PRIDDY, CUTLER, MILLER & MEADE PLLC

ALTON D. PRIDDY +
IRWIN H. CUTLER, JR.
MARK L. MILLER
SCOTT M. MILLER ++
DON C. MEADE

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

PETER J. NAAKE
MARY W. SHARP
EVERETT C. HOFFMAN +++
THOMAS J. SCHULZ
MARSHALL B. HARDY, JR., OF COUNSEL

February 9, 2007

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

RECEIVED
FEB 12 2007
PUBLIC SERVICE COMMISSION

Re: Case No. ~~2005-00534~~ 2007-00069

Dear Ms. O'Donnell:

Enclosed find ten copies of a Petition on behalf of Communication Workers of America and International Brotherhood of Electrical Workers.

Respectfully,

Don Meade

DM/sks
Enclosure

800 REPUBLIC BUILDING • 429 WEST MUHAMMAD ALI • LOUISVILLE, KY 40202 • PHONE: 502.587.8600 • TOLL FREE: 800.288.3592 • FAX: 502.569.2744
SUBURBAN OFFICE • 3103 FERN VALLEY ROAD • LOUISVILLE, KY 40213
PLEASE REPLY TO THE MUHAMMAD ALI ADDRESS

973M

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

COMMUNICATION WORKERS OF AMERICA
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS
AND
WINDSTREAM

Case No. 2007-00069

RECEIVED
FEB 12 2007
PUBLIC SERVICE
COMMISSION

Re: ENFORCEMENT OF COMMISSION ORDER IN CASE ~~2005-00534~~ WITH REGARD TO COMPLIANCE OF CONDITIONS

PETITION FOR ENFORCEMENT OF ORDER

Come the Petitioners, Communication Workers of America and International Brotherhood of Electrical Workers, and petition the Commission to enforce its Order. Windstream Communications has violated the Commission's Final Order in Case 2005-00534 by the reduction in force of Kentucky based employees as a result of the spin-off of Windstream from Alltel Communications, Inc. et al. As grounds for the petition, CWA/IBEW submit the evidence establishes probable cause and/or prima facie evidence to believe that a violation of the Order has occurred. A direct action in Franklin Circuit, pursuant to KRS 278.410, should be initiated.

BACKGROUND

On December 22, 2005, Alltel Kentucky Inc. and other affiliated parties filed an Application for the Transfer of Control of Alltel Kentucky and Kentucky Alltel. The subsequent proceedings resulted in the Final Order of May 23, 2006, which approved the spin-off by Alltel Corporation of its wireline business to Windstream with acceptance of specific conditions. That Order contained the following finding:

> Applicants agreed to certain outcomes if the Commission were to approve this spin-off and merger. No reduction in the employee head

> count in Kentucky would occur as a result of this transaction. (Order of May 23, 2006, p. 5)

The Order referenced the evidentiary transcript at page 116, which preserved the following exchange between Chairman Goss and Windstream CEO Jeffery Gardner:

> Q. Would the applicants be willing to accept a condition that there would be no employee reduction for the Kentucky ILECs as a result of this transaction being approved?
>
> A. There will be no reduction in the employee headcount in Kentucky as a result of this transaction.

Windstream filed on May 25, 2006 its Acknowledgment, under the signature of CEO Gardner, stating: "Joint Applicants hereby acknowledge their agreement to be bound by each of the conditions set forth in the Order." With this acceptance, approval of the transfer with its conditions was thus consummated.

On December 22, 2006, a letter was addressed to Chairman Goss by the CWA, through the office of Jasper Gurganus, Vice President. That letter identified the potential violation of the Commission's Order by the announcement of Windstream lay-off of a significant number of Kentucky employees. This letter was promptly followed by follow-up correspondence of January 4 from VP Gurganus, clarifying the number of employees impacted by the lay-off as 45.

As a result, on January 5, 2007, the Commission, through the office of its Executive Director, corresponded with CEO Gardner requesting a detailed explanation of why the restructuring of company operations was not in violation of the Commission's Order. In response, CEO Gardner replied on January 12 that the workforce reductions were a continuation of prior efforts that bore no relation to the Alltel separation/Valor merger transactions, stating:

> Instead, this workforce reduction was a continuation of workforce optimization efforts involving the closing and consolidation of various assignment groups that began as early as 2001.

Ironically, during the transfer case, none of the applicants made mention of the fact that workforce reductions had been planned or anticipated. Moreover, as demonstrated *infra*, quite the opposite was stated.

