

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

v.

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

Defendants

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PUBLIC SERVICE COMMISSION

**Case No.
2007-00004**

Motions for Dismissal and Temporary Suspension and Answer

Pursuant to the Commission's Order to Satisfy or Answer dated January 9, 2007 and the Commission's Order Granting Extension of Time dated January 23, 2007, Windstream Kentucky East, Inc. ("Windstream East") and Windstream Kentucky West, Inc. ("Windstream West") submit as follows:

Motion for Dismissal

1. At Paragraph 11 of their Complaint, 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. (collectively, "Rural ILECs" or "Non-negotiating Parties") state, "Upon information and belief...Windstream West issued and filed revisions to its general customer services tariff in a form that is substantially similar to Exhibit 1, hereto."

2. Windstream West did not file such a tariff revision.

3. Windstream West requests that the Commission dismiss it from these proceedings.

Motion for Temporary Suspension

4. Windstream East filed a revision to its General Customer Services Tariff setting forth the terms, conditions, and rates for provision of local traffic transit service (*i.e.*, an arrangement with respect to local service) applicable to those providers who have not negotiated such terms with Windstream East (including the Rural ILECs).

5. The Rural ILECs filed a complaint regarding the tariff revisions on January 2, 2007 after the Commission had approved the tariff revisions on December 16, 2006.

A. Limited Application and Purpose of Tariff

6. Windstream East's tariff revision applies only to those telecommunications service providers who have not negotiated an agreement with Windstream East.

7. As noted explicitly in Windstream East's revised tariff, if a provider has an agreement with Windstream East that addresses transiting of local traffic, then the parties' agreement applies in lieu of Windstream East's local transit tariff. Charges in Windstream East's local transit tariff do not apply to any provider who continues to operate under an expired agreement and is negotiating or arbitrating with Windstream East.

8. The Rural ILECs have not negotiated and currently are not negotiating agreements with Windstream East providing for compensation for local transit service. Certain of the Rural ILECs deliver local transit traffic over Windstream East's facilities.

9. Several of the Rural ILECs maintain CLEC affiliates that compete in Windstream East's operating area. The Rural ILECs with CLEC affiliates include Brandenburg Telephone Company ("Brandenburg"), North Central Telephone Cooperative Corporation ("North Central"), and South Central Rural Telephone Cooperative Corporation, Inc. ("South Central"), and Duo-County Telephone Cooperative ("Duo"). The CLECs (particularly Brandenburg, North Central, and South Central CLEC affiliates) have interconnection agreements with Windstream East addressing the provision of and compensation for local transit traffic, although their Rural ILEC counterparts do not.

10. Currently, if a provider does not have an agreement with Windstream East providing for local transit service and that provider routes its affiliate's local traffic over its own facilities, the provider avoids compensating Windstream East for local transit traffic charges that are provided for in the affiliate's interconnection agreement.

11. Windstream East's local transit tariff helps ensure that its network may not be subject to potential arbitrage opportunities and that it is compensated for transiting local traffic for providers who do not have agreements with Windstream East.

B. Two Types of Transit Tariff Charges

12. Windstream East's local transit tariff provides for two charges. First, the transit tariff assesses a charge of \$0.0045 to providers inappropriately delivering local transit traffic to Windstream East's end offices which are not designed to perform tandem transit functions beyond Windstream East's network local boundaries. Second, the transit tariff assesses a charge of \$0.0030 for local transit traffic that is delivered to Windstream East's tandem by providers such as the Rural ILECs who do not have agreements with Windstream East.

13. Windstream East intends the \$0.0045 end office transit charge to apply to providers utilizing Windstream East's end offices as tandems. Windstream East's end offices are Class 5 facilities and not designed to provide tandem transit functionalities (which are associated with Class 4 facilities) beyond the network's local boundaries. Windstream East has to perform additional functions as a result of providers delivering local transit traffic to its end offices that are appropriately the responsibility of the provider delivering the traffic to Windstream East.

