

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

TOUCHSTONE, D/B/A ALEC, INC.)
 Complainant)
 v.)
ALLTEL COMMUNICATIONS, INC.)
 Defendant)

CASE NO. 2005-00482

REPLY TO ALEC'S SUPPLEMENTAL RESPONSE

Windstream Kentucky East, Inc., f/k/a Kentucky Alltel, Inc. ("Windstream") files the following Reply to ALEC's Supplemental Response filed on October 13, 2006 by TOUCHSTONE, d/b/a ALEC, Inc. ("ALEC") with the Kentucky Public Service Commission ("Commission"):

1. ALEC's Supplemental Response to Defendant's Motion to Dismiss and Answer does not set forth any additional arguments or claims between the parties. Windstream's prior pleadings including its Motion to Dismiss and Answer sufficiently address ALEC's two claims (first being compensation for ISP-bound traffic from June 14, 2001 to August 2005, and the second being intra-LATA toll charges from August 2000 to August 2005) and are incorporated herein by reference. Nevertheless, Windstream is filing this Reply to address several specific assertions set forth in ALEC's Supplemental Response and denies all assertions in the response unless specifically admitted herein.
2. In its Supplemental Response, ALEC discusses at length the Federal Communication Commission's ("FCC") *ISP Remand Order* and suggests that, with respect to ISP compensation, "[t]he issue has now been settled." In fact, the issue is not well settled as ALEC itself has acknowledged. ALEC established clearly in its October 17, 2005 agreement

with Brandenburg Telephone Company that the FCC has **not** fully resolved ISP compensation. Sections 3.2 and 3.5 of ALEC's agreement with Brandenburg explicitly exclude any traffic associated with ISP services and also state that treatment of traffic directed to ISPs is "**unresolved and the subject of industry-wide controversy.**" (See, Section 3.5.1.)

3. ALEC's reliance on the FCC's *ISP Remand Order* also overlooks the critical fact that what governs these parties' actions in this proceeding is the interconnection agreement which ALEC adopted and which Windstream inherited from its predecessor.¹ That agreement provides explicitly in Article V, Section 3.2.3 that "until the FCC enters a final, binding and nonappealable order ("Final Order"), the Parties shall exchange and each Party may track ESP/ISP Traffic **but no compensation shall be owed for ESP/ISP Traffic exchanged between the Parties and neither party shall bill the other for such traffic.**" (Emphasis supplied.)
4. The FCC has issued no such final, binding, and nonappealable order and continues to evaluate one-way ISP-bound traffic in its ongoing proceedings. As ALEC even states in its Supplemental Response, "Under the *ISP Remand Order*, the ISP-bound traffic compensation system was to remain in place until the FCC completed the larger task of reforming the intercarrier compensation system as a whole. The FCC is closer to completing that task with the comment period open for its consideration of the 'Missoula Plan,' **but that is not complete.**" (Emphasis supplied.) The FCC, therefore, cannot be said to have issued any final, binding, and nonappealable order as contemplated under the parties' interconnection agreement.

5. ALEC further asserts that since "2002, most incumbent local exchange carriers have been following the Order and paying reciprocal compensation as required subject to the limitations established in the ISP Remand Order." ALEC's assertion is wholly unsubstantiated, and Windstream believes that the statement cannot be substantiated. The experience of Windstream affiliates across many states and through their telephone associations leads Windstream to believe that ALEC has no data to support its assertion and that, in fact, of the more than one thousand independent local exchange carriers, most of them likely do not pay reciprocal compensation on ISP traffic and were not doing so prior to the *ISP Remand Order*. Similarly, ALEC suggests without support that Windstream "is blatantly ignoring both FCC rules and standard industry practice in refusing to pay reciprocal compensation to ALEC." Yet, ALEC sets forth no facts to support what it believes the industry standard to be and fails to demonstrate how it believes that any such standard would take precedent over parties' interconnection agreement.
6. With respect to all claims prior to 2002, Windstream disagrees that this is simply a matter as to the status of Richard McDaniel as ALEC asserts in its Supplemental Response. At least four facts are not in dispute: (1) Richard McDaniel represented ALEC before this Commission; (2) ALEC representative John Dodge acknowledged that Windstream (then Kentucky Alltel) was being presented with competing claims from different ALEC entities; (3) Windstream paid Duro ALEC Settlement Group on March 9, 2005 for all intra-LATA toll charges from August 2000 through November 2002; and (4) neither Windstream nor its predecessor compensated any ALEC entity for ISP-bound traffic from August 2000 through November 2002. Based on these facts alone, the Commission may grant Windstream's

