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February 23, 2007

+ ADMITTED IN INDIANA
++ ADMITTED IN COLORADO & PENNSYLVANIA
+++ ADMITTED IN CALIFORNIA

Ms. Beth A. O'Donnell
Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, KY 40602-0615

RECEIVED
FEB 23 2007
PUBLIC SERVICE
COMMISSION

Re: Case No. 2007-00069

Dear Ms. O'Donnell:

Enclosed find an original and ten copies of the following:

1. Motion for Emergency Relief by Communication Workers of America and International Brotherhood of Electrical Workers;
2. Petitioners' Memorandum in Support of Emergency Relief; and
3. Affidavit of Mike Garkovich.

Respectfully,

Don Meade

Don Meade

DM/sks
Enclosure

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

IN THE MATTER OF:

**COMMUNICATION WORKERS OF AMERICA)
AND INTERNATIONAL BROTHERHOOD OF)
ELECTRICAL WORKERS' REQUEST TO)
ENFORCE COMMISSION ORDER REGARDING)
WINDSTREAM CORPORATION'S)
COMPLIANCE WITH SPIN-OFF CONDITIONS)**

**CASE NO.
2007-00069**

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**PUBLIC SERVICE
COMMISSION**

**MOTION FOR
EMERGENCY RELIEF BY CWA/IBEW**

Come the Petitioners, Communication Workers of America and International Brotherhood of Electrical Workers, by counsel, and move the Commission to take all necessary steps to grant or secure appropriate injunctive relief to prevent the layoff of a group of Kentucky employees in violation of the Commission's Orders. This motion is made consistent with Kentucky Civil Rules of Procedure 65.03 and 65.04.

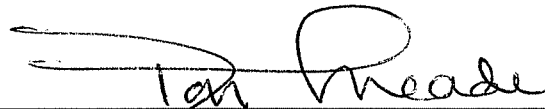
As grounds for the motion, the Petitioners assert that through the filing of its Petition of February 12, 2007, a prima facie case of the violation of this Commission's Final Order in Case No. 2005-00534 was demonstrated. Through its Order of February 15, 2007, the Commission docketed the matter with a new case number and required a response from Windstream within 20 days of date of service. This places the date of the required company response beyond the date of the layoffs.

Irreparable harm will arise once these two groups of employees are permanently separated from the company. As detailed in the Petitioner's Memorandum in Support, and the Affidavit of local CWA Union President Mike Garkovich, the layoff will set into motion employment related consequences that cannot be reversed or made whole by the simple reinstatement of employees.

For these reasons, the Commission must take action to enjoin the actions of Windstream and maintain the status quo of the parties pending final resolution of the dispute. Windstream has declined to postpone the layoffs, on a voluntary basis, in order to avoid this proceeding for injunctive relief, based upon communications between counsel for the parties.

Respectfully submitted,

PRIDDY, CUTLER, MILLER & MEADE PLLC

A handwritten signature in black ink, appearing to read "Don Meade", is written over a horizontal line.

Don Meade
800 Republic Bldg.
429 W. Muhammad Ali Blvd.
Louisville, KY 40202
(502) 587-8600
Counsel for CWA/IBEW

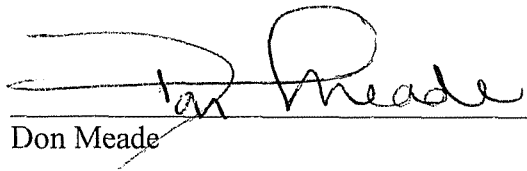
CERTIFICATE OF SERVICE

This is to certify that an original and ten copies of the foregoing were served and filed by hand delivery to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Blvd., Frankfort, KY 40601; furthermore it was served by mailing a true and correct copy of same, first class postage prepaid, to:

Jeffrey Gardner, CEO
Windstream
4001 Rodney Parham Road
Little Rock, AR 72212

Mark Overstreet
Stites & Harbison
P. O. Box 634
Frankfort, KY 40602-0634

Dennis G. Howard, II
Office of the Attorney General
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204



Don Meade

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

IN THE MATTER OF:

COMMUNICATION WORKERS OF AMERICA)	
AND INTERNATIONAL BROTHERHOOD OF)	CASE NO.
ELECTRICAL WORKERS' REQUEST TO)	2007-00069
ENFORCE COMMISSION ORDER REGARDING)	
WINDSTREAM CORPORATION'S)	
COMPLIANCE WITH SPIN-OFF CONDITIONS)	

PETITIONERS' MEMORANDUM
IN SUPPORT OF EMERGENCY RELIEF

The Petitioners, Communication Workers of America and International Brotherhood of Electrical Workers, file this memorandum in support of their motion for injunctive emergency relief against Windstream.

