

# STITES & HARBISON<sub>PLLC</sub>

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March 6, 2007

## HAND DELIVERED

Ms. Beth O'Donnell  
Executive Director  
Public Service Commission of Kentucky  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40602-0615

RECEIVED

MAR 06 2007

PUBLIC SERVICE  
COMMISSION

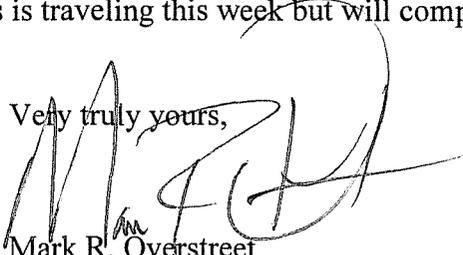
Mark R. Overstreet  
(502) 209-1219  
(502) 223-4387 FAX  
moverstreet@stites.com

**RE: P.S.C. Case 2005-00482**

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and ten copies of the Rebuttal testimony of Stephen B. Weeks. Mr. Weeks is traveling this week but will complete and file his verification upon his return.

Very truly yours,

  
Mark R. Overstreet

cc: Jonathon A. Amlung  
Kristopher E. Twomey

KE242:00KE1:15356:1:FRANKFORT

1  
2  
3 **COMMONWEALTH OF KENTUCKY**  
4 **BEFORE THE PUBLIC SERVICE COMMISSION**

5 **In the Matter of:**

6  
7 **TOUCHSTONE,** )  
8 **d/b/a/ ALEC, Inc.** )

9 )  
10 **COMPLAINANT** )

11 )  
12 **V.** )

**CASE NO. 2005-00482**

13 )  
14 **KENTUCKY ALLTEL, INC.** )

15 )  
16 **RESPONDENT** )  
17  
18  
19

20 **REBUTTAL TESTIMONY**

21 **OF**

22 **STEPHEN B. WEEKS**  
23  
24  
25  
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27  
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30  
31 **ON BEHALF OF WINDSTREAM KENTUCKY EAST, INC. F/K/A**  
32 **KENTUCKY ALLTEL, INC.**  
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**COMMISSION**

**Filed March 6, 2007**



1 A. Yes. Essentially, Mr. Hayes asserts that Windstream has failed to abide by the terms of  
2 the Agreement and owes ALEC more than \$9 million for termination of ISP-bound  
3 traffic and toll traffic.

4  
5 **Q. Do you agree that compensation for ISP-bound traffic is due to ALEC under the**  
6 **Agreement?**

7 A. No. The Agreement that ALEC assumed from Touchtone requires that certain events  
8 occur prior to the parties initiating compensation for such traffic. In particular, the  
9 Agreement explicitly provides that no compensation is due and neither party may bill for  
10 ISP-bound compensation until the FCC enters a final, binding and nonappealable order  
11 and until the parties amend the Agreement in writing to reflect such an order. These  
12 events have not occurred.

13  
14 **Q. Do you agree with Mr. Hayes' contention that the FCC's *ISP Remand Order* is the**  
15 **type of final, binding and non-appealable order contemplated under the**  
16 **Agreement?**

17 A. No. The Agreement contemplates issuance of an order which speaks dispositively to the  
18 issue of ISP-bound compensation. Presumably because of the arbitrage opportunities that  
19 exist with such ISP-bound traffic, GTE negotiated the provisions in the Agreement that  
20 prohibit either party from billing for such traffic until such a final determination is issued

1 and the parties amend the Agreement accordingly. Again, I am not an attorney and  
2 understand that the legal positions of the parties on various FCC orders and notices of  
3 proposed rulemakings will be addressed in post-hearing briefs. However, I am aware that  
4 the FCC continues to evaluate and investigate Internet service schemes and issued a  
5 notice of proposed rulemaking (“NPRM”) at the same time it issued the *ISP Remand*  
6 *Order* to consider issues of ISP compensation. I am also aware that the FCC released a  
7 further notice of proposed rulemaking (“FNPRM”) in 2005 to further determine how to  
8 address compensation for ISP traffic. Both the NPRM and the FNPRM remain pending.

