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September 6, 2011

VIA HAND DELIVERY

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

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SEP 06 2011

PUBLIC SERVICE
COMMISSION

RE: PSC Case No. 2010-00447

Dear Mr. DeRouen:

Enclosed for filing in this case please find an original and ten copies of Petitioner's Reply Brief. Please place your file stamp on the extra copy and return to me via our office runner.

If you have any questions concerning this filing, please do not hesitate to contact me. Thank you very much for your attention to this matter.

Sincerely yours,

C. Kent Hatfield

CKH: jms
Enclosures
cc: Parties of Record

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SEP 06 2011

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DANA BOWERS)	
COMPLAINANT)	CASE NO. 2010-00447
v.)	
WINDSTREAM KENTUCKY EAST, LLC)	
DEFENDANT)	

REPLY BRIEF OF PETITIONER

Petitioner’s initial Brief explained the extent to which Windstream violated the law by overcharging hundreds of thousands of customers. It also anticipated every excuse Windstream might offer for its misbehavior. Those excuses have not changed (and have not become any more persuasive). Accordingly, this Reply Brief is a short one, filed to emphasize three points:

- Windstream argues that it was entitled to charge the Kentucky Gross Receipts Surcharge (the “Surcharge”) without tariffing it because it is not required to tariff local franchise fees or 911 charges. The argument is disingenuous. Windstream’s *own tariff* alludes to recovery of local franchise fees. And 911 charges to wireline customers are imposed by the government *directly upon Windstream’s subscribers*, unlike the Kentucky Gross Receipts Tax, which is imposed on Windstream. Windstream is a mere collection agent in the former instance, but is the taxpayer in the latter. This is precisely the distinction drawn by the Kentucky court in *Lockett*¹ and the Federal Communications Commission in *Irwin Wallace*.² When the utility recovers *its* costs from its customers, it does so through rates – which must be accurately tariffed.
- Windstream’s status as an “electing carrier” under KRS 278.541 *et seq.* gives it *choices*. But it must abide by those choices. It may not choose the privileges and

¹ *Lockett v. Electric and Water Plant Board of the City of Frankfort*, 558 S.W.2d 611 (Ky. 1977).

² *Irwin Wallace v. AT&T Communications of the Southern States, Inc.*, 6 FCC Rcd 1618 (1991), *on reconsideration*, 7 FCC Rcd 3333 (1992).

obligations of one regulatory route and then seek refuge in another. It may not seek alternative rate regulation while ignoring the statutory price cap imposed in return. It may not disassociate itself from tariff law while routinely using its tariffs to raise rates on its customers. And it *certainly may not tariff one rate while it charges another.*

- At Windstream’s urging, the Court referred these two specific Kentucky tariff law issues to the Commission for its guidance to the Court. It is at the very least unseemly for Windstream to tell the Commission now that it should not address those issues due to the Petitioner’s alleged lack of standing or due to the Commission’s alleged lack of jurisdiction.

With respect to Petitioner’s claims based on Kentucky tariff law, the Court has referred to the Commission two specific questions:

“(1) whether the PSC would rule as the FCC did in *Irwin Wallace* on the issue of tariffs and pass-through taxes, and

(2) whether the ‘local taxing authority’ language of Windstream’s tariff encompasses state statutes.”³

The first question is a general one pertaining to Kentucky telecommunications carriers and other utilities, and the second pertains to the legal interpretation of Windstream’s tariff. Neither is personal to Petitioner. The Commission’s answers to these questions concern Windstream’s responsibilities to *all* of its customers purchasing services whose rates Windstream has tariffed with this Commission, including basic local exchange service, nonbasic service, and access services.

The Court has retained jurisdiction and will decide Petitioner’s federal claims. In addition, Petitioner’s adequacy as a class representative of the class of persons who take tariffed services from Windstream and who were assessed the Surcharge is an issue that has been fully briefed and is currently before the Court. The Court will decide that question pursuant to Fed. R. Civ. P. 23. In the meantime, the Commission has before it two basic questions of Kentucky

³ *Dana Bowers et al. v. Windstream Kentucky East, LLC, et al.*, 790 F.Supp.2d 526, 534 (W.D. Ky. 2010).

utility law. Its decisions on those issues is not dependent on the identity or status of the individual Petitioner.

ARGUMENT

I. WINDSTREAM'S ATTEMPT TO DERAIL THIS CASE WITH IRRELEVANT PROCEDURAL ROADBLOCKS SHOULD BE REJECTED.

Windstream first asserts a nonsensical procedural argument about Petitioner's alleged "burden of proof" [Windstream Brief at 9] -- as if the Commission should respond to the *Court's* referral of questions of Kentucky tariff law in a manner weighted to benefit Windstream, and as if "proof" is even an issue in a case that the Commission has already appropriately noted presents only legal questions. Next, Windstream argues that the Commission lacks jurisdiction, even though Windstream itself argued to the Court that the Commission not only has jurisdiction, but that the Commission's jurisdiction is "primary." Windstream also attacks Petitioner's "standing," apparently in an effort to show that she does not properly represent the class of customers who take tariffed service from Windstream and who have been charged a rate higher than Windstream's filed rates. This is the class of persons on whose behalf Petitioner filed her Complaint with the U.S. District Court. Windstream's procedural arguments have no bearing on the two questions of law referred by the Court.