The Petitioners urge that this Commission has inherent authority to take all necessary steps to require compliance with its Orders. This proceeding is an outgrowth of prior proceedings which established all jurisdictional prerequisites for the Commission's authority over Windstream and its activities within the Commonwealth that are regulated. Windstream agreed with and formally accepted conditions in order to secure the Commission's approval of its transfer of control. The Commission has opened a new docket and further exercised its jurisdiction over Windstream for post-order proceedings. An emergency order to keep the parties in status quo, pending resolution of legal issues, is within the Commission's authority.

In the alternative, the Commission is empowered to seek enforcement of its Order through proceedings in the Franklin Circuit Court pursuant to KRS 278.410, which would include a request for injunctive relief. The Petitioners set forth below the necessary information to meet the

requirement of temporary injunctive relief whether the proceeding is conducted administratively or judicially.

I. THE PLAINTIFFS HAVE SATISFIED THE TRADITIONAL REQUISITES FOR ISSUANCE OF A RESTRAINING ORDER AND TEMPORARY INJUNCTION

CR 65.03(1) and CR 65.04(1) provide for the issuance of a restraining order and temporary injunction where it has been shown that the movant's rights are being or will be violated by an adverse party and that the movant will suffer irreparable injury, loss, or damage, pending a final judgment in the action. "[I]njunctive relief is basically addressed to the sound discretion of the trial court." *Maupin v. Stansbury*, 575 S.W.2d 695, 697-698 (Ky. App. 1978); *accord, Oscar Ewing, Inc. v. Melton*, 309 S.W.2d 760, 762 (Ky. 1958).

The party seeking a temporary injunction is not required "to show a substantial probability of success on those merits.... [I]f the complaint shows a probability of irreparable injury and the equities are in favor of issuance, it is sufficient if the complaint raises a serious question warranting a trial on the merits." *Maupin*, 575 S.W.2d at 699. "If a party requesting a temporary injunction has shown the probability of irreparable injury, presented a substantial question as to the merits and the equities are in favor of issuance, then a temporary injunction should be granted." *Cowan v. Wilkinson*, 828 S.W.2d 610, 613 (Ky. 1992). "The clearest example of irreparable injury is where it appears that the final judgment would be rendered completely meaningless should the probable harm alleged occur prior to trial." *Maupin*, 575 S.W.2d at 698 (1978). "In any temporary injunctive relief situation, the relative benefits and detriments should be weighed. Obviously, this entails a consideration of whether the public interest will be harmed by the issuance of the injunction or whether its effect will merely be to maintain the status quo." *Id.*

The cases quoted above indicate that a movant must satisfy four elements in order to obtain a restraining order or temporary injunction: (1) a probability that irreparable injury will result in the absence of the relief requested; (2) that the movant's claim raises serious or substantial questions as to the merits of the dispute; (3) that the balance of harms and equities favors granting the relief; and (4) that granting the relief preserves the status quo or (5) will not otherwise harm the public interest. JCTA has satisfied all five criteria.

1. Irreparable injury. Irreparable injury is demonstrated through the Affidavit of CWA Local President Garkovich. The scenario faced by the CWA is that a large majority of the 26 affected employees have elected retirement in lieu of layoff.¹ This forced election has broad employment consequences which render impossible the restoration of the employment status by a later order of reinstatement and a make whole remedy, to which the Petitioners would be entitled upon finding a breach of the Commission's Order.

On the surface, it might appear that a layoff of employees can be simply remedied by reinstatement and payment of backpay. These employees exist in a mature and sophisticated employment environment that has been governed by the negotiated terms of a Collective Bargaining Agreement. The many job related benefits, which are attendant upon employment, change irrevocably upon retirement. As outlined by President Garkovich, the forced retirements press these employees into decisions that should not prematurely be made. These include the roll-out of 401k proceeds and reinvestment with other vendors, incurring necessary fees that diminish the value of the accounts. It is anticipated that some employees may invade their 401k plans, at a tax penalty, in order to underwrite the financial transition that comes with loss of significant employment.

