field Description		Char				
1	Category	Record Identification	X	68	Method Of Recording		9	135	Reserved for Local Company Use (continued)		9				
2	Group			69	Return Code		X	136	Reserved		9				
3	Record Type			70	From RAO		X	137	NECA Company Code		X				
4	Year	Date Of Record	9	71	Local Company Information	Cust. Bill Format	9	138	BSA / Feature Group D Call Event Status		9				
5	Month			72	Conference Leg Number		9	139	Reserved		9				
6	Day			73	Type of Access Service		9	140	BSA / Feature Group ID Code		X				
7	From Number Length		9	74	Reserved		9	141	Library Code		X				
8	NPA	From Number	9	75	Method Of Signaling		9	142	Settlement Code		X				
9	NXX			76	1	Indicators	9	143	Conversation Time		9				
10	Line Number			77	2			144	Min			9			
11	Overflow Digits			78	3			145	Sec		9				
12	To Number Length	79	4	146	1/10			9							
13	NPA	To Number	9	80	Operator Unit				9	147	Originating LRN		9		
14	NXX			81	5			Recording Point Identification (AMA)		Serial Number	148	Originating OCN		X	
15	Line Number			82	6						149	Originating LRN Source Indicator		9	
16	Originating / Terminating ID		9	83	CABS Billing RAO		X	150	Terminating LRN		9				
17	BSA / Feature Group D Trunk Group Number		9	84	Indicators		9	151	Terminating GCN		X				
18	Reserved		9	85	NPA		9	152	Terminating LRN Source Indicator		9				
19	Carrier Identification Code		9	86	NXX			BSA, Feature Group A Access Number	153	Send To CCN		X			
20	Carrier Access Method		9	87	Line Number				Reserved	154	Reserved		9		
21	Routing Method		9	88	Reserved for Local Company Use			9		155					
22	Dialing Method		9	89				156							
23	ANI		9	90				157							
24	NCTA		9	91				158							
25	Hr	Connect Time	9	92				159							
26	Min			93				160							
27	Sec			94				161							
28	Min	Billable Or Reported Time	9	95				162							
29	Sec			96				163							
30	1/10			97				164							

Field Indicators:
 1 - Number
 2 - Time
 3 - Date
 4 - Time
 5 - Time
 6 - Time
 7 - Time
 8 - Time
 9 - Time