First, there is no "proof" for which a "burden" need be borne because there are no material facts in dispute. If there is some sort of "burden of law" to be borne here, Petitioner has successfully borne it. Petitioner has not only cited court cases and Commission decisions that support her position, she has presented Windstream's own bills and tariff pages that show Windstream charges rates for service other than the rates it has filed in its tariffs. The Commission may take administrative notice of these documents, which show that Windstream is charging a rate different from its tariffed rate to basic local exchange service customers, nonbasic

service customers, and access customers. Kentucky's Filed Rate Doctrine does not permit Windstream to do this, whether it is codified at KRS 278.160 or the relatively new KRS 278.543, and Petitioner has so demonstrated.⁴

On the Court's second question -- whether Windstream's general tariff provision authorizing pass-through of "local" tax and franchise fee expense applies to recovery of the Gross Receipts Surcharge Windstream pays to the Commonwealth -- Windstream's position is equally unavailing. That tariff language (which, in any event, applies only to a portion of the customers who have paid the unlawful Surcharge) authorizes surcharges only for "license, occupation, franchise, or other similar fee or tax now or hereafter agreed to or imposed upon the Company *by local taxing authorities*" and those surcharges may be "added to bills of customers receiving service *within the territorial limits of the taxing authority.*"⁵ The Commonwealth of Kentucky is not a local taxing authority. A statewide tax is not a local tax or franchise fee, as was acknowledged in the testimony of Windstream's key regulatory and tax personnel. See Petitioner's Brief at 24, and deposition excerpts attached thereto. And a statewide tax is obviously not confined to "territorial limits," since the tariff applies to the entire state. In short, this tariff does not cover, give notice to the customer of, or authorize collection of the Kentucky Gross Receipts Surcharge.

Windstream's arguments concerning Petitioner's alleged lack of "standing" are as irrelevant and erroneous as its "burden of proof" contention. The questions referred to the Commission are posed in the abstract by the Court and are to be answered by declarations that

⁴ KRS 278.543 provides in pertinent part, "[t]he rates, terms, and conditions for **basic and nonbasic** services shall be **valid** upon the effective date stated in the schedule. Tariffs for **nonbasic** services in effect on July 12, 2006, shall continue to be **effective as binding** rates, terms, and conditions until withdrawn or modified by the telephone utility") (emphasis added).

⁵ Windstream Kentucky East, Inc., PSC KY No. 7, Original Page 27, S2.4.5 (emphasis added). It should be noted that Windstream's other tariffs do not even include authority to recover the expenses of "local" taxes.

interpret Kentucky law. *Bowers*, 709 F.Supp.2d at 534. They do not pertain to Petitioner personally. At issue are *Windstream's* tariffing obligations and *Windstream's* tariff. While the Court seeks the Commission's expertise on Kentucky utility law, it did not defer to the Commission the question of Petitioner's standing to bring the claim or to represent the class. In fact, the Court has already denied *Windstream's* motion to dismiss the Complaint for lack of standing, *Bowers*, 709 F.Supp. at 532, and its decision on her adequacy as a class representative is pending.

Windstream's procedural games should be ignored. The questions posed by the Court that apply to all of *Windstream's* customers who purchase tariffed services should be answered.

II. WINDSTREAM'S 911 AND FRANCHISE FEE ARGUMENTS ARE DISINGENUOUS.

Windstream continues to argue that its untariffed recovery of its *own* tax expense through the Surcharge is lawful because such fees as those for 911 service are bill "additives" rather than "rate[s] for service" [*Windstream* Brief at 19]. But the Surcharge cannot be compared to the 911 charge. Unlike the Kentucky Gross Receipts Tax, which is imposed on *Windstream* itself, 911 charges are assessed by local governments *directly upon the customer* and *Windstream* is merely the collection agent for the municipalities. See KRS 65.760 (authorizing local governments to charge a "**subscriber charge** for 911 emergency telephone service") [Exhibit 1 hereto (emphasis added)]; Lexington-Fayette Urban County Government Ordinance, Section 13-63 (establishing "a special '911' emergency telephone service funding fee of two dollars and ten cents (\$2.10) per month to be **collected from each telephone subscriber** located in Fayette County assessed on an individual exchange line basis limited to a maximum of twenty-five (25) exchange lines per account" and authorizing the mayor to sign agreements "with the billing or collection entities") [Exhibit 2 hereto]. Compare KRS 136.616 ("A tax is hereby imposed on the **gross**

revenues received by all providers.”) (emphasis added) Windstream admits, as it must, that KRS 136.616 imposes a tax directly upon the carriers, and that its Surcharge is to “recover costs of the gross revenues tax levied on Windstream East by the Kentucky Department of Revenue” [Windstream Brief at 18 (emphasis added)].

The distinction between a charge levied on a customer by the government and a charge levied on a utility by the government (then recovered by the utility by adding a proportionate amount to its rates) is precisely the difference between an untariffed bill “additive” (as Windstream puts it) and a “rate for service” that must be tariffed. Federal and state law are identical on the point. Federal law was fully explained by the U.S. District Court in this very case in its analysis of *Irwin Wallace*:

The *Irwin Wallace* opinion distinguished taxes imposed directly on the customer and taxes that are imposed on the telecommunications carrier, but are permitted to be passed on to the customer. 6 FCC Rcd. 1618 91991) at ¶ 6. The utility can apply the former without any mention in a tariff; it cannot pass along its own taxes, however, without special tariff authority. *Id.* The *Irwin Wallace* opinion concluded that a tax applied to a telecommunications carrier ... was ‘one of the many expenses affecting the carrier’s charges to its customers.’ *Id.* Accordingly, the FCC found that ‘imposition of a gross receipts tax surcharge on the end user before the tariff authorizing such a charge became effective was a violation of Section 203 of the Act.’

Bowers, 709 F.Supp.2d at 533.

