

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

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PUBLIC SERVICE
COMMISSION

In the Matter of:

DANA BOWERS
COMPLAINANT

v.

WINDSTREAM KENTUCKY EAST, LLC
DEFENDANT

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(CASE NO. 2010-00447
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**DANA BOWERS' RESPONSE TO WINDSTREAM KENTUCKY EAST, LLC'S
REQUESTS FOR ADMISSION AND DATA REQUESTS**

The Petitioner, Dana Bowers ("Bowers"), submits the following responses to the Requests for Admission and Data Requests of Windstream Kentucky East, LLC ("Windstream"), and states that she is the witness responding to each request:

GENERAL OBJECTION NO. 1

Petitioner objects to Windstream's discovery requests as irrelevant and immaterial except insofar as they demand that Petitioner repeat certain facts that are already of record (e.g., that Petitioner purchases Windstream services; that those services are subject to a Windstream tariff on file with the Commission; and that Windstream customers have been required to pay Windstream's unfiled Kentucky Gross Receipts Surcharge as a condition of continuing to receive service). See Petition for Declaratory Ruling, attached sample of Petitioner's bill, and Windstream tariffs cited therein.

Otherwise, Windstream's discovery requests are irrelevant because they focus on Petitioner. She is not, and could not possibly be, the subject of a Commission inquiry. The subject of the inquiry is Windstream. The Commission is charged by law to "regulate utilities and enforce the provisions of this chapter." KRS 278.040. Windstream is a utility, and

Petitioner has placed before the Commission allegations, based on evidence of record – Windstream’s bills and its tariffs – that Windstream has violated “the provisions of this chapter.” *See* Petition for Declaratory Ruling. The inquiry the Commission is bound by law to undertake implicates Windstream’s conduct directed at all of Windstream’s Kentucky customers, not just Petitioner. Nothing Petitioner has done (e.g., pay her bills [Request for Admission No. 13]) or has not done (file complaints against utilities or credit card companies [Data Request No. 6]) has the slightest bearing on whether or not Windstream has violated the Kentucky law to be applied here by the Commission.

The scope of the Commission’s inquiry was defined by the United States District Court for the Western District of Kentucky when, on Windstream’s motion, the Court ordered Petitioner to seek from the Commission answers to two issues: (1) whether the PSC would rule as the FCC did in *Irvin Wallace*¹ on the issue of tariffs and recovery of tax expenses and (2) whether the “local taxing authority” language of Windstream’s tariff could include state statutes.² Neither issue addresses Windstream’s *customers* in general, or Petitioner in particular.

Windstream seems, ironically, to be attempting to establish that Petitioner cannot ask the Commission for the determination that the Court – *on Windstream’s own motion* – instructed her to seek. That seems to be the only possible purpose of demanding that Petitioner repeat such undisputed (and irrelevant) facts as that she is a customer of Windstream East and not Windstream West; that she is not a business customer; that she is not a “telecommunications provider;” that she does not have an “interconnection agreement” with Windstream; *etc. See,*

¹ The Federal Communications Commission in *Irvin Wallace v. AT&T Communications of the Southern States, Inc.*, 6 FCC Rcd 1618 (1991), *on reconsideration*, 7 FCC Rcd. 3333 (1992) enforced the Filed Rate Doctrine when, as here, a telecommunications carrier charged its customers a surcharge to recover a tax that had been imposed on the telecommunications carrier and failed to tariff the surcharge.

² *See Dana Bowers v. Windstream Kentucky East, LLC*, 790 F.Supp.2d 526, 534 (W.D. Ky. 2010).

e.g., Requests for Admission 1, 2, 3, 4, 6. Such questions neither address “whether the PSC would rule as the FCC did in *Irvin Wallace*” nor the interpretation of the “local taxing authority” language in Windstream’s tariff.” Certainly they do not take into account the Commission’s statutory mandate to enforce Kentucky utility law. Petitioner anticipates that the Commission will enforce the provisions of KRS Chapter 278 and will rule on the issues referred by the Court.

GENERAL OBJECTION NO. 2

Petitioner objects to Windstream’s discovery requests to the extent that they demand that she present legal argument. Petitioner is a fact witness in these proceedings, not an attorney. Petitioner’s attorneys will present legal argument when briefs are due pursuant to the Commission’s procedural schedule or as otherwise ordered.

