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April 9, 2010

Via Hand-Delivery

Mr. Jeff R. Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602-0615

RECEIVED

APR 09 2010

**PUBLIC SERVICE
COMMISSION**

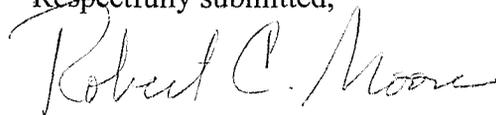
Re: In the matter of MCI Communications Services, Inc., et al., v. Windstream
Kentucky West, Inc., et al ("Windstream"), Case #2007-00503

Dear Mr. Derouen:

Please find enclosed for filing in the above referenced case the original and five (5) copies of Windstream's Motion to Compel.

Please call me if you have any questions concerning this filing, and thank you for your attention to this matter.

Respectfully submitted,



Robert C. Moore

RCM/neb
Enclosure
cc: Kimberly Bennett

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MCI COMMUNICATIONS SERVICES, INC., BELL)
ATLANTIC COMMUNICATIONS, CIN., NYNEX LONG)
DISTANCE COMPANY, TTI NATIONAL, INC.,)
TELECONNECT LONG DISTANCE SERVICES &)
SYSTEMS COMPANY AND VERIZON SELECT)
SERVICES, INC.)

RECEIVED

APR 09 2010

PUBLIC SERVICE
COMMISSION

Complainants

CASE 2007-00503

v.

WINDSTREAM KENTUCKY WEST, INC.,)
WINDSTREAM KENTUCKY EAST, INC. – LEXINGTON)
AND WINDSTREAM KENTUCKY EAST, INC. – LONDON)

Defendants

WINDSTREAM KENTUCKY EAST, LLC AND WINDSTREAM KENTUCKY WEST, LLC'S MOTION TO COMPEL MCI COMMUNICATIONS SERVICES, INC. D/B/A VERIZON BUSINESS SERVICES, BELL ATLANTIC COMMUNICATIONS, INC. D/B/A VERIZON LONG DISTANCE, NYNEX LONG DISTANCE COMPANY D/B/A VERIZON ENTERPRISE SOLUTIONS, TTI NATIONAL, INC., TELECONNECT LONG DISTANCE SERVICES & SYSTEMS COMPANY D/B/A TELECOM*USA AND VERIZON SELECT SERVICES, INC. TO RESPOND TO THE FIRST DATA REQUESTS OF WINDSTREAM KENTUCKY EAST, LLC AND WINDSTREAM KENTUCKY WEST, LLC

Come Windstream Kentucky East, LLC and Windstream Kentucky West, LLC (hereinafter collectively "Windstream"), and for their Motion to Compel MCI Communications Services, Inc. d/b/a Verizon Business Services, Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions, TTI National, Inc. Teleconnect Long Distance Services & Systems Company d/b/a Telecom*USA and Verizon Select Services, Inc. (collectively, "Verizon") to answer its First Data Requests to Verizon, state as follows:

On February 12, 2010, Windstream served its First Data Requests to Verizon. On March 5, 2010, Verizon filed its Objections and Responses to First Data Requests of Windstream

Kentucky. Verizon failed to answer Data Request Nos. 1, 2, 6, 10 and 11, despite the fact that these data requests asked Verizon to provide information relevant to this proceeding, which proceeding was filed by Verizon. On March 31, 2010, in an attempt to resolve this discovery dispute without the need for Commission intervention, Windstream forwarded to Doug Brent, Verizon's counsel, a letter requesting Verizon to provide answers to Data Request Nos. 1, 2, 6, 10 and 11. (See Attachment A). The letter set forth the relevance of the information requested in these data requests. Despite this explanation, Verizon, by letter from Doug Brent dated April 2, 2010 still refuses to provide answers to these Data Requests. (See Attachment B).

Data Request No. 1 requested Verizon to:

Identify in detail (including call volumes, dates, and details of each claimed incident) all claims made by any carrier other than Windstream West or Windstream East that you or your affiliate caused intrastate switched access traffic from your end user customers to appear to be interstate in nature.

Verizon refused to provide an answer to this request on the basis that it is "seeking information that is not relevant to the claims and issues in this proceeding." The requested information is directly relevant to this proceeding, as Verizon alleged in its complaint that it is suffering damage due to Windstream's intrastate switched access rates. The requested information seeks to determine whether Verizon may be engaging in its own version of "self-help" access reductions and/or not paying the very types of intrastate switched access charges that Verizon complains about in this proceeding. As Verizon noted in its responses, it maintains national rate plans and "geographically averaged rates" so that this information pertaining to other wholesale switched access rates that Verizon is/is not paying is directly relevant, and Verizon should be required to produce the requested information.

