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March 5, 2010

RECEIVED
MAR 05 2010
PUBLIC SERVICE COMMISSION

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, KY 40601

RE: MCI Communications, Inc. et al v. Windstream Kentucky East, LLC et al
Case No. 2007-00503

Dear Mr. DeRouen:

Enclosed please find an original and ten copies of Verizon's Objections and Responses to First Data Requests of Windstream Kentucky.

Please indicate receipt of this filing by placing your file stamp on the extra copy and returning to me via our runner.

Very truly yours,

STOLL KEENON OGDEN PLLC

Douglas F. Brent

DFB:

Enclosures

cc: Service List

105138.116493/571328.1

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
MAR 05 2010
PUBLIC SERVICE COMMISSION

In the matter of:

MCI Communications Services, Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company, TTI National, Inc., Teleconnect Long Distance Service & Systems and Verizon Select Services, Inc. Complainants vs. Windstream Kentucky West, Inc., Windstream Kentucky East, Inc. – Lexington, and Windstream Kentucky East, Inc. – London Defendants	)	Case No. 2007-00503

VERIZON'S OBJECTIONS AND RESPONSES TO
FIRST DATA REQUESTS OF WINDSTREAM KENTUCKY

Complainants MCI Communications Services, Inc. d/b/a Verizon Business Services, Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions, TTI National, Inc., Teleconnect Long Distance Services & Systems Company d/b/a Telecom*USA, and Verizon Select Services, Inc. (collectively, "Verizon") hereby provide their objections and responses to the first data requests of Defendants Windstream Kentucky East, Inc. and Windstream Kentucky West, Inc. (collectively, "Windstream").

GENERAL OBJECTIONS

1. Verizon objects to these Requests to the extent they seek information regarding Verizon affiliates that are not parties to this proceeding. This case concerns

claims by the Verizon Complainants against Windstream, and information regarding other, non-party Verizon affiliates is not relevant to those claims.

2. Verizon objects to these Requests to the extent that they seek information regarding Verizon's operations in territories other than Kentucky. The question before the Commission is whether Windstream's intrastate switched access rates in Kentucky are just and reasonable. Information regarding Verizon's operations in other locations outside the Commission's jurisdiction is not relevant to that question.

3. Verizon objects to these Requests as overly broad and unduly burdensome to the extent that they are not limited in time to any relevant period.

RESPONSES

REQUEST 1. Identify in detail (including call volumes, dates, and details of each claimed incident) all claims made by any carrier other than Windstream West or Windstream East that you or your affiliate caused intrastate switched access traffic from your end user customers to appear to be interstate in nature.

Responsible Party: Donald G. Price, Director – State Public Policy, Verizon.

RESPONSE: Verizon objects to this request as seeking information that is not relevant to the claims and issues in this proceeding. This proceeding focuses exclusively on the question of whether Windstream's current intrastate switched access rates are unjust and unreasonable. But the information sought by this request will not assist the Commission in resolving that question. To the contrary, this request is explicitly limited to seeking information pertaining to other carriers – not Windstream. Moreover, the request does not even address intrastate switched access rates, but rather seeks information regarding the designation of traffic as intrastate or interstate. Any information regarding any claims that might have been asserted by unrelated third parties outside this proceeding regarding Verizon's designation of traffic is simply irrelevant to the question of what Windstream's intrastate switched access rates properly should be.

REQUEST 2. Produce all documents relating to your response to No. 1 above.

Responsible Party: Donald G. Price, Director – State Public Policy, Verizon.

RESPONSE: Verizon incorporates and adopts its Response to Request No. 1, above.

REQUEST 3. Identify in detail the ways in which you are currently unable to compete or otherwise operate in the long distance market in Kentucky.

Responsible Party: Donald G. Price, Director – State Public Policy, Verizon.

RESPONSE: Windstream's current switched access charges have had and continue to have an adverse impact Verizon's ability to compete in the Kentucky long distance market, on Verizon's long distance Kentucky retail customers, and on competition in general.

Windstream's switched access charges reflect a significant distortion in the market for telecommunications services in Kentucky. Because long distance carriers like Verizon are required to complete all the calls their customers make, including those to customers of local carriers with excessively high access rates, Verizon and other long distance carriers have no choice but to pay whatever rate Windstream charges to provide intrastate switched access service. As such, and in sharp contrast to the competitive forces that influence *retail* long distance rates, competitive forces do not operate to constrain the *wholesale* switched access rates Windstream charges. Through its excessive wholesale rates, Windstream has been able to recover a disproportionate share of its costs from Verizon and other carriers – *i.e.*, its competitors – rather than from its own end users. Such irrational access rate structures lead to what the FCC has termed "inefficient and undesirable economic behavior"[1] and, ultimately, must adversely affect

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[1] *See Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (May 31, 2000) ("*CALLS Order*") at ¶ 129.

the customers of the long distance carriers that bear the cost of Windstream's switched access charges.