14. By way of example, North Central previously was misrouting local transit traffic to Windstream East's end offices. However, upon notice and requests from Windstream East, North Central worked with Windstream East's translations engineers to correct the routing of its local transit traffic in late 2006. Windstream East is not aware of any current end office routing concerns with North Central and is appreciative of North Central's corrective actions.

15. In the case of providers who misroute local transit traffic to Windstream East's end offices, corrective action may be accomplished relatively expeditiously. Such

providers may avail themselves of alternative arrangements including properly routing the local transit traffic through a tandem or establishing direct trunking with the terminating provider. To further Windstream East's efforts to correct the issue of providers misusing Windstream's East's end offices to tandem local transit traffic, Windstream East filed its transit tariff revision.

16. Windstream East filed the \$0.0030 tandem transit charge in order to compensate Windstream East for the service it provides to Non-negotiating Parties such as the Rural ILECs to transit local traffic that they deliver to Windstream East's tandems. Windstream East's actions to seek compensation for the service it provides in transiting local traffic for Non-negotiating Parties is analogous to the reasons why the Rural ILECs with access tandems (including Brandenburg, North Central, and South Central) maintain access tariffs setting forth their compensation with respect to access transit service they provide to interexchange carriers.

17. Windstream East has negotiated with other providers for the same local tandem transit service for which Windstream East is seeking to be compensated in its tariff revisions with respect to the Rural ILECs. The Rural ILECs should not be relieved of the obligation to compensate Windstream East for the same local transit service merely because they have not negotiated or have been unwilling to negotiate agreements with Windstream East regarding provision of this local tandem transit service.

C. Duty to Charge Approved Tariffed Rates

18. Windstream East has an obligation to charge its approved tariff rates.

19. Windstream East's local transit tariff revisions were approved and effective on December 16, 2007.

D. Preference for Negotiation

20. The crux of the Rural ILECs' Complaint filed on January 2, 2007 is that they believe (a) the local transit rates sought by Windstream East are more appropriately negotiated between providers and (b) the rates should be just and reasonable. While the notion that local tandem transit rates may not be tariffed is factually incorrect,¹ Windstream East agrees with both of the general premises set forth by the Rural ILECs.

21. Windstream East has a preference for negotiations and has made that fact clear to the Rural ILECs. However, Windstream East disagrees with the Rural ILECs' contention that negotiations take place at a point in the future at the discretion of the Rural ILECs and with the inference that, in the interim, Windstream East continue providing the tandem transit service to the Rural ILECs without compensation.

22. Windstream East agrees also that a provider's rates should be just and reasonable and believes that this obligation exists pursuant to general commercial laws prohibiting predatory pricing. Indeed, while parties may disagree as to whether cost support was required to be filed in support of this tariff or whether the Rural ILECs' implication that only a rate of \$0 is just and reasonable, Windstream East's cost support evidences that its approved transit rates are just and reasonable.

¹ For example, AT&T maintains tariffs for local tandem transit service in Alabama, South Carolina, and Tennessee.

E. Temporary Suspension of Tariffed Rates Pending Negotiations

23. In their Complaint, the Rural ILECs now express a desire to negotiate arrangements providing for provision of and compensation for local transit traffic services. Accordingly, Windstream East requests that the Commission enter an order allowing Windstream East to suspend temporarily implementation of its \$0.0030 tandem transit rate for ninety (90) days following date of such order so that the Rural ILECs and Windstream East may finalize agreements providing for such arrangements.

24. Within five (5) business days of such an order, Windstream East will serve bona fide requests for negotiations on each of the Rural ILECs and provide Windstream East's standard agreement for local transit traffic service. In conjunction with such negotiations, the Rural ILECs may request copies of Windstream East's cost support with respect to its tariffed local transit rates pursuant to a nondisclosure agreement.

