

RECEIVED
NOV 15 2006
COMMONWEALTH OF KENTUCKY
GENERAL COUNSEL

BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

RECEIVED

NOV 14 2006

PUBLIC SERVICE
COMMISSION

In the Matter of:

MOUNTAIN RURAL TELEPHONE
COOPERATIVE CORPORATION
COMPLAINANT

V.

KENTUCKY ALLTEL, INC.
RESPONDENT

)
)
)
)
) CASE NO. 2006-00198
)
)
)

REBUTTAL TESTIMONY OF
KERRY SMITH

ON BEHALF OF WINDSTREAM KENTUCKY, INC.
F/K/A KENTUCKY ALLTEL, INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48

1 A On page 6 at lines 10 through 11, Mountain Rural asserts incorrectly that since
2 “December 2005, Mountain Rural has received no compensation for NTSR on any traffic
3 delivered by Windstream.” This statement is false and ignores the settlement process in
4 place between the parties. To begin, Mountain Rural’s statement does not specify to
5 which traffic it is referring. With respect to ACS traffic which is the subject of the
6 parties’ current dispute, my direct testimony addressed the reasons why non-traffic
7 sensitive rates are not appropriately applied to ACS minutes. With respect to toll traffic
8 that is subject to the ITORP settlement process, however, Windstream has fully
9 compensated BellSouth with respect to non-traffic sensitive charges applied to ITORP
10 traffic minutes. Windstream does not compensate Mountain Rural directly because
11 Mountain Rural is not a primary toll carrier but is instead a secondary toll carrier to
12 BellSouth. Windstream and BellSouth are primary toll carriers. Accordingly, Windstream
13 compensates BellSouth for non-traffic sensitive charges applicable to Windstream’s
14 ITORP traffic delivered to Mountain Rural end users. BellSouth in turns settles such
15 compensation with Mountain Rural. For example, please refer to Exhibit 1 to my
16 testimony. This Exhibit is from a settlement report provided by BellSouth to Windstream
17 with respect non-traffic sensitive charges (“Terminating CCL”) for toll traffic subject to
18 the ITORP settlement process. For the line highlighted, you can see that for September
19 2006, from Windstream’s Morehead end office (noted with the CLLI code of
20 MRHDKYXA) to Mountain Rural’s West Liberty office (WLBTKYXA), there were
21 13,811 minutes charged at a non-traffic sensitive rate of 0.0573. The result was that
22 Windstream compensated BellSouth a total of \$791.37 for those minutes. BellSouth in
23 turn should settle with Mountain Rural for that traffic as Mountain Rural is the secondary

1 carrier. Thus, Mountain Rural's assertion that it receives no compensation for non-traffic
2 sensitive charges is false.

3
4 ***Q. Do you agree with Mountain Rural's characterization of the parties' settlement process
5 as a "gentlemen's agreement"?***

6 **A.** No. Throughout its testimony, Mountain Rural mischaracterizes the parties' relationship
7 as being governed by some vague "gentlemen's agreement." To the contrary, the parties'
8 record exchange process is not vague or elusive. As I described in my direct testimony,
9 the parties create two types of records for minutes-based ILEC-to-ILEC billing purposes.
10 These include ITORP records and ACS records as mentioned above. The ACS records
11 are distinct and uniquely separate from ITORP records. Throughout the parties' history
12 (*i.e.*, Mountain Rural, Windstream and its predecessors, and BellSouth), they populated
13 indicator 30 of the EMI records with a "K" for ACS traffic delivered to Mountain Rural
14 customers from Windstream. Thus, this is more than some handshake agreement between
15 the parties. The parties very clearly took affirmative action to separately designate ACS
16 records so that they could be separated from ITORP records and exempt from non-traffic
17 sensitive charges (unlike ITORP records to which non-traffic sensitive charges do apply).

18
19 Similarly, Mountain Rural's assertion on page 3 at lines 14 through 21 is also factually
20 inaccurate. Mountain Rural did not receive non-traffic sensitive charges for ACS traffic
21 from Windstream. To the contrary, the parties' records exchange process excluded ACS
22 traffic minutes from non-traffic sensitive charges. Presumably, this was also the basis for
23 BellSouth's dispute of Mountain Rural's attempt to apply non-traffic sensitive charges to
24 ACS traffic that Mountain Rural references on page 4 of its testimony (at lines 20

1 through 22). I can only assume that based on Mountain Rural's testimony, BellSouth also
2 disputed Mountain Rural's attempt to unilaterally change the process that had been in
3 place between the parties for many years. However, I should note that Mountain Rural
4 refused to answer Windstream's discovery questions on the issue of its settlement
5 agreement with BellSouth. Therefore, I am also without knowledge as to what records
6 Mountain Rural may have provided to BellSouth during those discussions. I am aware
7 that Mountain Rural has refused to answer the majority of discovery questions
8 Windstream has submitted with respect to this dispute and has failed to produce all
9 requested detailed record documentation.

10
11 ***Q. Do you know what the result was of the BellSouth settlement discussions referenced in***
12 ***Mountain Rural's testimony?***

13 **A** No. As indicated above, Mountain Rural has refused to disclose any of those details.
14 However, the timeframes set forth in Mountain Rural's testimony are inconsistent and
15 indicate that BellSouth may have already compensated Mountain Rural for some of the
16 same charges that Mountain Rural is now seeking to assess to Windstream. For instance,
17 throughout its testimony, Mountain Rural implies that it is due compensation from 2004.
18 Yet, on page 6, Mountain Rural states that its has not received compensation since
19 December 2005. Again, Mountain Rural has been compensated fully for non-traffic
20 sensitive charges for ITORP traffic and, with respect to ACS traffic, Mountain Rural has
21 refused all applicable discovery on this issue and has not produced any of the requested
22 records to support the amounts it alleges are owed.