GENERAL OBJECTION NO. 3

Petitioner objects to Windstream’s discovery requests and instructions to the extent that they seek to impose any obligations on Petitioner other than those provided for by Kentucky Public Service Commission rules and applicable law; to the extent that they imply that Ms. Bowers or any other Windstream customer, rather than Windstream itself, is responsible for overseeing Windstream’s compliance with its own tariffs; and to the extent that they imply that anything Ms. Bowers could do could *in any way* deprive the Commission of jurisdiction.

REQUESTS FOR ADMISSION

REQUEST 1. Admit that you are a residential retail customer of Windstream East.

RESPONSE: **Admitted. See Petition for Declaratory Ruling, at 1.**

REQUEST 2. Admit that at no time have you subscribed to services from or been a customer of Windstream Kentucky West, LLC or Windstream Communications, Inc.

RESPONSE: See Objection Nos. 1 and 3. Without waiving those objections, Petitioner admits.

REQUEST 3. Admit that you do not subscribe to any business service from Windstream East and do not purchase services from Windstream East pursuant to Windstream East's standard business sales contract.

RESPONSE: See Objection Nos. 1 and 3. Without waiving these objections, Petitioner admits.

REQUEST 4. Admit that you purchase no services from Windstream East subject to PSC KY No. 8.

RESPONSE: See Objection Nos. 1 and 3. Without waiving these objections, Petitioner states that she purchases services from Windstream pursuant to Windstream's Kentucky Tariff No. 7 and Windstream's FCC Tariff No. 6.

REQUEST 5. Admit that you purchase no services from Windstream East subject to KRS 278.160.

RESPONSE: See Objection No. 2. Denied.

REQUEST 6. Admit that you are not a telecommunications provider and do not purchase intrastate services pursuant to an interconnection agreement.

RESPONSE: See Objection Nos. 1 and 3. Without waiving these objections, Petitioner admits.

REQUEST 7. Admit that the only intrastate services you purchase from Windstream East are DSL service and those services included in Feature Pack A and Protection Plus Plan.

RESPONSE: See Objection Nos. 1 and 3. Without waiving those objections, Petitioner admits that she takes from Windstream services including unlimited calls within Windstream East's local exchange area; access to 911 service; directory assistance; operator service; the Custom Calling Services tariffed by Windstream as "Feature Pack Calling Service Option A"; DSL-based Internet access service; and Protection Plus.

REQUEST 8. Admit that with respect to intrastate services you purchase from Windstream East, you do not subscribe to and are not charged any fee for any stand-alone, unbundled service offered by Windstream East that provides only for the following features and functions: unlimited calls within Windstream East's local exchange area; dual-tone multifrequency dialing; and access to emergency 911 telephone service, all locally available interexchange companies, directory assistance, operator services, relay services, and a standard alphabetical directory listing.

RESPONSE: See Objection Nos. 1, 2, and 3, and Petitioner's Response to Data Request No. 7, in which Petitioner "admits" the services she purchases from Windstream. Petitioner receives all of the above-listed services.

REQUEST 9. Admit that the intrastate services you receive from Windstream East are subject to a monthly term.

RESPONSE: See Objection Nos. 1, 2, and 3. Without waiving those objections, Petitioner states that this sentence is vague and unclear, both factually and as a matter of legal import, and thus the allegation cannot reasonably be "admitted." However, Petitioner states that her understanding is that, if she fails to pay her bill from Windstream, which is issued monthly, Windstream will terminate her telephone service.

REQUEST 10. Admit that the services you receive from Windstream East and the rates charged by Windstream East for those services are set forth on your monthly billing invoices.

RESPONSE: See Objection Nos. 1 and 3. Without waiving those objections, Petitioner admits that the charges on her bill are the rates she pays for her Windstream service.

REQUEST 11. Admit that the monthly billing invoices you receive from Windstream East contain citations to Windstream East's website, online terms and conditions, customer service contact information, and instructions for filing disputes.

RESPONSE: See Objection Nos. 1 and 3. Without waiving those objections, Petitioner states that Windstream's bills speak for themselves.

REQUEST 12. Admit that you Windstream East began collecting the Gross Receipts Surcharge from you in your June 22, 2007 billing invoice, and that all of your subsequent billing invoices from Windstream East have identified the Gross Receipts Surcharge.

RESPONSE: See Objection Nos. 1 and 3. Without waiving those objections, Petitioner admits that Windstream began billing its Kentucky Gross Receipts Surcharge in June 2007. Windstream's bills speak for themselves.