Meanwhile, this Commission, the Kentucky courts, and the Kentucky Attorney General have drawn precisely the same distinction. *See generally*, Petitioner’s Brief; *Lockett*, 558 S.W.2d at 613 (a 3% increase to bills to recover the school tax was “no different from the remainder of the utility bill which constitutes gross receipts to the utility company”); Ky. OAG 83-445 (explaining that when a customer pays a share of the utility’s tax liability, it is not paying

the “utility gross receipts license tax, it is paying for utility services”).⁶ When a customer pays for utility services, the customer is paying a “rate,” and a “rate” must be tariffed.

Next, Windstream compares local “franchise fees” to its “Gross Receipts Surcharge” and says “Plaintiff may not infer that tariffing authority exists” when authority to impose a tax or fee is “outside of KRS Chapter 278” [Windstream Brief at 20]. This argument is, if anything, even further afield than Windstream’s attempt to equate 911 fees to its Surcharge. Of course the Commission has authority to require that a utility’s pass-through of its own franchise fee and tax expenses be tariffed. *See* Petitioner’s Brief, Section IV.A, and cases cited therein. Whether the Commission has authority to tax or to decide the *amount* of a franchise fee (or a rate for Feature Pack A service, for that matter) has nothing to do with it. The final irony, of course, is that Windstream’s own tariff purports to authorize “franchise” fees. *See* PSC KY No. 7, Original Page 27, S2.4.5. Obviously Windstream understands that recovery of business expenses, including franchise fees, must necessarily be through a rate.

The Surcharge is not a tax imposed by the government on the subscriber. It is an overhead recovery mechanism imposed by Windstream. It is a rate. The Commission can, and must, require it to be accurately tariffed.

⁶ Many of Windstream’s customers, including Petitioner, would be better off if the gross receipts tax *had* been imposed directly upon them by the government, for they have paid more to Windstream through the Surcharge than the 1.3% tax imposed by the statute, and Windstream has admitted it. *See* Windstream Response to Request for Admission No. 1 [Exhibit 10 to Petitioner’s Brief]; Deposition of Windstream C.F.O. Tony Thomas at 62-63 [Exhibit 9 to Petitioner’s Brief].

III. KRS 278.541 ET SEQ. OFFERS “ELECTING” CARRIERS ALTERNATIVES, BUT THEY MUST HONOR THE ALTERNATIVES THEY CHOOSE.

Windstream essentially claims that its status as an “electing” carrier under KRS 278.541 *et seq.* deprives the Commission of *any* authority over what it does. It claims the right to tariff one rate and charge another, contending that its nonbasic services (although they are tariffed) are no longer part of the tariff regime or subject to Commission jurisdiction. It makes this claim even though it continues to change its nonbasic rates through the tariff process⁷ and even though its own invoices describe nonbasic services, and the Surcharge, as “**REGULATED.**” Not only is this hypocritical, it ignores the plain language of KRS 278.544:

Telephone utilities may file with the commission schedules or tariffs reflecting the rates, terms and conditions for nonbasic services that are generally available to all subscribers qualifying for the rates, terms and conditions. The rates, terms, and conditions for **basic and nonbasic** services shall be **valid** upon the effective date stated in the schedule. Tariffs for nonbasic services in effect on July 12, 2006, shall continue to be **effective as binding** rates, terms, and conditions until withdrawn or modified by the telephone utility.

KRS 278.543 (emphasis added). *See also* KRS 278.542 (“Nothing in KRS 278.541 to 278.544 shall affect the commission’s jurisdiction with respect to: ... (k) Tariffs, except as expressly provided for in KRS 278.541 to 278.546”).

Windstream admits its rates for the Feature Pack A components purchased by Petitioner are in its Tariff No. 7 as “\$17.07 and \$16.00” [Windstream Brief at 19]. Windstream tacked on 1.3% (and, at times, 1.75% and 2.6%) to these prices (as well as to its tariffed prices for basic services and access services) and knowingly charged the increased rates without including them in the tariffs. It does not matter in the least that rates for nonbasic services “shall be set by the marketplace” [Windstream Brief at 12]. Petitioner is not asking Windstream to lower its rates.

⁷ Since 2006 Windstream has made numerous tariff filings to increase rates for nonbasic service and it continues to do so. Attached as Exhibit 3 is a representative Windstream tariff revision filed *just last month*.

Petitioner is not asking the Commission to set Windstream's rates. Petitioner is not arguing that her rate should have been determined based on rate of return, or any other type of rate-setting device. She argues only that Windstream must charge what it tariffs, and *only what it tariffs*. She is correct.

Nor does it matter in the least that electing carriers "may" provide nonbasic services "pursuant to terms and conditions provided to the customer" [Windstream Brief at 12]. This case has to do *only* with Windstream's claimed authority to choose to tariff one rate and charge another to customers who take service pursuant to *tariff*. As Windstream's Senior Vice President of Government Affairs admitted in deposition, "...whether a tariff is required or not is – is one issue, but having something in a tariff, whether you believe it's required or not, doesn't give you the ability to depart."⁸

Windstream must honor the choices it has made, including its choice to tariff nonbasic rates without including the Surcharge and its choice to elect price regulation pursuant to KRS 278.543, which required it, in return, not to raise its rates for basic local exchange service for sixty (60) months and *never* to increase its rates for intrastate switched access service.⁹ Instead of honoring its choices, Windstream elected price regulation under KRS 278.543 *and* raised its rates for basic local exchange and intrastate access services. Windstream tariffed nonbasic service rates *and* tacked an untariffed surcharge onto them. Windstream said on Petitioner's

⁸ Deposition of Michael Rhoda, at 25, Attachment 4 to Petitioner's Testimony and Materials.

