

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION** **RECEIVED**

Brandenburg Telephone Company; Duo County)
Telephone Cooperative Corporation, Inc.; Highland)
Telephone Cooperative, Inc.; Mountain Rural Telephone)
Cooperative Corporation, Inc.; North Central Telephone)
Cooperative Corporation; South Central Rural Telephone)
Cooperative Corporation, Inc.; and West Kentucky Rural)
Telephone Cooperative Corporation, Inc.)

SEP 21 2010

**PUBLIC SERVICE
COMMISSION**

COMPLAINANTS)

) Case No. 2007-0004

v.)

Windstream Kentucky East, Inc.)

DEFENDANT)

**REPLY TO RESPONSES TO MOTION FOR RECONSIDERATION OF
WINDSTREAM KENTUCKY EAST, LLC**

September 21, 2010

Counsel to Defendant:

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Windstream Kentucky East, LLC (“Windstream East”) hereby files its Reply to Responses to Windstream East’s Motion for Reconsideration (“Motion”) of the Kentucky Public Service Commission’s (“Commission’s”) August 16, 2010 Order in this proceeding (“Order”). Windstream East files this reply to respond to two arguments made by parties filing responses: (1) that Windstream East’s Motion is supposedly procedurally invalid because Windstream East has not presented any new evidence; (2) that the U.S. Court of Appeals for the Sixth Circuit’s decision in *Verizon North, Inc. v. Strand*, 309 F.3d 935, 940 (Sixth Cir. 2002) (“*Strand*”) allegedly categorically precludes any sort of tariffing of services that could conceivably be covered by Sections 251/252 of the Communications Act of 1934, as amended (“Act”), regardless of subsection.

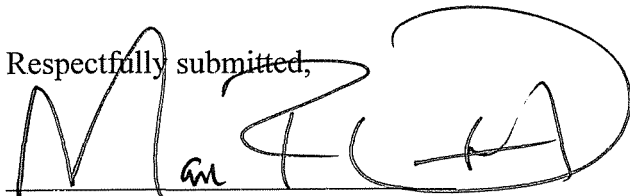
The procedural objections raised by Sprint Nextel and the RLECs in their responses to Windstream East’s Motion lack merit. Indeed, even the RLECs concede at page three of their Response that Windstream East raises at least one legal argument not considered by the Commission in its Order. More fundamentally, as the Commission itself has recognized, “KRS 278.400 expressly authorizes the Commission to rehear ‘any of the matters’ determined in any hearing. Order, *In the Matter of: Adjustment Of The Rates Of Kentucky-American Water Company*, Case No. 2000-120 at 3 (Ky. P.S.C. February 26, 2001).

Regarding the second contention, the Commission is not necessarily bound by *Strand*. In *Strand*, the Sixth Circuit was considering a Michigan Public Service Commission (“MPSC”) that required ILECs to tariff unbundled network element rates (based on the pricing standards of Section 252(d)) rather than to permit ILECs, at least in the first instance, to negotiate such rates, which is, of course, statutorily preferred to the arbitration-style tariffing proceeding in which the MPSC engaged. As explained in Windstream East’s Motion, the practical effect of the Transit

Tariff Provision is a default rate (subject to substitution pursuant to negotiation) of rates charged between noncompeting ILECs, which differs from the facts and holding of *Strand* in two significant ways. First, the Transit Tariff Provisions do not supplant negotiation, but, instead, only provide a default rate for traffic that is already flowing (and for which Windstream East is incurring cost to transit), thus leaving intact the spirit of Section 252. Second, when the Transit Tariff Provisions are applied to ILEC-ILEC arrangements, which, as explained in Windstream East's Motion, is their primary, if not exclusive effect, such application is most likely pursuant to Section 251(a) of the Act, which does not trigger the negotiation and arbitration provisions of Section 252, thus distinguishing such provisions from competitive access pricing, which is the focus of Section 252 and *Strand*.

For the forgoing reasons, Windstream East respectfully requests that its Motion be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Stacy J. Majors', written over a horizontal line. The signature is stylized and includes a large, circular flourish on the right side.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by United States First Class Mail, postage prepaid, on this 21st day of September, 2010 upon:

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