9  
10 **Q. Has ALEC itself agreed that the FCC has not issued a final, binding, and**  
11 **nonappealable order which speaks dispositively to the issue of ISP-bound**  
12 **compensation?**

13 A. Yes. Interestingly, Mr. Hayes fails to address the fact that ALEC itself acknowledged as  
14 recently as November 2005 in the interconnection agreement it negotiated with  
15 Brandenburg Telephone that the FCC has not released an order resolving the issue of  
16 compensation for ISP-bound traffic. Specifically, ALEC stated in Section 3.5.1 of its  
17 interconnection agreement with Brandenburg:

18 The Parties recognize **treatment of traffic directed to ISPs is unresolved**  
19 **and the subject of industry wide controversy.** The Parties further  
20 recognize that the long term resolution of issues related to ISP Traffic will  
21 affect both Parties and will likely necessitate modification to this  
22 Agreement.  
23

1 (Emphasis supplied.) In Section 3.5.2 of that same agreement, ALEC agreed that ALEC  
2 and Brandenburg "may treat ISP Traffic under these conditions **until such time as a**  
3 **regulatory authority, court, or legislative body addresses the proper treatment of**  
4 **this Traffic.**" (Emphasis supplied.) ALEC's agreement with Brandenburg was approved  
5 by the Commission in Case No. 2005-00429 on November 4, 2005. ALEC negotiated the  
6 2005 Brandenburg agreement more than four years after the *ISP Remand Order* became  
7 effective in June 2001, although ALEC now claims in this proceeding that the *ISP*  
8 *Remand Order* dispositively speaks to the issue of ISP-bound compensation. Clearly, it  
9 does not.

10  
11 **Q. Doe ALEC explain how the very terms of the *ISP Remand Order* would result in any**  
12 **compensation being due to ALEC for ISP-bound traffic?**

13 A. No. Even if the *ISP Remand Order* was final, binding, and nonappealable, Windstream  
14 would owe ALEC \$0 compensation for ISP-bound traffic under the very terms of the *ISP*  
15 *Remand Order*. ALEC fails to acknowledge that billing for ISP-bound traffic under the  
16 *ISP Remand Order* was permitted based on the minutes for which a local exchange  
17 carrier was entitled to receive compensation under its agreement during the first quarter  
18 of 2001. (See, e.g., *ISP Remand Order* at ¶78, providing that for the year 2001 a carrier  
19 may receive compensation for ISP-bound minutes up to a ceiling equal to the number of  
20 ISP-bound minutes for which it was entitled to receive compensation under its agreement

1 during the first quarter of 2001.) In ALEC's case, the Agreement prohibits ALEC from  
2 receiving or even billing for ISP compensation until certain events occur. ALEC claims  
3 that the *ISP Remand Order* was such an event. Even if true, that event did not occur until  
4 the second quarter of 2001. Thus, ALEC was not entitled to receive any ISP  
5 compensation under its Agreement during the first quarter of 2001 and by its own  
6 argument, would not have been entitled to receive compensation for ISP-bound traffic  
7 until the second quarter of 2001. Because the "cut-off" for ISP compensation for the year  
8 2001 under the very terms of the *ISP Remand Order* is the first quarter of 2001 and  
9 because ALEC was not entitled to any ISP compensation in the first quarter of 2001, the  
10 amount of compensation due under the *ISP Remand Order* pursuant to ALEC's asserted  
11 position is \$0.

12  
13 The compensation regime imposed by the *ISP Remand Order* also results in ALEC being  
14 owed \$0 compensation for ISP-bound traffic in subsequent years. As explained above,  
15 neither ALEC nor its predecessor was entitled to compensation for ISP-bound traffic  
16 under the GTE/Touchtone Agreement during the first quarter of 2001. Therefore, under  
17 the terms of the *ISP Remand Order* itself, ALEC was entitled to \$0 compensation for  
18 ISP-bound traffic for June 2001 through December 2001. Similarly, for subsequent years,  
19 the *ISP Remand Order* established a cap on the compensable ISP minutes of 110% of the  
20 ISP minutes for which the carrier was entitled to receive compensation in the previous

1 year (*i.e.*, 2001). Because 110% of 0 minutes is 0, ALEC is entitled to \$0 compensation  
2 for ISP-bound traffic for subsequent years under the terms of the *ISP Remand Order*.  
3 Therefore, while Windstream maintains that the *ISP Remand Order* was not a triggering  
4 event under the Agreement, even if it were, ALEC has failed to demonstrate how the very  
5 terms of the *ISP Remand Order* result in any compensation other than \$0 being due to  
6 ALEC for ISP-bound traffic.