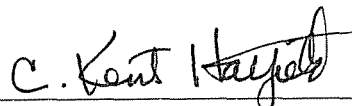
⁹ Windstream understands, and has acknowledged, that the alternative regulation plan it has chosen is a two-way street. Its own witness has testified that "[t]he whole point of such regulation is to offer an alternative to traditional ratemaking jurisdiction and to create incentives for carriers to operate efficiently in a competitive marketplace. At the same time, *the carrier bears the risk of costs increasing*.... This was part of the regulatory bargain created by the Legislature." Direct Testimony of Cesar Caballero filed July 15, 2010 in *MCI communications Services, Inc. et al. v. Windstream Kentucky West, Inc., et al.*, Case No. 2007-00503 (Except attached as Exhibit 14 to Petitioner's Brief) (emphasis added). Instead of "bearing" the cost of Gross Receipts Tax, Windstream added it to its allegedly "capped" basic local exchange service and switched access customers' rates.

bills that her services were “**REGULATED**” but now says they are not. Windstream cannot have it both ways.

CONCLUSION

For the foregoing reasons, and for those stated in Petitioner’s previous filings, the Commission should enter an Order confirming that the analysis of *Irwin Wallace* does indeed reflect the law in Kentucky, and that the “local taxing authority” language in one of Windstream’s tariffs does not encompass state statutes.

Respectfully submitted,



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Counsel for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served by first class mail on those persons whose names appear below this 6th day of September 2011:

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

Jeanne Shearer
Windstream Kentucky East, LLC
4139 Oregon Pike
Ephrata, PA 17522



C. Kent Hatfield

65.760 Establishment of 911 emergency telephone service by city, county, or urban-county government -- Funding.

- (1) Any city, county, or urban-county government may establish 911 emergency telephone service upon approval of the governing body of the city, county, or urban-county government and may adopt regulations concerning the provision of this service by ordinance.
- (2) Any city, county, or urban-county government, or any combination thereof, may with the approval of their governing bodies enter into an interlocal cooperation agreement creating a joint 911 emergency telephone service.
- (3) The funds required by a city, county, or urban-county government to establish and operate 911 emergency telephone service, or to participate in joint service with other local governments, may be obtained through the levy of any special tax, license, or fee not in conflict with the Constitution and statutes of this state. The special tax, license, or fee may include a subscriber charge for 911 emergency telephone service that shall be levied on an individual exchange-line basis, limited to a maximum of twenty-five (25) exchange lines per account per government entity. Any private commercial telephone service or owner of a dispersed private telephone system (DPTS) that provides local and 911 emergency service to subscribers for compensation shall collect and remit the subscriber charge to the local government on the same basis as the primary local exchange carrier, except that this requirement shall not apply to a state agency that currently maintains an independent 911 system with its own public safety answering point. All revenues from a tax or fee expressly levied to fund 911 emergency services shall be expended solely for the establishment, operation, and maintenance of a 911 emergency communications system; this may include expenditures to train communications personnel and to inform the public of the availability and proper use of 911 service.
- (4) The governing body may apply for and accept federal moneys and may accept contributions and donations from any source for the purpose of funding 911 emergency telephone service.
- (5) Nothing in this section shall preclude other means of establishing or funding a 911 emergency telephone service within any local area or exchange, nor require the operation of such service by any local government.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 521, sec. 4, effective July 15, 1998. -- Amended 1986 Ky. Acts ch. 114, sec. 1, effective July 15, 1986. -- Created 1984 Ky. Acts ch. 154, sec. 3, effective July 13, 1984.

Sec. 13-63. - Emergency communications system; fee.

(a) Pursuant to KRS 65.760(3) there is hereby established a special "911" emergency telephone service funding fee of two dollars and ten cents (\$2.10) per month to be collected from each telephone subscriber located in Fayette County, Kentucky, and served by the 911 emergency telephone service. The fee shall be assessed on an individual exchange line basis limited to a maximum of twenty-five (25) exchange lines per account. This fee shall automatically increase by four and one-half percent (4.5%) per annum, effective every July 1, commencing July 1, 2009. The mayor shall have the authority to sign any agreements and memorandum of understanding with the billing or collection entities as necessary to effectuate the intent of this section.

(b) The fee established in this section shall be deposited into a special account and shall be used solely for the establishment, operation and maintenance of the 911 emergency communication system; this includes expenditures to train communications personnel and to inform the public of the availability and proper use of the 911 service.

(c) The 911 emergency communication system shall be operated by the department of public safety of the urban county government.

(Ord. No. 57-95, § 1, 3-23-95; Ord. No. 12-99, § 1, 1-28-99; Ord. No. 170-2003, § 1, 7-1-03; Ord. No. 128-2008, § 1, 6-12-08)

Windstream Communications, Inc
4001 Rodney Parham Road
Little Rock, AR 72212

Karen Higgs
Manager, Tariffs

t: 501-748-6655 f:501-748-6583
e-mail: Karen.L.Higgs@windstream.com



Date: August 1, 2011

Ms. Stephanie Stumbo
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort KY 40602-0615

Dear Ms. Stumbo:

On behalf of Windstream Kentucky East, LLC., submitted for electronic filing with the Kentucky Public Service Commission are the following revised tariff sheets for its General Customer Services Tariff:

<u>Section</u>	<u>Title</u>	<u>Revision</u>	<u>Page</u>
3	Basic Local Exchange Service	1 st	2, 3, 4, 5, 152
10	Digital Network Service	1 st	79, 87
12	Central Office Non-Transport Service Offering	1 st	80
110	Discontinued Digital Network Services	1 st	38, 81, 82, 140
112	Discontinued Centrex Service	1 st	22, 76

The purpose of this filing is to increase some non-basic business rates.