ARGUMENT

I. PRESERVATION OF KENTUCKY JOBS WAS A CONTINUING THEME THAT RESULTED IN THE EMPLOYMENT PROTECTION CONDITION.

Both the CWA/IBEW and the Attorney General advocated for protection of Kentucky jobs as a condition to any approval of the spin-off.

CWA/IBEW propounded specific data request No. 20 to Alltel (Applicants) regarding workforce reductions:

> 20. If the transaction is approved, does the merged wireline business, AKI or KAI have any plans to change the number and/or types of employees currently working at the merged wireline business or AKI and KAI? If so, please describe in detail all such changes.
>
> R: There are no plans to change either the number or types of employees currently working at AKI or KAI if the transaction is approved. There will be some changes in the number of employees working at the corporate offices of the merged wireline business to avoid duplication between the Alltel wireline corporate staff and the Valor corporate staff and provide the appropriate level of support to the local operating companies. The integration plans are under development.

In response to the AG's second set of data requests No. 62, the following was propounded:

> 62. Please reference the joint applicants response to the AG's initial data request No. 1C, wherein the joint applicants state that no Alltel employee will be terminated or laid off; but in their testimony, the

joint applicants state that costs associated with early termination of Kentucky based staff will not be levied against Kentucky rate payers. Are these responses contradictory?

R: No. In response to the Attorney General's initial data request 1C, joint applicants stated that no employee residing in Kentucky will be terminated or laid off as a result of the transactions. Joint applicants testimony did not state that costs associated with early termination of Kentucky based staff would not be levied against Kentucky taxpayers. Respondent - Jeffery Gardner.

This theme of job protection was captured in the CWA/IBEW brief which proposed the following condition:

> The Kentucky ILECs shall be required to maintain employee currently working at API, with no reduction in compensation and full respect of union status and collective bargaining agreements. (p. 23)

Similarly, the Attorney General's brief proposed job protection:

16. The Kentucky ILECs will not reduce their levels of employees as a result of the transaction, if approved.

The matter was put to rest by the testimony of CEO Gardner when he reaffirmed that there were no plans for reduction of Kentucky employment levels. In response to direct questioning by Commission attorney Ms. Dougherty, his answer was unequivocal:

Q. Do you see that you might have a goal of reducing these [employment] levels through attrition as opposed to laying off people...

A. We don't have any specific plans in Kentucky. I mean, over a long period of time, in the land line business, we've tried to get more efficient, and, when we do that and it affects people, we try to do that first through attrition, because that's what makes the most sense, but, as today, **there are no current plans on doing anything with the work levels in Kentucky.**

Q. So that would include an increase or a decrease?

A. Right. **We have no plans as a part of this transaction** ***or any other immediate plans to change the workforce levels here in Kentucky.*** (Tr. 155, 156 - our emphasis)

Based upon these discovery responses, and the direct affirmations of CEO Gardner, there could be no doubt in the minds of the Commission, or the parties, that employment levels in Kentucky would be protected from reduction as a condition to approval of the application. Yet within six months significant workforce reductions have been publicly announced and individuals have been informed of their being fired.

II. THE EVIDENCE OF RECORD ESTABLISHES PROBABLE CAUSE AND/OR PRIMA FACIE EVIDENCE TO BELIEVE A VIOLATION WILL OCCUR, SHIFTING THE BURDEN TO WINDSTREAM TO OVERCOME THE INFERENCE.

The announced lay-offs, or firing of employees, effective March 1, are in direct contradiction to the record in evidence regarding protection of Kentucky employees. Mr. Gardner's claim that the lay-offs, or firing of employees, are a byproduct of plans already in place, or in motion, is not credible. CEO Gardner makes no effort whatsoever to verify his assertion that these lay-offs, or firing of employees, would have occurred independent of whether the wireline business was spun-off. His direct testimony states exactly the opposite. Discovery responses state exactly the opposite.

Windstream has failed to meet its burden of overcoming the legal inferences which arise from the contradiction between the evidence of record and the company's actual actions. Petitioners IBEW/CWA have brought to light practices which are a direct violation of its Orders. Petitioners move the PSC to initiate action in Franklin Circuit Court to enforce its Order and protect not only the integrity of the imposed conditions and the Commission's authority, but the existence and continuation of Kentucky jobs which were secured as a result of these proceedings.

Respectfully submitted,

PRIDDY, CUTLER, MILLER & MEADE PLLC

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 a copy of the foregoing was mailed this 8th day of February, 2007, 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; and to Dennis G. Howard, II, Office of the Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, KY 40601-8204.

Don Meade