In simplest terms, Windstream's access rates represent an increased and inflated cost to Verizon and other long distance carriers. Due to the competitive pressures they face, the long distance carriers cannot simply just absorb this increased cost. They must pay for this cost by passing it along to their own long distance retail customers. Because long distance carriers charge geographically averaged rates, including in Kentucky, the increased expense is inevitably passed along to customers statewide, not just to customers who happen to obtain their local service from Windstream. In other words, Verizon customers who obtain local service from BellSouth also are affected, albeit indirectly, by Windstream's high access charges.

The increased cost can be passed along in a variety of ways with a variety of effects. For example, costs can be passed along through higher retail long distance rates, which – in turn – subject Verizon to competitive pressure from other long distance carriers, including Windstream's own long distance affiliate, that may be able to maintain lower rates. But the increased cost also might prevent a rate reduction that otherwise would have occurred, if not for Windstream's switched access charges, thereby competitively harming Verizon and depriving consumers of rate reductions. In other cases, Verizon (or other similarly situated long distance carriers) might be able to maintain (or even reduce) retail rates, but have to pay for Windstream's inflated switched access charges by forgoing or delaying technological advances and improvements in service quality and customer service that otherwise would have benefitted both the long distance carriers and retail long distance customers. Another possibility is that, due to high access rates, a long distance carrier will curtail efforts to win new customers within the state, because – as discussed above – Windstream's inflated access rates can affect the costs to serve customers anywhere in the state.

Because of these factors – as well as the important fact that Verizon pays access charges to numerous companies in Kentucky that have different access rates from Windstream – it is difficult to precisely quantify the adverse impact that Windstream's access rates have upon Verizon's ability to compete in the long distance market in Kentucky. But the increased costs embodied in Windstream's current switched access rates clearly have had and continue to have a negative impact on Verizon and its long distance retail customers throughout the state, and reducing those rates will only benefit those consumers.

REQUEST 4. Identify (a) the specific point in time and (b) the specific circumstances under which the intrastate switched access rates of Windstream East became unjust and unreasonable.

Responsible Party: Donald G. Price, Director – State Public Policy, Verizon.

RESPONSE: Due to a number of factors, the telecommunications market has changed dramatically over the last several years. Significant changes in technology, the rise in intermodal competition, and various legal and regulatory changes in Kentucky and elsewhere (including access charge reform and increased retail pricing flexibility) have combined to profoundly affect the way in which switched access charges are viewed – in many cases, rendering previously established switched access rates no longer just and reasonable.

For example, on May 31, 2000, the FCC issued its *CALLS Order*, which recognized that the interstate access rates of local exchange carriers operating under price caps were no longer reasonable and therefore had to be reduced.[2] On November 8, 2001, the FCC issued the *MAG Order*, which substantially reduced the interstate access rates previously charged by carriers operating under federal rate-of-return regulation.[3] The FCC also required competitive local exchange carriers ("CLECs") to benchmark their interstate switched access rates to the level charged by the incumbent local exchange

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[2] *See* FN1, *supra*.

[3] *Multi-Association (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report & Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report & Order in CC Docket No. 96-45, and Report & Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001) ("*MAG Order*").

carrier ("ILEC") with which they compete – thereby reducing the rates previously charged by a number of CLECs.[4]

The Commission likewise has agreed in principle that benchmarks can be an appropriate tool in telecommunications rate setting[5] and has long recognized the need to rationalize previously established Kentucky intrastate access rates. For example, in 1995, the Commission approved a Price Regulation Plan for BellSouth that required its intrastate switched access rates to mirror analogous interstate rate elements.[6] As FCC and Commission thinking about access charges evolved, BellSouth restructured its access rates to move them "more closely to their costs and to continue the process of removing cross-subsidies."[7] In 2000, BellSouth agreed to eliminate the state-specific Non-Traffic Sensitive Revenue Requirement ("NTSRR"), thus moving its aggregate intrastate switched access rate to the interstate rate the FCC established in its *CALLS Order*.[8]

Despite this movement towards access charge reductions at the FCC, in Kentucky and in other jurisdictions, Windstream's intrastate switched access rates have remained high for years, with some rates unchanged since at least the 1990s. As the Commission agreed in denying Windstream's motion to dismiss, "Verizon has raised a compelling

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[4] *See, e.g., Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report & Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001) ("*CLEC Rate Cap Order*").

[5] *See Inquiry into Universal Service and Funding Issues*, Adm. Case No. 360, p. 25 (May 22, 1998) (revenue benchmark for universal service support).

[6] *BellSouth Telecomm, Inc.'s Application to Restructure Rates*, Case No. 97-074, Order at 1 (Oct. 24, 1997), *citing* Case No. 94-121, *Application of BellSouth Telecomm., Inc. d/b/a South Central Bell Tel. Co. to Modify Its Method of Regulation*.