The issue date of this filing is August 1, 2011 with an effective date of September 1, 2011. Please call me at 501-748-6655 if you have any questions regarding this filing.

Sincerely,

Karen Higgs

Attachments

GENERAL CUSTOMER SERVICES TARIFF

WINDSTREAM KENTUCKY EAST, INC.

P.S.C. KY. No. 7
First Revised Page 2
Cancels Original Page 2

ISSUED: August 1, 2011
BY: Vice President
Lexington, Kentucky

EFFECTIVE: September 1, 2011

S3. BASIC LOCAL EXCHANGE SERVICE

S3.2 Monthly Exchange Rates

- a. Monthly exchange rates as authorized by the Public Service Commission of Kentucky are shown herein.
- b. The rates specified herein, with mileage charges when applicable, entitle customers to an unlimited number of messages to all stations bearing the designation of central offices within the serving exchange and additional exchanges as shown in Section S3.5, Local Calling Areas.
- c. Reference S4.2.1 for application of Service Charges in the Link-Up Kentucky Program.

S3.2.1 Flat Rate Service

- a. The rates specified herein entitle customers to an unlimited number of messages to all stations bearing the designation of central offices within the serving exchange and the additional exchanges as shown in Section S3.5, Local Calling Areas. Local Calling Plans are available at the exchanges designated and rates specified in Section S3.6.

<u>Exchange</u>	<u>Business</u>			<u>Residence</u>	
	<u>One Party</u>	<u>PBX</u>		<u>One Party</u>	
Albany	\$32.00	\$39.00	(I)	\$13.20	
Arlington	23.40	39.00		13.20	
Ashland	32.00	39.00		17.47	
Augusta	24.60	39.00		13.20	
Barbourville	26.20	39.00		14.37	
Bardwell	23.40	39.00		13.20	
Bee Spring	24.60	39.00		13.20	
Berea	32.00	39.00		15.64	
Bradfordsville	32.00	39.00		13.20	
Brodhead	26.20	39.00		13.20	
Brooksville	24.60	39.00		13.20	
Brownsville	24.60	39.00		13.20	
Bryantsville	32.00	39.00		13.20	
Burkesville	32.00	39.00		13.20	
Burnside	32.00	39.00		15.64	
Calvert City	26.95	39.00	(I)	14.37	



GENERAL CUSTOMER SERVICES TARIFF

WINDSTREAM KENTUCKY EAST, INC.

**P.S.C. KY. No. 7
First Revised Page 3
Cancels Original Page 3**

**ISSUED: August 1, 2011
BY: Vice President
Lexington, Kentucky**

EFFECTIVE: September 1, 2011

S3. BASIC LOCAL EXCHANGE SERVICE

S3.2 Monthly Exchange Rates (Continued)

S3.2.1 Flat Rate Service (Continued)

a. (Continued)

<u>Exchange</u>	<u>Business</u>			<u>Residence</u>
	<u>One Party</u>	<u>PBX</u>		<u>One Party</u>
Campbellsville	\$32.00	\$39.00	(I)	\$14.37
Caneyville	26.95	39.00		14.37
Catlettsburg	32.00	39.00		17.07
Cecilia	32.00	39.00		15.64
Clarkson	26.95	39.00		14.37
Columbia	32.00	39.00		13.20
Columbus	23.40	39.00		13.20
Cumberland	22.20	39.00		13.20
Dover	26.95	39.00		14.37
East Bernstadt	28.09	39.00		15.64
Elizabethtown	32.00	39.00		17.07
Eubank	28.09	39.00		17.07
Evarts	23.40	39.00		13.20
Ewing	32.00	39.00		13.20
Faubush	28.09	39.00		15.64
Fernleaf	26.95	39.00		14.37
Flatlick	26.20	39.00		14.37
Flemingsburg	32.00	39.00		13.20
Garrison	32.00	39.00		13.20
Germantown	24.60	39.00		13.20
Glasgow	32.00	39.00		15.64
Grayson	32.00	39.00		14.37
Greensburg	32.00	39.00		13.20
Greenup	32.00	39.00		17.47
Hazard	32.00	39.00		14.37
Hillsboro	32.00	39.00		13.20
Hodgenville	32.00	39.00		15.64
Hustonville	32.00	39.00		14.37
Irvine	26.20	39.00		13.20
Jenkins	26.95	39.00		14.37
Johnsville	24.60	39.00		13.20
Lancaster	32.00	39.00		13.20
Leatherwood	32.00	39.00		14.37
Lebanon	32.00	39.00	(I)	13.20



GENERAL CUSTOMER SERVICES TARIFF

WINDSTREAM KENTUCKY EAST, INC.

**P.S.C. KY. No. 7
First Revised Page 4
Cancels Original Page 4**

**ISSUED: August 1, 2011
BY: Vice President
Lexington, Kentucky**

EFFECTIVE: September 1, 2011

S3. BASIC LOCAL EXCHANGE SERVICE

S3.2 Monthly Exchange Rates (Continued)

S3.2.1 Flat Rate Service (Continued)

a. (Continued)