Data Request No. 2 requested Verizon to:

Produce all documents relating to your response to No. 1 above.

Verizon incorporated its response to Request No. 1 as its response to Request No. 2, again refusing to answer on the basis that this request is “seeking information that is not relevant to the claims and issues in this proceeding.” The same positions set forth above apply here and demonstrate that the information should be produced.

Windstream’s Data Request No. 6 requested Verizon to:

Identify all of your affiliates’, including your wireless affiliate(s), local services, offerings, calling plans, products, bundles, or promotions made available only to your long distance customers from 2006 to the present.

Verizon predictably relies upon its standard objection in refusing to answer this request on the basis that it is “seeking information that is not relevant to the claims and issues in this proceeding.” This information is relevant because Verizon is alleging in this proceeding that

Windstream’s intrastate switched access rates render Verizon unable to compete in the long distance market in Kentucky. The requested information mirrored similar questions posed to Windstream regarding its Kentucky long distance affiliate's calling plans and seeks to show whether the applicable markets in Kentucky are competitive. As Verizon is aware, one of the chief competitors of long distance calling plans are wireless national calling plans and one primary competitor of local service providers are wireless providers. The information sought, therefore, is directly relevant to the issues in this proceeding. For this question, Windstream requested that Verizon 's wireless affiliate provide only information pertaining to its Kentucky operations, and therefore, the question is reasonable in scope. The Commission should require Verizon to provide the information responsive to this request.

Windstream’s Data Request No. 10 requested Verizon to provide the following information:

For each year from 2006 to present, provide, by local exchange carrier (“LEC”) in Kentucky, the originating access minutes of use (“MOUs”) for which you compensated each LEC or, in a case

where you did not remit the compensation, for which you were billed by each LEC.

Once again, Verizon again refused to answer this request on the basis that it is “seeking information that is not relevant to the claims and issues in this proceeding.” However, this information is relevant where Verizon alleges that Windstream’s intrastate switched access rates render it unable to compete in the long distance market in Kentucky. The requested information is useful, if not critical to Windstream’s defense herein, to determine the levels at which Verizon is providing long distance service to customers in various areas of Kentucky served by other LECs with rates that may be the same as or higher than those of the Windstream companies. This information, therefore, is directly relevant and crucial to Windstream's defense in this case, and Verizon should be required to produce same.

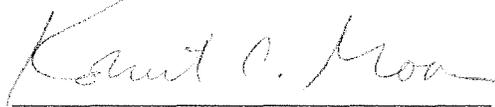
Windstream’s Data Request No. 11 to Verizon stated:

For each year from 2006 to present, provide, by local exchange carrier (“LEC”) in Kentucky, the terminating access minutes of use (“MOUs”) for which you compensated each LEC or, in a case where you did not remit the compensation, for which you were billed by each LEC.

Verizon also refused to answer this Data Request, incorporating its answer to Data Request No. 10 and stating that Windstream is “seeking information that is not relevant to the claims and issues in this proceeding.” The necessity and relevance of the requested information for terminating access MOUs is the same as noted above for originating access MOUs. Also, it should be noted that questions 10 and 11 were served on Sprint and AT&T in this proceeding, and both of those parties answered the questions over any objections they may have had. Again, Verizon should be required to provide the information responsive to these discovery requests.

Windstream has established that the information responsive to Data Request Nos. 1, 2, 6, 10 and 11 is directly relevant to the issues raised by Verizon in this proceeding. However, Windstream is also entitled to not only relevant evidence, but also information that may lead to

the discovery of relevant evidence. For this reason as well, Verizon should be required to provide the information responsive to these discovery requests. Therefore, the Commission should enter an Order requiring Verizon to provide the information responsive to these data requests. It should be noted that Verizon has not indicated that this information is not available to it, it merely objects to providing same on the basis of relevance.