7  
8 **Q. Mr. Hayes noted that Windstream recognizes compensation for ISP traffic in its**  
9 **Interconnection Agreement with Cinergy Communications Company. Do ALEC**  
10 **and Cinergy currently operate under the same interconnection agreement with**  
11 **Windstream?**

12 A. No. Previously, Cinergy operated under the same interconnection agreement under which  
13 ALEC operates and pursuant to which ALEC makes the claims in this proceeding for  
14 retroactive ISP compensation. However, at the time that Cinergy operated under the same  
15 agreement as ALEC, Cinergy was not entitled to and did not receive ISP compensation.  
16 This fact is evidenced by Cinergy's adoption letter filed with the Commission dated May  
17 31, 2001 (Commission Tracking Number 00373-AM in Docket No. 1999-00123). (*See*,  
18 Rebuttal Exhibit A to my testimony.) In that letter, Cinergy adopted the terms of the  
19 GTE/AT&T Agreement which is the Agreement that ALEC assumed from Touchtone.  
20 Paragraph 6 of Cinergy's adoption letter specifically states, "**For avoidance of doubt,**

1 **please note that adoption of the Terms will not result in reciprocal compensation for**  
2 **Internet traffic.**” (Emphasis supplied.) **Significantly, Cinergy adopted the Agreement**  
3 **in May 2001, which was one month after the *ISP Remand Order* was released in**  
4 **April 2001.**

5  
6 After operating under the Agreement and following further legal decisions regarding the  
7 uncertainty of ISP-bound compensation, Cinergy submitted a bona fide request to  
8 Windstream to negotiate a successor interconnection agreement that included  
9 compensation for ISP-bound traffic on a prospective basis. Cinergy and Windstream  
10 negotiated and executed such an agreement. The Commission deemed the  
11 Windstream/Cinergy Agreement effective as of August 14, 2006, and Windstream began  
12 compensating Cinergy for ISP-bound traffic on a prospective basis in accordance with the  
13 terms of that agreement.

14  
15 **Q. Like Cinergy, has ALEC ever submitted a request to Windstream to negotiate an**  
16 **interconnection agreement which provides prospectively for compensation for ISP-**  
17 **bound traffic?**

18 A. No. Mr. Hayes omits discussion of the critical fact that ALEC never has submitted a bona  
19 fide request to negotiate an interconnection agreement that provides prospectively for  
20 compensation of ISP-bound traffic.

1

2 **Q. Has ALEC ever requested that Windstream amend the parties' existing Agreement**  
3 **to provide for the compensation scheme set forth in the *ISP Remand Order*?**

4 A. No. Mr. Hayes does not address that ALEC has not requested to amend the Agreement to  
5 reflect even the terms of the *ISP Remand Order*.

6

7 **Q. Mr. Hayes asserts in his direct testimony that ALEC is owed \$3,965,693.45 for**  
8 **reciprocal compensation charges. Do you agree?**

9 A. No, I do not agree. As I have discussed, the GTE/Touchtone Agreement which ALEC  
10 assumed does not allow for compensation for ISP-bound traffic unless certain events take  
11 place. Those events have not transpired, but even if the *ISP Remand Order* was one such  
12 event, it results in \$0 compensation being due to ALEC under the Agreement. The  
13 Agreement further provides explicitly that local traffic is subject to a bill-and-keep  
14 compensation. As defined in the Agreement, bill-and-keep is an arrangement whereby  
15 both parties bill its respective end users and do not bill each other for termination of local  
16 traffic.

17

18 **Q. Is Mr. Hayes testimony with respect to claims for ISP traffic consistent with ALEC's**  
19 **Amended Complaint?**

1 A. No. ALEC apparently has changed the amount it claims is owed for local and ISP traffic.  
2 In its Amended Complaint, ALEC claimed it was owed for local and ISP traffic as early  
3 as June 2001 (which is still after the first quarter of 2001 as required under the terms of  
4 the *ISP Remand Order*). However, in his direct testimony and without explanation, Mr.  
5 Hayes now changes that time period to January 2002. ALEC only provided an unmarked  
6 schedule of minutes and amounts from January 2002 through August 2006 without  
7 discussion of periods for June 2001 through December 2001. Although this schedule is  
8 not referenced in Mr. Hayes' direct testimony, the amount of \$3,965,693.45 is found in  
9 both the direct testimony and the unmarked schedule.