<u>Exchange</u>	<u>Business</u>			<u>Residence</u>
	<u>One Party</u>	<u>PBX</u>		<u>One Party</u>
Leitchfield	\$32.00	\$39.00	(I)	\$14.37
Lewisburg	26.95	39.00		14.37
Lexington	31.00	38.00		18.95
Liberty	32.00	39.00		13.20
Livingston	26.20	39.00		13.20
London	28.09	39.00		15.64
Loretto	32.00	39.00		13.20
Mammoth Cave	24.60	39.00		13.20
Manchester	26.20	39.00		14.37
Mays Lick	26.95	39.00		14.37
Meads	32.00	39.00		17.47
Midway	32.00	39.00		18.95
Milburn	23.40	39.00		13.20
Monticello	32.00	39.00		13.20
Morehead	32.00	39.00		14.37
Mount Olivet	23.40	39.00		13.20
Mount Vernon	26.20	39.00		13.20
Nancy	32.00	39.00		15.64
Nicholasville	32.00	39.00		18.59
Olive Hill	32.00	39.00		14.37
Oneida	26.20	39.00		14.37
Owingsville	32.00	39.00		13.20
Paint Lick	32.00	39.00		15.64
Park City	28.09	39.00		15.64
Russell	32.00	39.00		17.47
Salt Lick	32.00	39.00		13.20
Science Hill	28.09	39.00		15.64
Scottsville	32.00	39.00		13.20
Sharpsburg	32.00	39.00		13.20
Shopville	28.09	39.00		15.64
Smithland	24.60	39.00	(I)	13.20



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S3. BASIC LOCAL EXCHANGE SERVICE

S3.2 Monthly Exchange Rates (Continued)

S3.2.1 Flat Rate Service (Continued)

a. (Continued)

<u>Exchange</u>	<u>Business</u>			<u>Residence</u>
	<u>One Party</u>	<u>PBX</u>		<u>One Party</u>
Smiths Grove	\$28.09	\$39.00	(I)	\$17.07
Somerset	32.00	39.00		15.64
South Hardin	32.00	39.00		15.64
South Shore	32.00	39.00		18.99
Tollesboro	32.00	39.00		13.20
Tompkinsville	32.00	39.00		13.20
Uniontown1	10.85	39.00		6.40
Vanceburg	32.00	39.00		13.20
Versailles	32.00	39.00		18.59
Vicco	32.00	39.00		14.37
Washington	26.95	39.00		14.37
White Lily	28.09	39.00		15.64
Wilmore	32.00	39.00	(I)	18.59

Note 1: Uniontown - Key Access Line - \$24.87.



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S3. BASIC LOCAL EXCHANGE SERVICE

S3.15 Network Access Register Package

S3.15.1 General

The Network Access Register (NAR) Package provides for exchange and long-distance message network calling to and from Main Stations and attendant positions of a Centrex System. The NAR Package provides for Flat Rate network access.

S3.15.2 Rates and Charges

- a. The Flat Rate (NAR) Package includes an unlimited number of dialed sent paid local calls.
- b. The rates shown are applicable whether the NAR Package is used for Inward, Outward, or Combination applications.
- c. The conditions and rates specified in other sections of this Tariff for service which may be associated with these services are in addition to those specified herein.
- d. Flat Rate Network Access Register (NAR) Package:

<u>Exchanges</u>	<u>Monthly Rate</u>	
All Exchanges, per NAR	\$ 34.00	(I)

- e. Flat Rate Network Access Register (NAR) Package, per NAR, for Centrex customers subscribing to one of the Local Calling Plans is as specified in Section S3.6.3 of this Tariff.
- f. The number of simultaneous exchanges and tollnetwork calls to and from Centrex stations and attendant positions of a Windstream Centrex and/or a Windstream Digital (ISDN) Centrex system are limited by the number of Network Access Registers subscribed to by the customer. The following Network Access Register quantities are recommended to maintain a P.01 grade-of-service.

Network Access Register Sizing					
<u>Lines</u>	<u>NARs</u>	<u>Lines</u>	<u>NARs</u>	<u>Lines</u>	<u>NARS</u>
02	2	46-55	10	176-200	20
03-04	3	56-66	11	201-225	22
05-08	4	67-77	12	226-250	25
09-13	5	78-89	13	251-275	27
14-19	6	90-100	14	276-300	29
20-27	7	101-125	15	301-325	32
28-37	8	126-150	16	326-350	35
38-45	9	151-175	18	351-375	
				376-400	



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S10. DIGITAL NETWORK SERVICE

S10.11 Digital (ISDN) Single Line Service (Continued)

S10.11.5 Rates and Charges

	<u>Monthly Rate</u>	<u>12 Month Rate</u>	<u>36 Month Rate</u>
a. Home Digital (ISDN) Single Line Service			
(1) Measured			
Nonrecurring Charge	\$ 200.00	\$ 100.00	\$ -
Monthly Access (Note 1)	30.00	30.00	30.00
Usage (Note 2)	.025/min per channel	.020/min per channel	.015/min per channel
(2) Flat			
Nonrecurring Charge	200.00	100.00	-
Monthly Access (Note 1)	70.00	60.00	50.00
Usage (Note 2)	N/A	N/A	N/A
b. Business Digital (ISDN) Single Line Service			
(1) Measured			
Nonrecurring Charge	200.00	100.00	-
Monthly Access (Note 1)	33.00 (1)	30.00	30.00
Usage (Note 2)	.025/min per channel	.020/min per channel	0.15/min per channel

Note 1: Monthly access includes B-voice/switched data on both B-channels and individual line loop extension, if necessary. In addition, the appropriate one-party residence or one-party business line rate, specified in Section S3.2.1 is required for the local loop component.

Note 2: Usage applies to all originating voice/switched data calls terminating within the local calling area. Rates as specified in Section S18 apply for all originating long distance calls.

Note 3: Complementary packet services may be ordered from the appropriate tariff.