¹The IBEW will lose 13 members, one of whom is retirement eligible.

Retiring employees have elected to receive their retirements in lump sum payments. Some of these employees are age eligible to immediately begin drawing benefits, thus impairing the cash value of their retirement funds. Each employee will be making investment decisions with independent brokers, incurring fees and charges. All of this cannot simply be undone in order to restore retired employees to active employment and pre-retirement status.

Retirees are not simply placed on a COBRA election which permits them to continue their regular health care benefits. Retiree health care benefits are an entirely separate matter, carrying substantially increased premiums. Retiring employees will make elections of medical care benefits based on their ability to afford them, predictably resulting in decisions which will leave them less insured and more vulnerable than if they continued under the health care plans that are less expensive and more comprehensive.

All employees have company paid life insurance which will terminate upon their separation. An employee that has no other life insurance benefits is vulnerable. Once an employee must secure new life insurance benefits, he suffers financial losses. It is unknown whether employees will be fully eligible for the same life insurance benefits if restored to employment.

Other employees that carry the company's optional life insurance will be forced to decide whether to continue such benefits. If permitted to lapse, it is uncertain that these coverages could simply be restored based upon re-employment. If employees elect to continue such coverages, they lose the benefit of group premiums and immediately must pay more.

Employees face an election as to whether to continue long term disability benefits, at a substantially higher cost than the group rates previously afforded. An employee that allows LTD

benefits to lapse, and who would suffer a disabling condition prior to being restored to full employment, would be unable to obtain the same benefits as if coverage had continued.

All CWA/IBEW affected employees, whether retiring or not, are facing serious decisions about management of affairs for themselves and their families as a result of loss of employment. Decisions will be forced now that affect marriages, child care, elder care, living situations, relocation, debt management -- all having immediate and long term consequences that cannot simply be repaired by ordering employees restored to their prior employment.

2. Serious or substantial questions on the merits. The Petitioners incorporate both the arguments and proof contained in the original Petition as evidence of serious issues regarding Windstream's compliance with Commission orders. Nothing about Windstream's initial response to the company evidences either the substance or good faith of its position. Petitioners have demonstrated a substantial likelihood of success on the merits.

3. Balance or harms and equities. Petitioners have demonstrated the irreparable harm that will be experienced if the requested relief is not granted. By contrast, Windstream will suffer virtually no harm if they are required to continue the employment and services of a group of employees that were necessary for the extended period leading up to the merger and the months following. Windstream's payroll costs are ultimately taxed to the consuming public through their rates. While the Commission's first obligation is to the public interest, as discussed below, the financial cost of continued employment cannot be seen as either a burden or injury to Windstream.

4. Status quo and the public interest. The public interest is first served by the continuation of reliable service through a stable group of employees. Windstream's application for change of control went to extremes to persuade the Commission that the public interest would be

served by the reliable continuation of services, undiminished by new corporate ownership. One of the primary issues explored by both the Attorney General and Petitioners was the maintenance of a sufficient Kentucky based workforce to insure that Windstream's representations were not merely rhetorical. To this end, Windstream bound itself to a stable workforce in order to demonstrate the veracity of its representations. It is unreasonable to conclude that Windstream's declarations of no change, to Kentucky employment levels, was so temporal as to only have a life span of mere months. The ink was barely dry on the Commission's Order, and the time for appeal only shortly run before Windstream, by its actions, revealed its calumny.

CONCLUSION

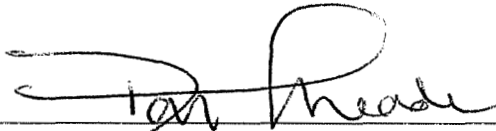
For the reasons set forth above, the Petitioners respectfully request the Commission take action to enjoin the announced layoff of CWA/IBEW employees, *as well as all other affected non-union employees*. The Commission should order Winstream to continue the regular employment of all Kentucky employees affected by the announcements and permit each employee who has elected retirement to revoke such election, without diminishment of such benefits. The order should be in the form of a temporary restraining order, conforming to the requirements of CR 65.03(1) and CR 65.04(1). The order should be effective until the action is challenged, motion for permanent injunction made and the matter heard. These rules provide adequate checks, balances and protections for all parties by permitting necessary and expedited proceedings to provide full due process.