10

11 **Q. Does Mr. Hayes correctly account for ISP-bound minutes in his statements offered**  
12 **in support of ALEC's claims in this proceeding?**

13 A. No. Mr. Hayes continues ALEC's error of improperly including minutes for ISP-bound  
14 traffic in ALEC's quantification of local and toll minutes. ALEC's calculations are  
15 contrary to the Agreement and result in ALEC drastically over-stating the quantity of  
16 minutes that are subject to either bill-and-keep (local traffic) or access compensation (toll  
17 traffic). As explained in my direct testimony but not addressed by Mr. Hayes, the  
18 Agreement recognizes that ISP, local, and toll traffic are three separate and distinct  
19 categories of traffic for purposes of compensation. (Article V, Sections 3.2.2-3.2.4). Yet,  
20 ALEC continues to apply the Percent Local Usage and the Exempt factors to the total

1 minutes of use without first accounting for those minutes attributable to ISP-bound  
2 traffic. Very simply, ISP-bound traffic must be accounted for separately since it is treated  
3 distinctly under the Agreement and accounts for the overwhelming majority of the traffic  
4 exchanged between Windstream and ALEC.  
5

6 **Q. Does Mr. Hayes's testimony address the concerns Windstream has with ALEC's**  
7 **billings and lack of records in support of those billings?**

8 A. No. With respect to all of the traffic, Mr. Hayes' testimony does not clarify the concerns  
9 that ALEC has been unable to support either its billed minutes or its billed rates. As  
10 explained in detail in my direct testimony, ALEC has sent to Windstream as many as  
11 three different invoices containing three different total billed minutes for the same month.  
12 Also, Mr. Hayes does not address the concern that ALEC is billing Windstream for traffic  
13 not originated by Windstream but delivered using Windstream's facilities. In addition,  
14 ALEC continues to change its representation of the tariffed rate that lawfully should  
15 apply to toll traffic. In fact, the rate ALEC continues to bill Windstream today is different  
16 than the rate used by ALEC to calculate its claim.  
17

18 **LOCAL AND TOLL TRAFFIC**

19 **Q. Do you agree with Mr. Hayes that ALEC is owed \$5,198,657.06 for termination of**  
20 **toll traffic through December 2006?**

1 A. No. ALEC or its predecessor in interest has been compensated fully for toll traffic  
2 through September 2006. As admitted by Mr. Hayes, Windstream's predecessor  
3 (Verizon) paid \$159,711.09 for toll traffic through July 2002. Yet, ALEC continues to  
4 pursue toll traffic compensation from Windstream for the very same months for which  
5 ALEC was compensated by Verizon. Moreover, Windstream paid the proper party in  
6 interest \$115,092.38 for toll traffic from August 2002 through November 2002 and  
7 remitted to ALEC the amount of \$56,421.56 for toll traffic from December 2002 through  
8 September 2006. This amount was calculated by Windstream using the rate certified by  
9 ALEC to be its tariffed access rate but using ALEC's minutes which likely include  
10 minutes that are for non-Windstream traffic.

11

12 **Q. Has the amount that ALEC claims for toll traffic changed throughout this**  
13 **proceeding?**

14 A. Yes. ALEC has changed the amount it claims is owed for toll traffic. In its Amended  
15 Complaint, ALEC asserted it was owed for toll traffic as early as August 2000. However,  
16 in his direct testimony, Mr. Hayes changed that time to January 2002. Mr. Hayes does not  
17 explain the reason for this change and provides only an unmarked schedule of minutes  
18 and amounts from January 2002 through August 2006 with no mention of August 2000  
19 through December 2001. Although this schedule is not referenced in Mr. Hayes' direct

1 testimony, but the amount of \$5,198,657.06 is found in his direct testimony and the  
2 unmarked schedule.