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S10. DIGITAL NETWORK SERVICES

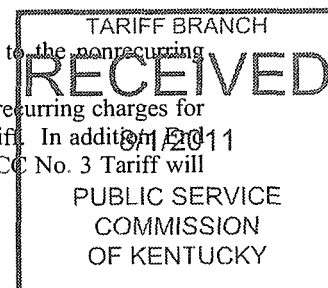
S10.12 Integrated Services Digital Network - Primary Rate Interface (ISDN-PRI) (Continued)

S10.12.5 Rates and Charges

	<u>Monthly Rate</u>		<u>Nonrecurring Charge¹</u>
a. ISDN-PRI Facility			
1. Flat Rate Option			
Month to Month	\$320.00	(I)	\$ -
12-Month Term	300.00	(I)	-
36-Month Term	260.00	(I)	-
60-Month Term	220.00	(I)	-
2. Mileage Sensitive Option	Note 2		Note 2
b. ISDN-PRI Access			
Month to Month	\$468.00	(I)	\$500.00
12-Month Term	438.00	(I)	500.00
36-Month Term	398.00	(I)	500.00
60-Month Term	358.00	(I)	500.00
c. Channel Activations, per channel			
Voice Channel			
Activation (flat)	17.00	(I)	-
Voice/Data Channel Activation (measured)	5.00		-

Note 1: Service charges reflected in Section S4.3 of this Tariff will not apply in addition to the nonrecurring charges specified above.

Note 2: The applicable rates and charges for the ISDN-PRI Facility are the monthly and nonrecurring charges for 1.544 Access Line and Special Transport, as specified in Section S20.3.4 of this Tariff. In addition, 2011 User Charges as specified in Section 4 of the Windstream Telephone Systems FCC No. 3 Tariff will apply per PRI Access.



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S12. CENTRAL OFFICE NON-TRANSPORT SERVICE OFFERING

S12.4 Windstream Centrex Service/Windstream Digital (ISDN) Centrex Service (Continued)

S12.4.5 Rates and Charges (Continued)

b. Service Line (Continued)

(1) Windstream Analog Centrex Service Line

	<u>Monthly Rate</u>		<u>Initial Order Nonrecurring Charge</u>	<u>Nonrecurring Charge</u>
<u>Month-to-Month</u>				
2-25 lines, per line	\$18.80	(1)	\$24.60	\$24.60
26-50 lines, per line	14.50	(1)	24.60	24.60
<u>12-Month term</u>				
2- 25 lines, per line	17.70		12.30	24.60
26- 50 lines, per line	13.40		12.30	24.60
51-100 lines, per line	13.30		12.30	24.60
101-200 lines, per line	13.05		12.30	24.60
201-250 lines, per line	12.50		12.30	24.60
<u>36-Month term</u>				
2- 25 lines, per line	17.60		-	24.60
26- 50 lines, per line	13.30		-	24.60
51-100 lines, per line	12.80		-	24.60
101-200 lines, per line	12.35		-	24.60
201-400 lines, per line	12.20		-	24.60
<u>60-Month term</u>				
51-100 lines, per line	12.40		-	24.60
101-200 lines, per line	12.25		-	24.60
201-400 lines, per line	12.10		-	24.60
<u>84-Month term</u>				
51-100 lines, per line	12.30		-	24.60
101-200 lines, per line	12.15		-	24.60
201-400 lines, per line	12.00		-	24.60



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S110. DISCONTINUED DIGITAL NETWORK SERVICES

S110.1 Integrated Services Digital Network (ISDN) - Basic Rate Interface (Continued)

S110.1.9 Rates and Charges (Continued)

a. Nonrecurring Charges

- (3) Software Reconfiguration Charge:

Nonrecurring <u>Charge</u>
\$50.00

This charge applies for changes, deletions, additions for the following activities. The rate will apply on a per line, per service order basis regardless of the mix of activities. A Data Base Change Charge and a Software Reconfiguration Charge may be applicable on the same service order.

- (a) Feature Packages
- (b) Features Within a Feature Package
- (c) Programmable Buttons
- (d) Terminals

b. Recurring Charges

- (1) The rates and charges shown herein apply in addition to all other applicable rates and charges shown elsewhere in the Company's Tariffs.

	<u>Monthly Rate</u>	
(a) ISDN Access - Note 1		
3- 25 Lines, per access line	\$ 22.00	(I)
26- 49 Lines, per access line	18.25	
50-100 Lines, per access line	17.50	
101-250 Lines, per access line	17.00	



Note 1: May be used for Voice or Data or a combination of Data and Voice on a single or multipoint service

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S112A. DISCONTINUED CENTREX SERVICE-FORMER CONTEL EXCHANGES

S112A.4 Rates and Charges (Continued)

a. Basic Centrex Service (Continued)

(1) Application (Continued)

- (d) Block 1 charges are assessed to customers with 5-24 stations. The base charge is applied to each station up to and including four (4) stations. The additional line charge is applied to each station greater than four (4) subscribed to.
- (e) Block 2 charges are assessed to customers with 25-49 stations. The base charge is applied to each station up to and including (24) stations. The additional line charge is applied in each station greater than twenty-four (24) subscribed to.
- (f) Block 3 charges are assessed to customers with 50-200 stations. The base charge is applied to each station up to and including (49) stations. The additional line charge is applied to each station greater than forty nine (49) subscribed to.