REQUEST 13. Admit that you have paid and continue to pay the Gross Receipts Surcharge included in each of your monthly billing invoices from June 22, 2007 through the present.

RESPONSE: See Objection Nos. 1 and 3. Without waiving those objections, Petitioner admits that she has paid, and continues to pay, her telephone bills.

REQUEST 14. Admit that prior to the filing by your attorneys of the Complaint in the United States District Court for the Western District of Kentucky in the action styled *Dana Bowers v. Windstream Kentucky East, LLC*, at no time did you file or submit any formal or informal complaint to Windstream East, or any Windstream East affiliate, regarding the Gross Receipts Surcharge.

RESPONSE: See Objection Nos. 1 and 3. Without waiving those objections, Petitioner states that she brought her Complaint to the lawful forum of the United States District Court and, at the Court's direction, has brought two questions to the Commission.

REQUEST 15. Admit that your monthly invoices have contained the following fees and surcharges: 911 Service, Access Charge Per FCC Order, KY TEL Relay SVC/TDD EQUIP PRG, Federal Universal Service Fee, and Kentucky Lifeline Support.

RESPONSE: See Objection Nos. 1 and 3. Without waiving those objections, Petitioner denies that each monthly invoice has included the items described in the request, and states that Windstream's bills, all of which are in Windstream's possession, speak for themselves.

REQUEST 16. Admit that the fees and surcharges reflected in your monthly invoices from Windstream, including the 911 Service, GRS, and Federal Universal Service Fee, have varied in amount between 2005 and the present date.

RESPONSE: See Objection Nos. 1 and 3. Without waiving those objections, Petitioner states that Windstream's bills, all of which are in Windstream's possession, speak for themselves.

REQUEST 17. Admit that you did not avail yourself of the Kentucky Public Service Commission's informal complaint resolution process with respect to any dispute regarding your monthly invoices from Windstream.

RESPONSE: See Objection Nos. 1 and 3. Without waiving those objections, Petitioner states she has invoked lawful process to address her complaint.

REQUEST 18. Admit that you have never been denied access by any party to the Kentucky Public Service Commission's informal complaint resolution process.

RESPONSE: See Objection Nos. 1 and 3. Without waiving those objections, Petitioner denies that any obligation exists to invoke legal process other than the two that have been invoked.

REQUEST 19. Admit that as far back as 2002, you were provided notice that your telephone provider maintained a website with information pertaining to your services, including specifically your Feature Pack A service.

RESPONSE: See Objection Nos. 1 and 3. Without waiving those objections, Petitioner states that she is not aware of any such notice, and therefore denies same.

REQUEST 20. Admit that as far back as 2002, you were provided notice that you would receive a bill message in the event that there were changes to the charges set forth on your monthly telephone invoices.

RESPONSE: See Objection Nos. 1 and 3. Without waiving those objections, Petitioner states that she is not aware of such notice, and therefore denies same.

REQUEST 21. Admit that from 2002 to the present date you have received bill invoices that have included bill messages or bill inserts.

RESPONSE: See Objection Nos. 1 and 3. Without waiving these objections, Petitioner states that she has not retained Windstream documents dating from 2002.

DATA REQUESTS

REQUEST 1. For any and all requests for admission that you denied, explain in detail the basis for your denial.

RESPONSE: An explanation for each response is provided above.

REQUEST 2. Identify all witnesses you expect to submit testimony on your behalf in this proceeding as well as the subjects each witness will address.

RESPONSE: Petitioner will testify as to her status as a Windstream customer. Should a hearing be held in this matter, Petitioner reserves the right to call past and present Windstream employees and other persons having knowledge of this matter.

REQUEST 3. Identify and produce all documents you will be relying upon to support your claims in this proceeding.

RESPONSE: Windstream intrastate tariffs governing services for which Windstream Kentucky East and West have assessed the Kentucky Gross Receipts surcharge support Petitioner's position in this proceeding. All such tariffs are in Windstream's possession and the Commission's. Petitioner reserves the right to produce, if necessary, additional documents, including statements by Windstream's attorneys and employees filed in the action styled *Dana Bowers and Sunrise Children's Services, Inc. on Behalf of Themselves and others Similarly Situated v. Windstream Kentucky East, LLC, and Windstream Kentucky West, LLC*, C.A. No. 3:09-CV-440 (W.D. Ky.) characterizing the effect of Windstream's Kentucky tariffs and all deposition transcripts, documents, and information produced pursuant to the discovery process in the action styled *Dana Bowers and Sunrise Children's Services, Inc. on Behalf of Themselves and others Similarly Situated v. Windstream Kentucky East, LLC, and Windstream Kentucky West, LLC*, C.A. No. 3:09-CV-440 (W.D. Ky.).