3  
4 **Q. Do you agree with Mr. Hayes' assertion that ISP-bound traffic is to be treated**  
5 **under the Agreement as local traffic?**

6 A. No. As I have explained, Mr. Hayes' assertion is incorrect and unsupported by the  
7 Agreement. The plain language of the Agreement distinguishes between ISP-bound  
8 traffic and local traffic and provides separate compensation rules for each. ISP-bound  
9 traffic is defined in Article II, Section 1.31 of the Agreement as traffic bound to any  
10 Internet Service Provider and states that ISP-bound Traffic is not included in Local  
11 Traffic. Local Traffic is defined in Article II, Section 1.59, and the Agreement states that  
12 "Local Traffic excludes Enhance Service Provider (ESP) and Internet Service Provider  
13 (ISP) traffic, including but not limited to Internet, 900-976, etc., and Internet Protocol  
14 based long distance telephony." The Agreement provides that ISP-bound traffic is subject  
15 to no compensation until the FCC issues a final, binding, and nonappealable order and the  
16 parties amend the agreement to reflect that order and that, in contrast, local traffic is  
17 subject to bill-and-keep.

18  
19 **Q. Given Mr. Hayes' assertion that ISP-bound traffic is treated as local traffic, what is**  
20 **the impact on ALEC's invoices to Windstream?**

1 A. By failing to separately account for ISP-bound traffic and including ISP-bound traffic in  
2 its calculation of local and toll minutes, ALEC artificially inflates the quantity of both  
3 local and toll minutes. The result is critical considering that approximately 99% of the  
4 total minutes terminated to ALEC are ISP-bound minutes and should not be compensated  
5 at access rates. Although Mr. Hayes' claims no knowledge of Windstream's testing of the  
6 traffic, Windstream has explained to Mr. Hayes and ALEC that Windstream made this  
7 determination by actually calling telephone numbers of ALEC destined traffic. Therefore,  
8 because the Agreement clearly states that ISP traffic is to be treated separately from local  
9 and toll traffic, ALEC's methodology for determining local and toll minutes, as supported  
10 by Mr. Hayes, is incorrect, contradicts the Agreement, and results in an artificial inflation  
11 of local and toll minutes.

12 **MINUTES AND RATES**

13 **Q. Is Mr. Hayes correct that on March 4, 2003, Windstream requested ALEC to cease**  
14 **invoicing?**

15 A. No, that is incorrect. Windstream specifically stated that “[i]n order to process payment  
16 for the Intrastate Intralata Toll, ALLTEL requests the PLU used to determine the  
17 jurisdiction, the rate applied and the records supporting the minutes of use.” To date,  
18 ALEC has refused to provide call detail records supporting the minutes it is billing to  
19 Windstream despite admitting in discovery that it does record the traffic terminated to it.

20

1 **Q. Is Mr. Hayes correct in his assertion that Windstream did not provide a reason to**  
2 **pay undisputed portions of ALEC's invoices?**

3 A. No. In a letter from Windstream to ALEC dated March 4, 2003, Windstream offered to  
4 pay for termination of toll traffic once ALEC provided call detail records supporting the  
5 toll minutes billed and the rate applied to those toll minutes. To this date, ALEC has not  
6 provided call detail records --- records that ALEC admits it generates and maintains ---  
7 supporting the minutes it is billing Windstream. Throughout this matter, various  
8 representatives from Windstream have requested this information from ALEC, but ALEC  
9 has not provided it. As a result, Windstream has not been able to verify the correct  
10 quantity of toll minutes billed by ALEC. Additionally, as Windstream has made clear to  
11 ALEC throughout this proceeding, it has concerns with both the minutes and tariffed  
12 rates claimed by ALEC. Without confirmation of these items, calculating an "undisputed"  
13 amount of traffic is difficult.

14  
15 **Q. Do you agree with Mr. Hayes that ALEC has terminated 2,846,873,036 total minutes**  
16 **from June 2001 through December 2006?**

17 A. I cannot validate ALEC's claimed total minutes and have reason to believe that those  
18 minutes contain non-Windstream traffic. ALEC has refused to provide the call detail  
19 records for such traffic. Therefore, Windstream is unable to verify the volume of total  
20 minutes billed by ALEC. Windstream is also unable to determine whether ALEC is

1 pursuing compensation minutes not originated by Windstream. As discussed in detail in  
2 my direct testimony, Windstream has valid reasons for its concern about the quantity of  
3 total minutes billed by ALEC. From August 2002 through February 2003, ALEC  
4 provided Windstream at least two different invoices with different minutes for the same  
5 month. ALEC's minutes change without explanation. ALEC provides, in the form of a  
6 worksheet, invoices for tens of millions of minutes each month without any support.  
7 Windstream has repeatedly asked ALEC and ALEC has refused to provide call detail  
8 records supporting ALEC's invoices.

