

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

PUBLIC SERVICE
COMMISSION

Brandenburg Telephone Company;)
Duo County Telephone Cooperative Corporation, Inc.;)
Highland Telephone Cooperative, Inc.;)
Mountain Rural Telephone Cooperative Corporation, Inc.;)
North Central Telephone Cooperative Corporation;)
South Central Rural Telephone Cooperative Corporation, Inc.;)
And West Kentucky Rural Telephone Cooperative Corporation, Inc.)

Complainants

Case No.

2007-0004

v.

Windstream Kentucky East, Inc.; and)
Windstream Kentucky West, Inc.)

Defendants

SPRINT NEXTEL'S RESPONSE
TO WINDSTREAM'S MOTION FOR RECONSIDERATION

Sprint Communications Company L.P.; Sprint Spectrum, L.P. and SprintCom, Inc. d/b/a Sprint PCS; Nextel West Corp., Inc.; and NPCR, Inc., d/b/a Nextel Partners (collectively "Sprint Nextel"), by counsel, object to Windstream's Motion for Reconsideration.

In the "Application of Atmos Energy Corporation To Extend Its Demand-side Management Program and Cost Recovery Mechanism " Case No. 2008-00499, Order dated October 12, 2009, the Commission said:

KRS 278.400 provides that "[u]pon . . . rehearing any party may offer additional evidence that could not with reasonable

diligence have been offered on the former hearing.” The statute is intended to provide closure to Commission proceedings by limiting rehearing to new evidence not readily discoverable at the time of the original hearing. The Commission has carefully reviewed the AG’s motion and Atmos’s response thereto and finds that the AG offers no arguments or evidence not previously considered by this Commission. Accordingly, pursuant to KRS 278.400, rehearing is denied.

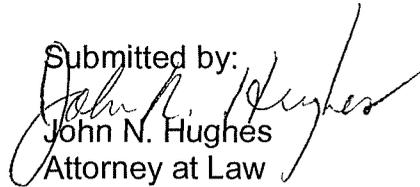
Similarly, in its Motion Windstream makes no offer of newly discovered evidence required by the statute. Rather, it merely supplements the arguments previously made. Now that the Commission has ruled against Windstream’s positions, Windstream wants to explain in greater detail why the Commission should adopt its positions. Its effort should be rejected. - the rehearing statute is not for the purpose of re-argument of legal issues and the Commission has correctly applied the law to the facts as presented in the case. Windstream has not provided any authority to create an exception to the Commission’s holding that negotiation of transit traffic services is required by the Telecom Act. While a tariff may be an expedient option for Windstream, the Commission’s interpretation of the Act correctly precludes that option.

As for the issue of retroactive rate denial, Windstream fails to address the key issue of the Commission’s conclusion. Windstream assumes that the tariff was valid from the time it was filed. The Commission found that the tariff applied to improper services and consequently was unenforceable from the outset. Because the tariff attempted to include services that could not be legally included in a tariff, it cannot be the basis for recovery of any rate. No rate was ever valid, so there is no revenue to recover, either retroactively or prospectively. To accept

Windstream's argument is to acknowledge that a tariff is a proper platform for these charges, which it most certainly is not.

For these reasons, the Commission should deny the Motion for Reconsideration.

Submitted by:

A handwritten signature in black ink, appearing to read "John N. Hughes". The signature is written in a cursive style and is positioned to the right of the typed name.

John N. Hughes

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CERTIFICATE OF SERVICE

I certify that Sprint Nextel's Response has been served this day by first class mail and electronic mail to the following parties:

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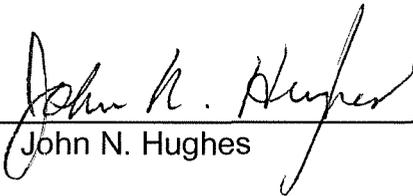
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This 17th day of September, 2010.



John N. Hughes