Respectfully submitted,


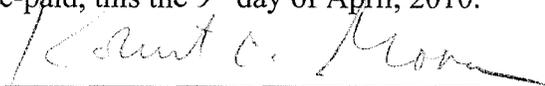
Robert C. Moore
HAZELRIGG & COX, LLP
415 West Main Street, 1st Floor
P. O. Box 676
Frankfort, Kentucky 40602-0676
(502) 227-2271

And

Kimberly K. Bennett
Windstream Communications
4001 Rodney Parham Road
Little Rock, AR 72212-2442

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon Douglas F. Brent and C. Kent Hatfield, Stoll, Keenon Ogden, PLLC, 2000 PNC Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202, Dulaney L. O' Roark III, Vice President and General Counsel - Southern Region, Verizon, 5055 North Point Parkway, Alpharetta, Georgia 30022, John N. Hughes, 124 West Todd Street, Frankfort, Kentucky, 40601 and Mary K. Keyer, General Counsel/AT & T Kentucky, 601 West Chestnut Street, Room 407, Louisville, Kentucky, 40203, by placing same in the U.S. Mail, postage pre-paid, this the 9th day of April, 2010.


Robert C. Moore

HAZELRIGG & COX, LLP

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March 31, 2010

Via Electronic Mail

Hon. Douglas F. Brent
Stoll, Keenon Ogden, PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202

Re: In the matter of MCI Communications Services, Inc., et al., v. Windstream
Kentucky West, Inc., et al ("Windstream"), Case #2007-00503

Dear Doug:

Windstream counsel have reviewed in detail Verizon's Objections and Responses to the First Data Requests of Windstream Kentucky. As you are aware, Verizon failed to provide answers to several of the data requests, including Data Request Nos. 1, 2, 6, 10 and 11. For the reasons set forth below, the subject requests do not seek the production of irrelevant information and are not ambiguous, overly broad and unduly burdensome, and Verizon is required to provide answers to same:

- 1) Data Request No. 1 requested Verizon to identify all claims made by carriers other than Windstream that Verizon or its affiliate caused intrastate switched access traffic from its end user customers to appear to be interstate in nature. Data Request No. 2 requested Verizon to produce all documents relating to its response to Data Request No. 1. Verizon alleged in its complaint that it is suffering damage due to Windstream's intrastate switched access rates. The requested information seeks to establish the extent to which Verizon may be engaging in its own version of "self-help" access reductions and/or not paying the very types of intrastates switched access charges that Verizon complains about in this proceeding. As Verizon noted in its responses, it maintains national rate plans and "geographically averaged rates" so that this information pertaining to other wholesale switched access rates that Verizon is/is not paying is directly relevant.
- 2) Data Request No. 6 seeks the identification of all local services, wireless affiliate plans, offerings, calling plans, products, bundles or promotions made available by Verizon to its long distance customers in Kentucky from 2006 to the present. Verizon is alleging in this proceeding that Windstream's intrastate switched access rates render Verizon unable to compete in the long distance market in Kentucky. The requested information mirrored similar questions posed to Windstream regarding its Kentucky long distance affiliate's calling plans and seeks to show whether the applicable markets in Kentucky are competitive. As Verizon is aware, one of the chief competitors of long distance calling plans are wireless national calling plans and one primary competitor of local service providers are wireless providers. The information sought, therefore, is directly relevant to

ATTACHMENT A

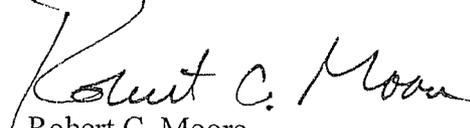
Hon. Douglas F. Brent
March 31, 2010
Page Two

the issues in this proceeding. For this question, Windstream requested that Verizon's wireless affiliate provide only information pertaining to its Kentucky operations, and therefore, the question is reasonable in scope.

- 3) Data Request No. 10 stated "For each year from 2006 to present, provide, by local exchange carrier ("LEC") in Kentucky, the originating access minutes of use ("MOUs") for which you compensated each LEC or, in a case where you did not remit the compensation, for which you were billed by each LEC." Verizon is alleging in this proceeding that Windstream's intrastate switched access rates render Verizon unable to compete in the long distance market in Kentucky. The requested information is useful to determine the levels at which Verizon is providing long distance service to customers in various areas of Kentucky served by other LECs with rates that may be the same as or higher than those of the Windstream companies. This information, therefore, is directly relevant to Windstream's defense in this case.
4. Data Request No. 11 states: For each year from 2006 to present, provide, by local exchange carrier ("LEC") in Kentucky, the terminating access minutes of use ("MOUs") for which you compensated each LEC or, in a case where you did not remit the compensation, for which you were billed by each LEC." Verizon is alleging in this proceeding that Windstream's intrastate switched access rates render Verizon unable to compete in the long distance market in Kentucky. The requested information is useful to determine the levels at which Verizon is providing long distance service to customers in various areas of Kentucky served by other LECs with rates that may be the same as or higher than those of the Windstream companies. This information, therefore, is directly relevant to Windstream's defense in this case.