[7] *Review of BellSouth Telecomm, Inc.'s Price Regulation Plan*, Order, Case No. 99-434, at 9 (Aug. 3, 2000); *see also Tariff Filing of BellSouth Telecommunications, Inc. to Mirror Interstate Rates*, Order, Case No. 98-065 ("*BellSouth Mirroring Order*") (March 31, 1999).

[8] *See BellSouth Mirroring Order*.

argument that Windstream's current non-traffic sensitive revenue requirement rates have not been modified by Windstream to actively reflect its most recent revenue results and, therefore, are not specifically cost-based and are adversely affecting the provision of access services by carriers within the Windstream territories." [9]

In the face of the evolving regulatory and competitive environment, it is difficult (if not impossible) to identify precisely when the intrastate switched access rates of either Windstream East or Windstream West became unjust and unreasonable. But, there is no need to focus on when those rates became unjust and unreasonable. The fact is that those rates are unjust and unreasonable now. Identifying exactly when they became so does not change their current (unjust and unreasonable) status nor eliminate the need for the Commission to take corrective measures now. Verizon is not seeking retroactive recovery for intrastate switched access charges billed prior to the Commission's resolution of this proceeding. Therefore, the precise date on which Windstream's intrastate switched access rates became unjust and unreasonable is irrelevant. This proceeding instead deals only with the question of what Windstream's rates should be on a going-forward basis.

[9] Order denying motion to dismiss, at 8-9 (March 11, 2009).

REQUEST 5. Identify (a) the specific point in time and (b) the specific circumstances under which the intrastate switched access rates of Windstream West became unjust and unreasonable.

Responsible Party: Donald G. Price, Director – State Public Policy, Verizon.

RESPONSE: Verizon incorporates and adopts its Response to Request No. 4, above.

REQUEST 6. Identify all of your affiliates', including your wireless affiliate(s), local services, offerings, calling plans, products, bundles, or promotions made available only to your long distance customers from 2006 to the present.

Responsible Party: Donald G. Price, Director – State Public Policy, Verizon.

RESPONSE: Verizon objects to this request as seeking information that is not relevant to the claims and issues in this proceeding. This proceeding focuses exclusively on the question of whether Windstream's current intrastate switched access rates are unjust and unreasonable. But the information sought by this request will not assist the Commission in resolving that question. To the contrary, this request does not even pertain to Windstream (or its switched access rates), but instead focuses on Verizon – and, specifically, Verizon's various offerings to its long distance customers. However, the scope of Verizon's various offerings to its long distance customers is simply irrelevant to determining what rates Windstream should charge for intrastate switched access services.

REQUEST 7. Identify which long distance carriers that customers of your wireless affiliate(s) may choose to provide their long distance service.

Responsible Party: Donald G. Price, Director – State Public Policy, Verizon.

RESPONSE: Verizon objects to this request as overly broad and seeking information that is not relevant to the claims and issues in this proceeding. This proceeding focuses exclusively on the question of whether Windstream's current intrastate switched access rates are unjust and unreasonable. But the information sought by this request will not assist the Commission in resolving that question. To the contrary, this request does not pertain to Windstream at all, but rather asks about the choice of long distance carriers available to customers of Verizon's wireless affiliate(s) – presumably throughout the nation. Information regarding the long distance choices available to customers of non-party wireless affiliate(s) nationwide is simply irrelevant to whether Windstream's current Kentucky intrastate switched access rates are too high. Moreover, rates for Verizon's non-party wireless affiliates are not regulated by the Commission and wireless carriers are exempted by federal statute from having to provide equal access to long distance carriers. *See* 47 U.S.C. § 332(c)(8).

REQUEST 8. Identify in detail how you will flow through rate reductions granted by the Commission in this proceeding to only your end customers in Kentucky including the amount of expected rate reductions and specific impacts to your existing calling plans offered in Kentucky.

Responsible Party: Donald G. Price, Director – State Public Policy, Verizon.

RESPONSE: Verizon objects to this request because it calls for speculation. Without waiving this objection, Verizon responds that, for the same reasons it is difficult to precisely quantify the adverse impact that Defendants' access rates have had upon Verizon's ability to compete in the long distance market in Kentucky,[10] it is also difficult to precisely quantify the effect that access rate reductions resulting from this proceeding will have on its (and other carriers') retail long distance rates and calling plans (particularly because Verizon cannot know, at this point, the details of the rate reductions the Commission will order). However, two key points are clear: (a) the proposed reduction in switched access charges will *not* result in a windfall to long distance providers because (b) competition in the long distance market will ensure that access cost savings will be passed along to retail long distance customers.