9  
10 **Q. Is it standard in billing disputes between carriers for the billing party to provide**  
11 **such call detail records?**

12 **A.** Yes. As the terminating carrier, ALEC is responsible for recording the traffic and has  
13 admitted that it does in fact generate such records. It is common industry practice for a  
14 billing party to provide the records to the billed party upon request in order to validate  
15 minutes of use, claimed amounts, *etc.*

16  
17 **Q. Mr. Hayes asserts that, throughout the course of this matter, Windstream randomly**  
18 **has changed the amounts it acknowledges it owes ALEC for toll traffic. Do you**  
19 **agree?**

1 A. No. The amounts have changed depending on the information Windstream had available  
2 at that time, but the amounts have not changed randomly. For example, the amounts for  
3 toll traffic have changed over time for two reasons. First, the amounts cited by ALEC  
4 were calculated at various time periods (December 2004, October 2006 and January  
5 2007). Second, ALEC's representations as to its tariff rates have changed.

6  
7 With respect to the \$56,000.00 referenced by Mr. Hayes, I do not recall that amount.  
8 Windstream relied on the *revised* monthly total minutes supplied by ALEC for minutes  
9 through October 2004 to calculate the \$64,889.99 figured referenced by Windstream in  
10 December 2004. Windstream applied a rate of \$0.029 provided by ALEC to the toll  
11 minutes. Indeed, ALEC continues to apply this rate to toll traffic in its invoices, even as  
12 recently as December 2006, but has not produced any documentation definitively proving  
13 what ALEC's Commission-approved tariff rate is. The amount of \$87,731.32 provided by  
14 Windstream in October 2006 was calculated using minutes updated through August 2005.  
15 Windstream applied the rate of \$0.0412 for toll traffic through July 2004 and a rate of  
16 \$0.01402 for toll traffic from August 2004 through August 2005. The amount of  
17 \$56,421.56 provided by Windstream in January 2007, included toll minutes through  
18 September 2006. ALEC later certified to Windstream that the rate of \$0.01402 applied to  
19 toll traffic for all disputed periods and that was the rate applied to the toll minutes,

1           although ALEC then recanted this rate in favor of a higher tariffed rate after resulting  
2           compensation amounts "appeared too low."  
3

4    **ALEC's Rights under the Agreement**

5    **Q.    Have you been able to discern from Mr. Hayes direct testimony whether ALEC has**  
6           **rights under the GTE/Touchtone Agreement?**

7    A.    Mr. Hayes' testimony supports Windstream's initial conclusion that as a result of the sale  
8           of ALEC to Wispnet, ALEC's rights under the Agreement were an excluded asset that  
9           remained with ALEC's former parent company, Duro Communications. Accordingly,  
10          after the Wispnet transaction on December 16, 2002, it appears that ALEC no longer had  
11          any rights under the Agreement. ALEC was required thereafter to either adopt the  
12          Agreement or assume the Agreement from Duro, but ALEC did not do either of these.

13  
14   **Q.    With respect to Mr. Hayes' testimony regarding "DURO Settlement Group" is that**  
15           **the correct name of the entity?**

16    A.    No. Curiously, despite Mr. Hayes' attempts to disassociate Duro from ALEC, the correct  
17          entity name was DURO ALEC Settlement Group.

18  
19   **Q.    Can you please summarize your rebuttal testimony?**

1 A. Mr. Hayes testimony does not support ALEC's claims exceeding \$8 million which are  
2 without merit and should be denied. To begin, it appears that ALEC no longer had rights  
3 to operate under the Agreement or pursue an claims thereunder after December 16,  
4 2002. Additionally, ALEC asserts claims for periods prior to December 2002 for traffic  
5 which already properly was compensated as acknowledged by Mr. Hayes. ALEC has not  
6 proven how it is entitled to ISP compensation under the terms of the Agreement or how  
7 the *ISP Remand Order* results in anything other than \$0 compensation being due to  
8 ALEC. Mr. Hayes' testimony fails to clarify the confusion over ALEC's invoices,  
9 including the overstated amounts for toll. Finally, ALEC's claimed total minutes are  
10 suspect and appear to include non-Windstream traffic. In short, ALEC's claims are not  
11 supported by the express language of the Agreement, the very terms of the *ISP Remand*  
12 *Order*, the FCC's NPRM and FNPRM, or Mr. Hayes' testimony and should be denied.