REQUEST 4. Identify any and all surcharges that have appeared on monthly billing invoices you received from Windstream East and also from any other telecommunications carrier, cable service provider, electric utility, and water/sewer utility, from January 1, 2006 to April 1, 2011.

RESPONSE: See Objection Nos. 1 and 3. Without waiving those objections, Petitioner states that the invoices of Windstream East speak for themselves and that

demanding five years' worth of Petitioner's bills from cable companies and utilities other than Windstream is not only irrelevant to this proceeding but is personally intrusive, unduly burdensome, and borders on harassment.

REQUEST 5. Identify any formal or informal complaints you have made to the Kentucky Public Service Commission concerning rates or services you have received from any utility.

RESPONSE: See Objection Nos. 1 and 3. Without waiving those objections, Petitioner states that she has filed no Complaints with the Kentucky Public Service Commission.

REQUEST 6. Identify any formal or informal complaints that you have made to any governmental agency in Kentucky including the state Attorney General concerning rates or services you have received from any utility or other service provider including but not limited to any credit card company.

RESPONSE: See Objection Nos. 1 and 3. Without waiving those objections, Petitioner states that she has filed a Complaint with the United States District Court concerning Windstream, and then has filed a petition with this Commission at the direction of the Court.

REQUEST 7. Identify any formal or informal proceedings you have participated in before the Kentucky Public Service Commission.

RESPONSE: See Objection Nos. 1 and 3. Without waiving those objections, Petitioner states that she has participated in no Kentucky Public Service Commission proceedings prior to this one.

REQUEST 8. Identify all communications services you receive from providers other than Windstream East, including but not limited to cellular services.

RESPONSE: See Objection Nos. 1 and 3. Without waiving these objections, Petitioner states that she subscribes or has subscribed to services from AT&T Communications and DirecTV.

REQUESTS FOR PRODUCTION

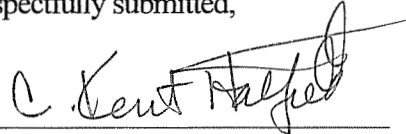
REQUEST 1. Produce all documents that support your answers to the foregoing Interrogatories.

RESPONSE: There are no such documents other than Windstream's tariffs and its bills, all of which are in Windstream's possession, as well as Windstream's documents produced in discovery.

REQUEST 2. Produce copies of the standard documents you use or have used with customers and/or vendors in your own business ("I Pay") including but not limited to standard contracts, standard terms/conditions, and standard policies/procedures used for handling complaints from your customers and/or vendors pursuant to those contracts and terms/conditions.

RESPONSE: See Objection Nos. 1 and 3. This request is irrelevant and improper for the additional reasons that iPay is not a utility and is not a party to the federal lawsuit pursuant to which Judge Heyburn referred the filed rate doctrine and state tariff interpretation issues to this Commission. Without waiving those objections, Petitioner states she is no longer employed by iPay in any capacity and that she has no access to iPay's documents.

Respectfully submitted,



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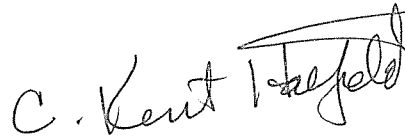
Counsel for Dana Bowers, Complainant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Windstream Kentucky East, LLC's Requests for Admission and Data Requests was served by United States First Class Mail, postage prepaid, on this the 27th day of May 2011 upon:

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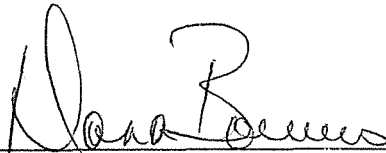


COMMONWEALTH OF KENTUCKY)
)
COUNTY OF JEFFERSON)

VERIFICATION


Personally appeared before the undersigned, an officer duly authorized to administer oaths, Dana Bowers, who first being duly sworn, deposes and states that she is the Petitioner in this proceeding, and confirms that the statements made herein are true to the best of her knowledge and belief.

Dated: 5/27/11



Dana Bowers, _____

Subscribed and sworn to before me, a Notary Public in the State and County above named, this 27 day of May, 2011.



Notary Public

My Commission Expire:

11/15/2014