¹ On August 26, 1999, the Commission approved the Interconnection Agreement, Resale and Unbundling Agreement ("Interconnection Agreement") between GTE South Incorporated ("GTE") (one of Kentucky Alltel's

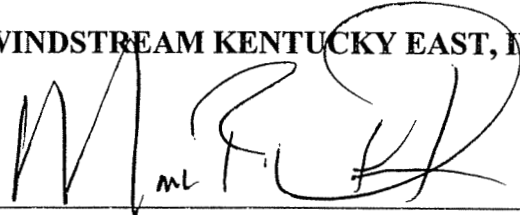
requested relief and dismiss all claims from August 2000 through November 2002 with prejudice.

7. As a final matter, ALEC's Supplemental Response fails to address the parties' obligations under their interconnection agreement with respect to intra-LATA toll, although ALEC did file a series of updated invoices. Windstream continues to work with ALEC to attempt to determine an appropriate amount due for intraLATA toll consistent with the parties' interconnection agreement and ALEC's actual tariffed rates. ALEC has committed to provide to Windstream filemarked tariff pages for the periods in question so that Windstream can attempt to calculate the toll charges it believes may be due. Windstream also continues to attempt to reconcile the inconsistencies in the amount of minutes set forth in ALEC's invoices. For example, invoices ALEC provided during the parties' recent informal conference showed 33,243,450 total minutes for January 2003, which was consistent with another invoice provided by ALEC. However, another invoice provided by ALEC to Windstream for January 2003 showed total minutes of 20,772,159. Reconciliation of the correct minutes and access rates is necessary before Windstream can determine the amount of intraLATA toll charges that are due pursuant to the parties' interconnection agreement. Windstream reserves its rights to file updated or revised calculations for all periods as more rate and minute detail is learned.

WHEREFORE, Windstream requests that the Commission grant all relief requested by Windstream in this proceeding.

Respectfully submitted,

WINDSTREAM KENTUCKY EAST, INC.

A handwritten signature in black ink, appearing to read 'M. R. Overstreet', is written over a horizontal line. The signature is stylized and somewhat cursive.

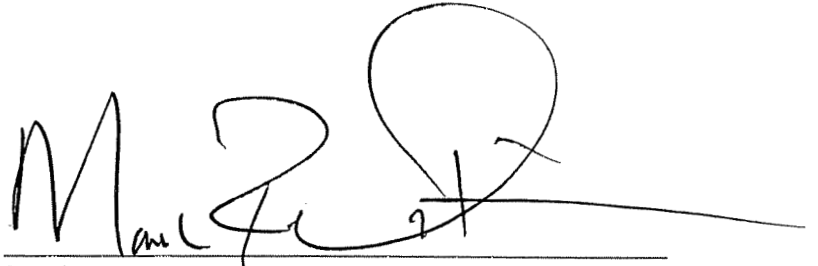
Mark R. Overstreet
STITES & HARBISON, PLLC
421 West Main Street
P.O. Box 634
Frankfort, KY 40602-0634
Telephone: (502) 223-3477

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by United States First Class Mail, postage prepaid, on this 20th day of October, 2006 upon:

Jonathon A. Amlung
Amlung Law Offices
616 South Fifth Street
Louisville, Kentucky 40202

Kristofer E. Twomey
Law Offices of Kristopher E. Twomey
1725 I Street NW
Suite 300
Washington, D.C.



Mark R. Overstreet

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