13

14 **Q. Does this conclude your rebuttal testimony?**

15 A. Yes, at this time.

16

**Verification**

Being duly sworn, Stephen B. Weeks avers the foregoing testimony is true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
Stephen B. Weeks

STATE OF ARKANSAS

)

) SS

COUNTY OF \_\_\_\_\_

)

The foregoing testimony was subscribed and sworn to before me this \_\_ day of March, 2006 by Stephen B. Weeks.

My commission expires:

\_\_\_\_\_

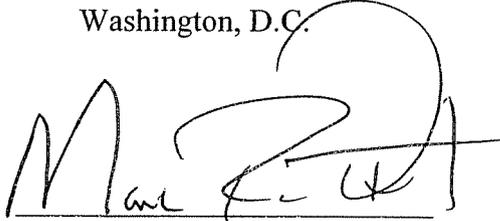
\_\_\_\_\_  
NOTARY PUBLIC, State at Large

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by United States First Class Mail, postage prepaid, on this 6th day of March, 2007 upon:

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

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

A handwritten signature in black ink, appearing to read "Mark R. Overstreet", written over a horizontal line.

Mark R. Overstreet

**EXHIBIT A**

Steven J. Pitterle  
Director - Negotiations  
Network Services



**Network Services**  
600 Hidden Ridge HQE03B67  
P.O. Box 152092  
Irving, Texas 75038

Phone 972/718-1333  
Fax 972/718-1279  
steve.pitterle@verizon.com

May 31, 2001

Mr. John Greenbank  
President  
Cinergy Communications Company  
1419 West Lloyd Expressway  
Evansville, IN 47710

Re: Requested Adoption Under Section 252(i) of the TA96

Dear Mr. Greenbank:

Verizon South Inc., *f/k/a* GTE South Incorporated ("Verizon"), has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the "Act"), Cinergy Communications Company ("Cinergy") wishes to adopt the terms of the arbitrated Interconnection Agreement between AT&T Communications of the South Central States Inc. ("AT&T") and Verizon that was approved by the Kentucky Public Service Commission (the "Commission") as an effective agreement in the Commonwealth of Kentucky in Docket No. 96-478, as such agreement exists on the date hereof after giving effect to operation of law (the "Terms"). I understand Cinergy has a copy of the Terms. Please note the following with respect to Cinergy's adoption of the Terms.

1. By Cinergy's countersignature on this letter, Cinergy hereby represents and agrees to the following three points:
  - (A) Cinergy adopts (and agrees to be bound by) the Terms of the AT&T/Verizon arbitrated agreement for interconnection as it is in effect on the date hereof after giving effect to operation of law, and in applying the Terms, agrees that Cinergy shall be substituted in place of AT&T Communications of the South Central States Inc. and AT&T in the Terms wherever appropriate.
  - (B) Notice to Cinergy and Verizon as may be required under the Terms shall be provided as follows:

To: Cinergy Communications Company  
Attention: Bob Bye  
8829 Bond St.  
Overland Park, KS 66214  
Telephone number: 913-492-1230 ext. 5132  
FAX number: 253-541-7229

To Verizon:

Director-Contract Performance & Administration  
Verizon Wholesale Markets  
600 Hidden Ridge  
HQEWMNOTICES  
Irving, TX 75038  
Telephone Number: 972-718-5988  
Facsimile Number: 972-719-1519  
Internet Address: wmnotices@verizon.com

with a copy to:

Vice President and Associate General Counsel  
Verizon Wholesale Markets  
1320 N. Court House Road  
8th Floor  
Arlington, VA 22201  
Facsimile: 703/974-0744