The failure of the Commission to recognize its obligation to safeguard the integrity of its orders would be the most damaging course for the public interest. Such a failure will be experienced personally and directly by many employees whose designated legal representatives – their unions – took every prudent step to protect their interests and, by full participation in the Commission's

proceedings, became co-parties in interest to proper enforcement of orders affecting that same membership.

Respectfully submitted,

PRIDDY, CUTLER, MILLER & MEADE PLLC



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Counsel for CWA/IBEW

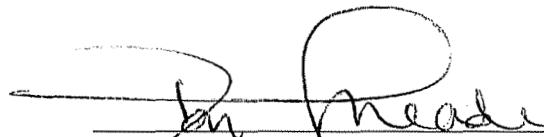
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Dennis G. Howard, II
Office of the Attorney General
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204


Don Meade

**AFFIDAVIT OF CWA
IN SUPPORT OF EMERGENCY RELIEF**

Comes the Affiant, and after first being duly sworn, states as follows:

1. I am Mike Garkovich, President of IBEW Local 33272. Our office address is 1590 Delaware Avenue, Lexington, Kentucky. This local is party to the Collective Bargaining Agreement between Windstream and CWA. The 26 employees identified for layoff come from this local.

2. I have personal knowledge of the Collective Bargaining Agreement and the key union and management officials responsible for implementing the Windstream decision to layoff employees. I personally attended each conference in which the layoff decision was announced and the consequences of the layoff discussed individually with the affected employees. I have also been involved in the decisions that have led one of the affected employees to exercise his rights to bump downward into a lower pay classification, rather than be laid off. The lower classification involves a \$6.00 an hour cut in pay. As a result, a junior employee has been bumped out of the bargaining unit and will be laid off.

3. Of the 26 employees affected, 20 were eligible for retirement. Of these, 19 employees have already filed the necessary paperwork to exercise their right to retire. This puts these employees in an entirely different status than employees who are otherwise laid off but not retiring.

4. Each of the retiring employees has elected to take a lump sum payment of retirement benefits. This lump sum payment is expected within 30 days of the March 2 layoff. Each employee will then be responsible for investment of the lump sum. Some will be eligible to immediately start drawing income from these retirement proceeds without tax penalties.

5. Retiring employees will not be eligible for the COBRA election which would permit them to continue their health insurance for the same premium paid while employed. Retiree medical

insurance is substantially more expensive than for those actively employed. Laid off employees under COBRA coverage, have premiums that are based upon a group rating which includes a younger median aged workforce. Retiree health benefits are rated based upon a group whose median age is considerably older. As a consequence, retiring employees will immediately face very substantial increases in medical insurance rates. This often leads to decisions regarding continuation and reduction of health care benefits in order to offset the increased cost.

6. All affected employees must roll out the funds from their 401k accounts. The company's 401k account allows investment with no load charges and no commissions. Most employees will be required to reinvest through private brokerages which will require either front loaded fees or commissions. This will diminish the cash value of the accrued money. Predictably, some employees will be required to invade their 401k to underwrite the impact on their families and lifestyles that comes from losing a \$19.00 an hour union job with full benefits.

7. All affected employees will face changes in the life insurance provided as a feature of the Collective Bargaining Agreement. All employees receive life insurance equal to 1.5 times their base wage. This is a non-contributory plan that ceases at the end of employment. It cannot be converted and is not portable. Employees also have the election of a contributory life insurance plan up to five times the amount of their base wages. This insurance can be converted and transferred, but the employee loses the benefit of group premium rates. Upon layoff, employees will be faced with decisions about whether to discontinue their optional life insurance coverage.

8. Employees have both short term and long term disability benefits. Upon layoff, short term benefits are lost. Employees have the opportunity to elect continued long term disability coverage. They must pay higher rates because they lose the benefit of group rates.

9. I have personally spoken with all affected members. I am aware that many are contemplating the decisions outlined above. Many are considering dropping benefits and discontinuing benefit coverages as a cost savings measure. Those who have elected retirement have only done so because of the layoff.

Further the Affiant sayeth not.

Mike Garkovich
Mike Garkovich

Subscribed and sworn to before me this 23rd day of February, 2007. by Mike Garkovich, Affiant herein.

My commission expires: Jan and 2011

Heather Enshinger
Notary Public, State at Large, Kentucky