25. Windstream East will provide the Commission status reports every thirty (30) days regarding the progress of the parties' negotiations. If the Rural ILECs are unwilling to negotiate with Windstream East or if the parties are unable to finalize an agreement in ninety (90) days, then Windstream East reserves all rights to pursue implementation of its approved local transit tariff rate to any provider that does not have an agreement with Windstream East.

26. Windstream East requests that the Commission enter an order allowing Windstream East to suspend temporarily implementation of its \$0.0045 end office transit rate for thirty (30) days following date of such order so that any affected Rural ILEC may coordinate with Windstream East regarding the rerouting of such traffic. Included in Windstream East's first status report will be identification of any provider that continues

to route local transit traffic to Windstream East's end office, and Windstream East reserves all rights to pursue implementation of its approved local transit tariff rate at that time.

27. Windstream East respectfully requests that the Commission issue such orders on an expedited basis to encourage the Rural ILECs to begin meaningful negotiations with Windstream East and immediately reroute local transit traffic that is currently being delivered to a Windstream East end office.

Answer to Complaint

28. Windstream East incorporates Paragraphs 1 through 27 above as if more fully set forth herein and denies all allegations in the Complaint unless specifically admitted herein.

29. Windstream East is without information to admit or deny the information in Paragraph 1 of the Complaint.

30. Windstream East admits the information in Paragraph 2(a) of the Complaint but denies the allegation in 2(b) that Windstream West is a foreign corporation.

31. Paragraph 3 of the Complaint sets forth the Rural ILECs' legal theory.

32. The statutes and regulations referenced in Paragraphs 4 through 10 of the Complaint are written authorities which speak for themselves.

33. With respect to Paragraph 11 of the Complaint, Windstream East's local transit tariff revision filed on December 1, 2006 is a written document which speaks for itself. Allegations with respect to Windstream West are denied.

34. With respect to Paragraphs 12 through 16 of the Complaint, Windstream East's local transit tariff revision is a written document which speaks for itself.

35. The statements in Paragraph 17 of the Complaint are the Rural ILECs' unsubstantiated legal theories.

36. Windstream East admits the assertion in Paragraph 18 of the Complaint that its local transit tariff revision applies to the Rural ILECs as they are Non-negotiating Parties. Windstream East denies that the Rural ILECs will suffer harm for compensating Windstream East for a service its is providing to the Rural ILECs.

37. The statements in Paragraph 19 of the Complaint are the Rural ILECs' unsubstantiated legal theories.

38. With respect to the relief requested in the Complaint, Windstream East affirms that the Commission approved the tariff revision on December 16, 2006. Windstream East agrees that it is appropriate for providers to negotiate transit traffic arrangements and that any rate should be just and reasonable. Windstream East denies all other allegations therein.

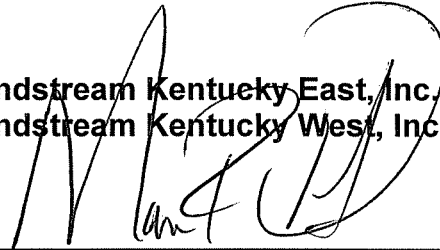
39. All allegations in the Complaint which reference a transit tariff filed by Windstream West are denied for the reason set forth in the Motion to Dismiss. Windstream East reserves the right to plead further in this matter as may be necessary.

WHEREFORE, Windstream West requests that the Commission issue an order dismissing it from these proceedings. Windstream East requests that the Commission issue an order, on an expedited basis, temporarily suspending implementation of Windstream East's local tandem transit tariff for ninety (90) as to the \$0.0030 tandem transit rate and thirty (30) days as to the \$0.0045 end office transit rate consistent with

the Motion for Temporary Suspension set forth herein and that the Commission grant all other necessary and equitable relief to which Windstream East may be entitled.

Respectfully submitted,

Windstream Kentucky East, Inc.
Windstream Kentucky West, Inc.

A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', is written over the printed text of the firm name.

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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 26th day of January, 2007 upon:

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