- (C) Cinergy represents and warrants that it is a certified provider of local telecommunications service in the Commonwealth of Kentucky, and that its adoption of the Terms will cover services in the Commonwealth of Kentucky only.
2. Cinergy's adoption of the AT&T arbitrated Terms shall become effective upon the date of filing of this adoption letter with the Commission (which filing Verizon will promptly make upon receipt of an original of this letter countersigned by Cinergy) and remain in effect no longer than the date the AT&T/Verizon arbitrated agreement terminates. The AT&T/Verizon arbitrated agreement is currently scheduled to terminate on August 9, 2002. Thus, the Terms adopted by Cinergy also shall terminate on that date.
  3. As the Terms are being adopted by you pursuant to your statutory rights under section 252(i), Verizon does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by Verizon of the Terms does not in any way constitute a waiver by Verizon of any position as to the Terms or a portion thereof, nor does it constitute a waiver by Verizon of all rights and remedies it may have to seek review of the Terms, or to petition the Commission, other administrative body, or court for reconsideration or reversal of any

determination made by the Commission pursuant to arbitration in Docket No. 96-478, or to seek review in any way of any provisions included in these Terms as a result of Cinergy's 252(i) election.

4. On January 25, 1999, the Supreme Court of the United States ("Court") issued its decision on the appeals of the Eighth Circuit's decision in *Iowa Utilities Board*. Specifically, the Supreme Court modified several of the FCC's and the Eighth Circuit's rulings regarding unbundled network elements and pricing requirements under the Act. *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999). Certain provisions of the Terms may be void or unenforceable as a result of the Court's decision of January 25, 1999, the United States Eighth Circuit Court of Appeals' decision in Docket No. 96-3321 regarding the FCC's pricing rules, and the current appeal before the U.S. Supreme Court regarding the FCC's new UNE rules. Moreover, nothing herein shall be construed as or is intended to be a concession or admission by Verizon that any contractual provision required by the Commission in Docket No. 96-478 (the AT&T arbitration) or any provision in the Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commissions, the decisions of the courts, or other law, and Verizon expressly reserves its full right to assert and pursue claims arising from or related to the Terms.
5. Verizon reserves the right to deny Cinergy's adoption and/or application of the Terms, in whole or in part, at any time:
  - (a) when the costs of providing the Terms to Cinergy are greater than the costs of providing them to AT&T;
  - (b) if the provision of the Terms to Cinergy is not technically feasible; and/or
  - (c) to the extent that Verizon otherwise is not required to make the Terms available to Cinergy under applicable law.
6. For avoidance of doubt, please note that adoption of the Terms will not result in reciprocal compensation payments for Internet traffic. Verizon has always taken the position that reciprocal compensation was not due to be paid for Internet traffic under section 251(b)(5) of the Act. Verizon's position that reciprocal compensation is not to be paid for Internet traffic was confirmed by the FCC in the Order on Remand and Report and Order adopted on April 18, 2001 ("*FCC Remand Order*"), which held that Internet traffic constitutes "information access" outside the scope of the reciprocal compensation obligations set forth in section 251(b)(5) of the Act.<sup>1</sup> Accordingly, any compensation to be paid for Internet traffic will be handled pursuant to the terms of the *FCC Remand Order*, not pursuant to adoption of the Terms.<sup>2</sup> Moreover, in light of the *FCC Remand*

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<sup>1</sup> Order on Remand and Report and Order, In the Matters of: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68 (rel. April 27, 2001) ¶44.

<sup>2</sup> For your convenience, an industry letter distributed by Verizon explaining its plans to implement the *FCC Remand Order* can be viewed at Verizon's Customer Support Website at URL [www.verizon.com/wise](http://www.verizon.com/wise) (select Verizon East Customer Support, Resources, Industry Letters, CLEC).

*Order*, even if the Terms include provisions invoking an intercarrier compensation mechanism for Internet traffic, any reasonable amount of time permitted for adopting such provisions has expired under the FCC's rules implementing section 252(i) of the Act.<sup>3</sup>

7. Should Cinergy attempt to apply the Terms in a manner that conflicts with paragraphs 3-6 above, Verizon reserves its rights to seek appropriate legal and/or equitable relief.

Please arrange for a duly authorized representative of Cinergy to sign this letter in the space provided below and return it to the undersigned.

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<sup>3</sup> See, e.g., 47 C.F.R. Section 51.809(c).

Sincerely,

VERIZON SOUTH INC.

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Steven J. Pitterle  
Director – Negotiations  
Network Services

Reviewed and countersigned as to points A, B, and C of paragraph 1:

CINERGY COMMUNICATIONS COMPANY

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(SIGNATURE)

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(PRINT NAME)

c: R. Ragsdale – Verizon