1 **Q.** *Do you agree with the statement that Mountain Rural did not participate in the*
2 *"determination of the percentages of traffic that belonged to BellSouth and*
3 *Windstream" on page 4 of its testimony?*

4 **A** No. Mountain Rural's use of the word "percentages" is confusing. As I have explained in
5 great detail, the parties' usage was and continues to be determined by actual recordings
6 and not some factoring or use of default percentages.

7
8 **Q.** *Is it a correct statement that by not applying the non-traffic sensitive rates to ACS*
9 *traffic that Windstream has been "receiving a discount from Mountain Rural"? (See*
10 *page 6 at lines 14 through 18 of Mountain Rural's testimony.)*

11 **A** No. Mountain Rural's assertion is incorrect. As I described in greater detail in my direct
12 testimony, the parties' records exchange process for many years separately designated
13 ACS traffic and did not apply non-traffic sensitive charges to such traffic. However, this
14 practice that does not result in a "discount." Using the formulas explained in my direct
15 testimony, Mountain Rural would have collected its entire revenue requirement across the
16 other types of minutes – just not with respect to ACS minutes. Therefore, there was no
17 "discount," and Mountain Rural was fully compensated. While Mountain Rural has made
18 conclusory statements that it included "all minutes" including ACS minutes in its
19 calculations (implying, therefore, that it may have not have recovered fully its revenue
20 requirement), it has refused to produce all supporting records to substantiate its assertion.
21 Without the records, no one can be certain whether Mountain Rural failed to collect fully
22 its allowed revenue requirement or whether the relief sought in this case actually would
23 result in over recovery by Mountain Rural. For example, from the discrepancies in its

1 own testimony, it appears that Mountain Rural has been compensated already for traffic
2 prior to at least December 2005.

3
4 ***Q. Is Mountain Rural's characterization (on page 7 at lines 7 through 8) of the non-***
5 ***traffic sensitive rate as a "fixed revenue recovery" accurate?***

6 **A** I believe this description is misleading. The non-traffic sensitive usage rate that Mountain
7 Rural is seeking to apply to Windstream's ACS traffic in this proceeding is not a fixed or
8 tariffed rate. While Mountain Rural's \$10.88 non-traffic sensitive per line monthly rate is
9 fixed and tariffed, it is only one component of the formulas as set forth in my direct
10 testimony and, again, is not the actual rate Mountain Rural is seeking to assess to
11 Windstream's ACS traffic.

12
13 ***Q. Do you agree that ACS traffic is the same as intraLATA toll as Mountain Rural asserts***
14 ***on page 6 of its testimony?***

15 **A** No. To begin, as I have explained, the parties treat ACS traffic differently from
16 intraLATA toll traffic by separately designating it with a unique indicator in the records
17 exchange process. Further, unlike intraLATA toll calls, ACS calls are the result of plans
18 that are geographically limited in scope between communities of interest. For this reason,
19 Kentucky policy has favored the establishment of ACS calling plans when they are
20 proven to be in the public interest. Additionally, as a practical matter, ACS calls are
21 dialed using only seven or ten digits, contrary to intraLATA toll calls which are dialed
22 using 1+.

23
24 **TRAFFIC SENSITIVE CHARGES**

1 **Q.** *In the course of preparing your testimony in this proceeding, what did you learn with*
2 *respect to Mountain Rural's assessment of traffic sensitive charges for traffic*
3 *exchanged pursuant to the ITORP settlement process?*

4 A Through the course of defending this complaint and preparing my testimony, I have
5 become aware that Mountain Rural may have overcollected traffic sensitive charges with
6 respect to Windstream traffic exchanged pursuant to the ITORP settlement process. As
7 BellSouth and Windstream are primary toll carriers, the settlement of traffic sensitive
8 charges for ITORP traffic should occur between them. However, it appears that Mountain
9 Rural is also assessing such charges to Windstream for the same ITORP traffic despite
10 the fact that Mountain Rural is a secondary toll carrier in the ITORP settlement process.
11 Windstream is investigating this claim further and is also placing Mountain Rural and the
12 Commission on notice that any traffic sensitive payments made from Windstream to
13 Mountain Rural with respect to ITORP traffic will be paid under protest or disputed until
14 such time as Windstream can validate the charges. I should note that these traffic
15 sensitive charges for ITORP traffic should not be confused with traffic sensitive charges
16 for ACS traffic for which Windstream compensates Mountain Rural directly.

17
18 **Q.** *Does this conclude your rebuttal testimony?*

19 A. Yes, at this time.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by United States First Class Mail, postage prepaid and by e-mail transmission, on this 14th day of November, 2006 upon:

John E. Selent
Holly C. Wallace
Edward T. Depp
Dinsmore & Shohl, LLP
1400 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
e-mail: selent@dinslaw.com

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

Mark R. Overstreet

FSD M065
DATE 10/25/2006
TIME 04:36 JOB: M065A10KPGH M065A10
COMPILED 06/27/0510.45.27 JES JOB19880

*** KENTUCKY ***
TERM CCL
PAYMENT PERIOD: SEPTEMBER 2006
ORP SETTLEMENT SYSTEM
SUMMARY (INTS./WATS/OPH) ****

FORM MP-6012-NTS/WATS/OPH
RETAIN OPT
LOUISVILLE
PAGE 0044

PAYOR COMPANY NO: 9690 NAME: ALLTEL - LEXINGTON

PAYABLE TO COMPANY NO: BELL NAME: BELL

PAYOR CLI T
ORIGINATING
END OFFICE

PAYEE CLI I
TERMINATING
END OFFICE

MINUTES RATE

AMOUNT

MRHDXXA

WUDTKVXA

13,811

0.0573000

\$791.37

↑