Unlike the market for switched access services, in which Verizon and other carriers have no choice but to use Windstream's switched access services, the market for retail long distance telecommunications services has historically been highly competitive. Indeed, the Commission determined twenty five years ago that competition among long distance carriers would ensure that the rates of new entrants like MCI would be "fair, just

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[10] *See* Response to Request No. 3, *supra.*

and reasonable" as required by KRS 278.030.[11] In a fully competitive market, prices for services tend to reflect and move toward the cost of providing those services. This is precisely why Windstream's high access rates have affected long distance carriers and long distance retail consumers. As explained in the Response to Request No. 3, above, when the cost of providing those long distance services is inflated (due to higher access rates), that cost must then be passed along to long distance consumers in one or more ways. But when the cost is reduced (through the proposed access charge reductions), the same principle holds and the savings are passed along to long distance retail customers in one form or another.

In no case would Verizon or any other long distance carrier receive any windfall, because competition in the long distance market will ensure that retail long distance rates will reflect the effects of access cost savings. Cost savings may be reflected in reduced rates, or in rates that stay the same because the savings have offset other cost increases, or in a smaller rate increase than otherwise would have been implemented. Alternatively, Verizon and other competitors in the long distance market may invest the savings in advanced technology, improved service quality or customer service, or by introducing new services or features, thereby bringing tangible benefits to consumers in other ways. Reduced access rates may also create an incentive for other carriers to enter or re-enter markets, or to market long distance services to compete against Windstream and each other. It is difficult to say which (or whether all) of these alternatives will occur. But the savings will be passed along to long distance customers in one way or the other, simply

[11] *See Inquiry into Inter- and IntraLATA Competition*, Adm. Case No. 273, p. 33 (May 25, 1984).

REQUEST 9. Explain with specificity how you intend to realize any expense reductions that would result from the Commission's grant of your requested relief in this proceeding and state specifically for what purposes you intend to use such expenses reductions in Kentucky.

Responsible Party: Donald G. Price, Director – State Public Policy, Verizon.

RESPONSE: Verizon objects to this request as vague and ambiguous. It is not clear what Windstream means by the phrase "realize any expense reductions that would result from the Commission's grant of your requested relief." Nevertheless, subject to and without waiving that objection, Verizon hereby incorporates and adopts its response to Request No. 8, above. As discussed above, excessive access rates deprive carriers of expense reductions they could be using to improve products, services or their networks and may result in higher retail long distance rates than otherwise would be the case. Excessive access rates also discourage new entry. If Windstream's unreasonably high access rates are reduced as a result of this proceeding, those are examples of the types of benefits that Verizon and long distance consumers would realize.

because any long distance carrier that refuses to pass along the savings embodied in access charge reductions will lose customers to those long distance carriers that do.

For these reasons, in a competitive market like the one that exists for long distance services, and without knowing the details of the reductions the Commission will eventually order, it is impossible to identify precisely the effects of such reductions on Verizon's retail rates and specific calling plans – nor is there any need to do so. The market will ensure that benefits of rate reductions are flowed through to customers. The statute recognizes as much. KRS 278.544(4), which applies to nonbasic services – including all of Verizon's long distance offerings – makes clear that rates for such services are set solely by the marketplace. The fact that the Commission does not prescribe these rates has no adverse consequences. Rather, the competitive long distance telecommunications market will ensure that (a) neither Verizon nor any other long distance carrier will receive a windfall as a result of the necessary access charge reductions and (b) access cost savings will benefit long distance consumers in Kentucky.

REQUEST 10. For each year from 2006 to present, provide, by local exchange carrier ("LEC") in Kentucky, the originating access minutes of use ("MOUs") for which you compensated each LEC or, in a case where you did not remit the compensation, for which you were billed by each LEC.

Responsible Party: Donald G. Price, Director – State Public Policy, Verizon.

RESPONSE: Verizon objects to this request as seeking information that is not relevant to the claims and issues in this proceeding. This proceeding focuses exclusively on the question of whether Windstream's current intrastate switched access rates are unjust and unreasonable. But the information sought by this request will not assist the Commission in resolving that question. To the contrary, this request is explicitly limited to seeking information pertaining to other carriers – not Windstream. Information regarding the amount of access MOUs other carriers have billed Verizon is simply irrelevant to whether Windstream's current intrastate switched access rates are too high.

REQUEST 11. For each year from 2006 to present, provide, by local exchange carrier ("LEC") in Kentucky, the terminating access minutes of use ("MOUs") for which you compensated each LEC or, in a case where you did not remit the compensation, for which you were billed by each LEC.

Responsible Party: Donald G. Price, Director – State Public Policy, Verizon.

RESPONSE: Verizon incorporates and adopts its Response to Request No. 10, above.

March 5, 2010

Respectfully submitted,

By:________________________________

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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 5th day of March, 2010.

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