Please provide the requested information to me by no later than Friday, April 2, 2010. Thank you for your attention to this important matter. Of course, please feel free to contact me should you wish to discuss same.

Sincerely,



Robert C. Moore

RCM/db
Enclosures
cc: Kimberly Bennett



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douglas.brent@skofirm.com

April 2, 2010

VIA ELECTRONIC MAIL

Robert C. Moore
Hazelrigg & Cox, LLP
415 W. Main Street, 1st Floor
P.O. Box 676
Frankfort, KY 40602-0676

Re: *In the matter of MCI Communications Services, Inc., et al. v. Windstream Kentucky West, Inc., et al. (Case No. 2007-00503)*

Dear Rob:

Verizon¹ is in receipt of your March 31, 2010 letter (“Letter”) regarding Verizon’s objections and responses to the first data requests of Defendants Windstream Kentucky East, Inc. and Windstream Kentucky West, Inc. (collectively, “Windstream”) in the above-referenced docket. Verizon properly and timely objected to certain of Windstream’s data requests as seeking information and materials that are irrelevant to the claims and issues in this proceeding. Your letter nevertheless asks that Verizon provide certain of the requested information and materials anyway (specifically for Request Nos. 1, 2, 6, 10 and 11) and offers several explanations as to why Windstream might want to obtain the requested information from its competitor. However, none of those explanations is persuasive. The simple fact of the matter is that the data requests at issue are objectionable and, for the reasons set forth both previously in Verizon’s objections and below, Verizon has no obligation to provide the requested material as part of this proceeding.

Below I address each of the individual Requests identified in your letter. But, at the outset, it is worth noting that Windstream’s attempted justifications for all of these requests seem

¹ Complainants MCI Communications Services, Inc. d/b/a Verizon Business Services, Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions, TTI National, Inc., Teleconnect Long Distance Services & Systems Company d/b/a Telecom*USA, and Verizon Select Services, Inc. are referred to herein collectively as “Verizon.”

LEXINGTON • LOUISVILLE • FRANKFORT • HENDERSON

to spring from an essential misperception about the nature of this proceeding. This docket concerns *Windstream's* intrastate switched access rates and, in particular, whether those Windstream rates are just and reasonable. But all of the requests at issue focus on *Verizon*, its affiliates or – in some cases – entirely unrelated third parties. Information about the various business activities of Verizon (and other entities) is irrelevant to determining whether Windstream's intrastate switched access rates are just and reasonable.

For example, Data Request Nos. 1 and 2 seek information and documents, respectively, regarding “claims made by *any carrier other than Windstream West or Windstream East* that [Verizon] or [its] affiliate caused intrastate switched access traffic from [their] end user customers to appear to be interstate in nature.”² Verizon properly objected to these requests as seeking information irrelevant to the claims and issues in this proceeding. As Verizon explained in its objection to Request No. 1:

This proceeding focuses exclusively on the question of whether Windstream's current intrastate switched access rates are unjust and unreasonable. But the information sought by this request will not assist the Commission in resolving that question. To the contrary, this request is explicitly limited to seeking information pertaining to other carriers – not Windstream. Moreover, the request does not even address intrastate switched access rates, but rather seeks information regarding the designation of traffic as intrastate or interstate. Any information regarding any claims that might have been asserted by unrelated third parties outside this proceeding regarding Verizon's designation of traffic is simply irrelevant to the question of what Windstream's intrastate switched access rates properly should be.

Windstream nevertheless attempts to justify these requests as somehow necessary to ascertain the level of harm suffered by Verizon as a result of the unreasonably high switched access rates charged by Windstream. *See* Letter at 1 (“Verizon alleged ... that it is suffering damage due to Windstream's intrastate switched access rates. The requested information seeks to establish the extent to which Verizon may be engaging in its own version of ‘self-help’ access reductions and/or not paying the very types of intrastate switched access charges that [it] complains about in this proceeding.”) But Verizon is not seeking damages in this proceeding – only a prospective reduction in Windstream's rates. Since there is no claim for monetary relief on behalf of Verizon, the Commission need not determine whether and the extent to which Verizon has engaged in “self-help” or otherwise mitigated its injuries.

