

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUL 01 2011

DANA BOWERS,)
)
COMPLAINANT)
)
v.)
)
WINDSTREAM KENTUCKY EAST, LLC,)
)
DEFENDANT)

PUBLIC SERVICE
COMMISSION

CASE NO. 2010-00447

WINDSTREAM KENTUCKY EAST, LLC'S REQUEST FOR A HEARING

Pursuant to the Commission's Order of May 12, 2011, Windstream Kentucky East, LLC ("Windstream East") requests a hearing in this matter. A hearing is necessary in this proceeding for Windstream East to resolve questions of fact and clarify issues raised by the Petitioner, Dana Bowers, in filings she made with the Commission in response to the direct testimony filed by Windstream East. Additionally, this case involves complex factual and legal questions and a hearing will afford the Commission the opportunity to address any questions it might have on these issues.

On June 10, 2011, Windstream East filed the direct testimony of Stephen Weeks, Director of Wholesale Services. Mr. Weeks' testimony addressed a number of factual issues pertinent to the claims raised by Ms. Bowers in Count III of the lawsuit as filed in her Complaint with the Commission, including, but not limited to, the following: (1) the specific services and functionalities of those services Ms. Bowers purchases from Windstream East and the reasons why those services factually do not meet the definition of "jurisdictional" services under KRS 278.160; (2) the history of Kentucky's Gross Revenues Tax as a replacement for previously-existing municipal franchise fees, and the manner in which Windstream East collected the costs associated with the tax through the Gross Revenues Surcharge ("GRS")

applied to customer invoices; and (3) Windstream East's experience with customer disputes concerning the GRS and the requirements applicable to Ms. Bowers to timely challenge the inclusion of the GRS to her invoices. The facts presented by Mr. Weeks on these points necessarily support the reasons why the allegations in Mrs. Bowers' Complaint are erroneous.

On June 24, 2011, Ms. Bowers attacked Mr. Weeks' testimony in separate filings made with the Commission. In the first of these filings, Ms. Bowers objected to Mr. Weeks' testimony and argued that the Commission should afford it no weight for a number of reasons. Mr. Bowers offered no legal support that would warrant the Commission to take such action and fails to adequately explain why Mr. Weeks' testimony on factual issues arising under the Complaint should have no bearing on this matter. Plaintiff should not be allowed to object to Mr. Weeks' testimony because she does not like its substance. Moreover, certain of her objections highlight the factual disputes between the parties.¹ In addition to the objections raised to Mr. Weeks' testimony, Ms. Bowers also filed purported rebuttal testimony that consists primarily of excerpts from an affidavit made by Cesar Caballero, Vice President of Regulatory Strategy for Windstream Communications, Inc., and excerpts from the deposition of Michael Rhoda, Senior Vice President of Government Affairs.² Ms. Bowers misconstrues these excerpts to call into question testimony offered by Mr. Weeks in this proceeding. In several instances, Ms. Bowers has taken statements made by Mr. Caballero and Mr. Rhoda out of context or otherwise distorted their testimony in an apparent effort to show some inconsistency between positions taken by Windstream East in this proceeding and the related federal court action.

¹ For example, Ms. Bowers objects to Mr. Weeks' testimony addressing his understanding of the legislative history behind KRS 278.544, arguing that Mr. Weeks cannot claim to know the intent of the Kentucky General Assembly because his office is located in Little Rock, Arkansas. Petitioner's Objections to Windstream's "Testimony," p. 2. Ms. Bowers also argues that Windstream had made inconsistent representations between this proceeding and the related federal court action. *Id.*, pp. 2-4. Windstream East should be afforded the opportunity to address these claims which are tantamount merely to written cross examination of Mr. Weeks at a hearing before the Commission.

² The affidavit and deposition originated from the federal court action related to this proceeding.

Windstream East should be afforded a hearing to address these attempts which essentially are Plaintiff's efforts to cross examine Mr. Weeks without the corresponding ability by him to respond. Further, Windstream East should be afforded a hearing to address Ms. Bowers' claims and establish that no conflict exists between the testimony offered by Mr. Weeks in this proceeding and any other factual representations made by Windstream East in this or other proceedings.

Accordingly, Windstream East respectfully requests that the Commission enter an Order scheduling a hearing to resolve any factual disputes existing between the parties and address any questions the Commission has about the factual basis for Ms. Bowers' Complaint.

Respectfully submitted,

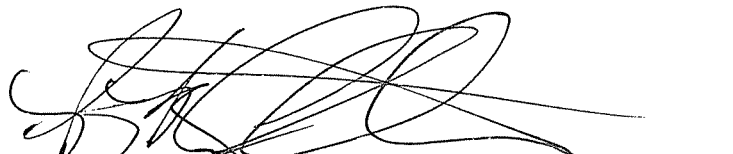


Mark R. Overstreet
R. Benjamin Crittenden
STITES & HARBISON PLLC
421 West Main Street
P.O. Box 634
Frankfort, KY 40602-0634

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by United States First Class Mail, postage prepaid, on this 1st day of July, 2011 upon:

C. Kent Hatfield
Douglas F. Brent
Deborah T. Eversole
STOLL KEENON OGDEN PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202



Counsel for Windstream Kentucky East, LLC