(2)	Rates Rate Group	<u>Station Blocks</u>			
		Block <u>1</u>	Block <u>2</u>	Block <u>3</u>	
1	Base Charge	\$ 28.70	\$ 25.80	\$ 21.95	(I)
	Additional Line Charge	25.25	18.25	17.50	
2	Base Charge	29.65	26.55	22.80	
	Additional Line Charge	25.95	19.20	17.65	
3	Base Charge	30.90	27.35	23.65	
	Additional Line Charge	26.65	20.15	17.75	
4	Base Charge	31.50	28.00	24.50	
	Additional Line Charge	27.30	21.05	17.90	
5	Base Charge	32.45	28.75	25.30	(I)
	Additional Line Charge	28.00	22.00	18.00	



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**S112. DISCONTINUED CENTRAL OFFICE NON-TRANSPORT
SERVICE OFFERING - FORMER GTE EXCHANGES**

S112.4 Centrex III Service (Continued)

S112.4.6 Rates and Charges (Continued)

b. Recurring

- (1) The rates and charges shown herein apply in addition to all other applicable rates and charges shown elsewhere in the Company's Tariff.
- (2) Centrex III Service line rates are determined by the total number of Centrex lines requested (i.e., if a customer requests 28 lines, all lines will be billed at the "26-49" group line rate).
- (3) The following rates apply during the contract period and until the service is discontinued.*

	<u>Monthly Rate</u>	
3-25 Stations, Per Station [#]	\$14.75	(I)
26-49 Stations, Per Station [#]	14.50	(I)
 <u>12 Month Contract</u>		
50-100 Stations, Per Station	13.25	
101-250 Stations, Per Station	13.00	
 <u>36 Month Contract</u>		
50-100 Stations, Per Station	12.75	
101-250 Stations, Per Station	12.20	
251-400 Stations, Per Station*	12.30	
 <u>60 Month Contract</u>		
50-100 Stations, Per Station	12.30	
101-250 Stations, Per Station	12.20	
251-400 Stations, Per Station*	12.10	
 <u>84 Month Contract</u>		
50-100 Stations, Per Station	12.20	
101-250 Stations, Per Station	12.10	
251-400 Stations, Per Station*	12.00	

* Centrex III Service Arrangements exceeding 400 lines will be offered as a Special Service Arrangement case basis.

Minimum Contract Period for 3-49 Lines is one month.



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S110. DISCONTINUED DIGITAL NETWORK SERVICES

S110.3 Digital (ISDN) Single Line Service

S110.3.1 General

The provision of the following rates to existing customer subscribing to Digital (ISDN) Single Line Service 12 month and/or 36 month contract terms will be continued only until the expiration of the customer's current contract term. Upon contract term expiration, the customer will revert to rules, regulations, and rates as specified in Section S10.11 of this Tariff for the provisions of Digital (ISDN) Single Line Service. New installations, moves and additions will not be allowed under this obsolete service offering. The customer may request changes within the existing premises.

S110.3.2 Rates and Charges

	<u>Monthly Rate</u>		<u>12 Month</u>		<u>36 Month</u>
a. Home Digital (ISDN) Single Line Access, each	\$ 44.00	(I)	\$ 35.50		\$ 32.50
B-Voice/Circuit Switched Data, per line	2.00		2.00		2.00
B-Packet ⁽¹⁾ , per channel	120.00		120.00		120.00
D-Packet ⁽¹⁾ , per channel	5.00		5.00		5.00
b. Business Digital (ISDN) Single Line Access, each	65.00	(I)	60.00	(I)	52.50
B-Voice/Circuit Switched Data, per line	5.00		5.00		5.00
B-Packet ⁽¹⁾ , per channel	120.00		120.00		120.00
D-Packet ⁽¹⁾ , per channel	5.00		5.00		5.00

(1) Available within the closed user group only, unless combined with Local Packet Switching Network Service in Section S10.6 of this Tariff.



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S110. DISCONTINUED DIGITAL NETWORK SERVICES

S110.3 Digital (ISDN) Single Line Service

S110.3.2 Rates and Charges (Continued)

c. Usage Options⁽¹⁾

Monthly
Rate

Home Digital (ISDN) (Residence):

(1)	25 hour block of time	\$19.00
(2)	50 hour block of time	33.00
(3)	Flat Rate	40.00

Business Digital (ISDN):

(1)	Measured	Note 5	
(2)	50 hour block of time	36.00	(I)
(3)	100 hour block of time	57.00	

Note 1: Business customers may subscribe to the Measured option, the 50 Hour Block-of-Time or the 100 Hour Block-of-Time on a per line basis for Business Digital (ISDN) Single Line Service.

Note 2: Residence customers may subscribe to the 25 Hour Block-of-Time, the 50 Hour Block-of-Time or the Flat Rate option on a per line basis for Home Digital (ISDN) Single Line Service.

Note 3: When customers subscribe to a Block-to-Time, all local voice and circuit switched data calls apply toward the Block-of-Time.

Note 4: Overtime for all local voice and circuit switched data calls occurring beyond the subscribed Block-of-Time will be billed at a rate of \$.05 cents per minute.

Note 5: Usage rates will apply for all circuit switched data calls terminating in the customer's local calling area as specified in Section S10.2.5.e.(2).



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S110. DISCONTINUED DIGITAL NETWORK SERVICES

S110.10 Switched Data Service (Cont'd)

S110.10.5 Rates and Charges (Continued)

e. The following rates are in addition to the rates and charges for other associated services and applicable service charges shown in Section S4 of this Tariff.

(1) Switched Data Customer Line

	Monthly Rate	
(a) Single-Line, without Intercom		
<u>Monthly Rates</u>		
Low Speed Switched Data Lines, each	\$34.00	
High Speed Switched Data Lines, each	48.00	(1)
<u>Nonrecurring Charge</u>	50.00	
(b) Windstream Centrex With Intercom		
<u>Monthly Rates</u>		
<u>Low Speed Switched Data Lines</u>		
2- 49 lines, each	37.00	
50-100 lines, each	33.00	
101 lines and above, each	29.00	
<u>High Speed Switched Data Lines</u>		
2- 49 lines, each	47.00	
50-100 lines, each	40.00	
101 lines and above, each	33.00	
<u>Nonrecurring Charge</u>	50.00	