It is undisputed that Verizon (like many other interexchange carriers) is a payor of access charges assessed by Windstream and therefore has a sufficient standing and interest to initiate

² Unless otherwise indicated, all emphasis has been added.

and participate in this proceeding. But that is effectively the sum total of information about Verizon that is relevant here. The only question the Commission needs to resolve in this proceeding is whether Windstream's intrastate switched access charges are unjust and unreasonable. Knowing whether and to what extent Verizon (or any other payor of Windstream's access charges) has "self-helped" will not aid the Commission in answering that question. The Commission does not need to know precisely how much Verizon or any other payor of access charges has been harmed by Windstream's rates in order to determine whether those rates are unjust and unreasonable. Therefore, requests like these that are targeted at precisely determining an access payor's damages – and any alleged "self-help" or other mitigation of those damages – are simply irrelevant.

Data Request No. 6 similarly is focused on the impact that Windstream's intrastate switched access rates have had on Verizon – and not on the sole issue of whether those rates are just and reasonable to begin with. In particular, Request No. 6 seeks information regarding the "local services, offerings, calling plans, products, bundles, or promotions made available" by Verizon's affiliates to Verizon's long distance customers from 2006 to the present. Verizon objected to that request as irrelevant because, rather than seeking information regarding the reasonableness of Windstream's intrastate switched access rates, this request seeks information about Verizon and Verizon's affiliates. Moreover, it does not even address switched access rates, but instead focuses on the various offerings that Verizon's affiliates may have offered to its long distance customers.

Windstream nevertheless suggests that this information is material because "Verizon is alleging in this proceeding that Windstream's intrastate switched access rates render Verizon unable to compete in the long distance market in Kentucky" and that information regarding offerings to Verizon's long distance customers would test that assertion and help "show whether the applicable [long distance] markets in Kentucky are competitive." Letter at 1. But, again, determining the precise effects that Windstream's intrastate switched access rates have had on Verizon will not help the Commission answer the lone question before it in this proceeding – *i.e.*, whether those rates are reasonable.

To be sure, as Verizon indicated in its response to Request No. 3, "Windstream's current switched access charges have had and continue to have an adverse impact on Verizon's ability to compete in the Kentucky long distance market, on Verizon's long distance Kentucky retail customers, and on competition in general." In particular, "Windstream's access rates represent an increased and inflated cost to Verizon and other long distance carriers" that ultimately must be passed along in a variety of ways with a variety of adverse effects. *Id.* But, not only is it "difficult to precisely quantify the adverse impact that Windstream's access rates have upon Verizon's ability to compete in the long distance market in Kentucky" (*id.*), it is entirely unnecessary.

The question of whether Windstream's rates are unjust and unreasonable does not depend on whether Verizon's (or any other access payor's) ability to compete in the long distance

Robert C. Moore
April 2, 2010
Page 4

market has been impaired a little or a lot. Even if Verizon were able to compete effectively in the long distance market despite having to pay Windstream's intrastate switched access rates, that does not mean those rates are just or reasonable. Because determining precisely how Verizon's ability to compete in the long distance market has been affected will not help the Commission judge whether Windstream's rates are unjust and unreasonable, that information is not relevant for purposes of discovery.

Request Nos. 10 and 11 suffer from much the same defect. Those requests seek information regarding the originating and terminating access minutes of use ("MOUs") that every Kentucky local exchange carrier *other than Windstream* has billed Verizon for each year from 2006 to the present. As with Request No. 6, Windstream suggests this information is necessary to test whether Windstream's current intrastate switched access rates have "render[ed] Verizon unable to compete in the long distance market in Kentucky." Letter at 2. But, as noted above, the Commission need not determine the extent to which Verizon (or any other payor of Windstream's access charges) has been competitively injured in order to determine whether Windstream's rates are unjust and unreasonable. Information regarding the amount of access MOUs other carriers have billed Verizon will not assist the Commission in determining whether Windstream's current intrastate switched access rates are too high. Accordingly, this Request seeks information irrelevant to this proceeding.

Given that none of these requests seeks relevant information, Verizon will not be providing the requested information today.

Very truly yours,

STOLL KEENON OGDEN, PLLC

A handwritten signature in black ink, appearing to read "Douglas F. Brent". The signature is stylized and written in a cursive-like font.

Douglas F. Brent