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May 26, 2010

**Via Hand-Delivery**

Mr. Jeff R. Derouen  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, Kentucky 40602-0615

RECEIVED

MAY 26 2010

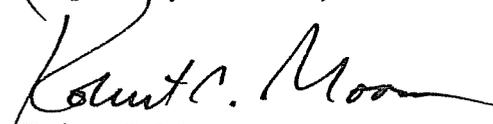
PUBLIC SERVICE  
COMMISSION

Re: In the matter of MCI Communications Services, Inc., et al., v. Windstream  
Kentucky West, Inc., et al ("Windstream"), Case #2007-00503

Dear Mr. Derouen:

Please find enclosed for filing in the above referenced case the original and ten (10) copies of Windstream's Reply to the Responses to Its Motion to Hold Proceeding in Abeyance Pending Access Reform Action by the Federal Communications Commission. Please call me if you have any questions concerning this filing, and thank you for your attention to this matter.

Respectfully submitted,



Robert C. Moore

RCM/db

Enclosures

cc: Kimberly Bennett

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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MAY 26 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 SERVICES & )  
SYSTEMS COMPANY AND VERIZON SELECT )  
SERVICES, INC. )

Complainants )

CASE NO.  
2007-00503

v. )

WINDSTREAM KENTUCKY WEST, INC., )  
WINDSTREAM KENTUCKY EAST, INC. – LEXINGTON )  
AND WINDSTREAM KENTUCKY EAST, INC. – LONDON )  
Defendants )

WINDSTREAM'S REPLY TO THE RESPONSES TO ITS MOTION TO HOLD  
PROCEEDING IN ABEYANCE PENDING ACCESS REFORM ACTION BY THE  
FEDERAL COMMUNICATIONS COMMISSION

Windstream Kentucky West, LLC (“Windstream West”) and Windstream Kentucky East, LLC (“Windstream East”) filed herein a motion to hold this proceeding in abeyance (“the Windstream motion”) pending imminent action by the Federal Communications Commission (“FCC”) on the issue of intrastate switched access reform. Verizon, AT&T, and Sprint filed responses opposing the Windstream motion. While Windstream East and Windstream West disagree with many statements in each of the parties’ responses, this Reply focuses on the notable misrepresentations set forth in Verizon’s response.

Specifically, Verizon asserts that the Windstream motion may be considered moot because the relief Verizon seeks in this proceeding is in line with what the FCC has proposed; the intervenors’ responses contain similar assertions. Even the most cursory comparison of the FCC’s National Broadband Plan (as described in the Windstream motion) with Verizon’s

targeted complaint against the Windstream companies shows clearly that Verizon's targeted expense reduction request in no way resembles the type of meaningful, in-depth access reform being undertaken by the FCC. Indeed, even a comparison of Verizon's complaint with the petition filed by AT&T in Case No. 2010-00162 reveals that Verizon's request is wholly lacking in the types of comprehensive reform considerations necessary to achieve rational intrastate switched access reform. Verizon's suggestion, therefore, that Windstream's request to hold this proceeding in abeyance pending the meaningful access reform being undertaken by the FCC is moot because Verizon believes that it is accomplishing the same goals as the FCC is totally inaccurate.<sup>1</sup>

As an initial point, Windstream West and Windstream East oppose this proceeding given that they are alternatively regulated local exchange carriers statutorily exempt from this rate investigation proceeding in return for their statutory commitment to cap certain rates. Their participation in this proceeding remains subject to their express reservation of all of their rights as alternatively regulated carriers. Verizon's attempts to mischaracterize Windstream West and Windstream East's assertion of their statutory rights as an improper attempt to derail this proceeding are out of line. The Windstream companies have every right to assert the rights that they believe were granted to them by law, and they should not be penalized for that.

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<sup>1</sup> In an order entered by the Pennsylvania commission earlier this month on May 11, 2010 addressing the Verizon ILEC's request for an extended stay of that commission's access charge reform proceeding, the Pennsylvania commission recognized the significance of the FCC's initiative and stated that "there has been a major, notable development, which occurred after the due date for the submission of the last round of status reports, that may have a profound effect on intrastate switched access charges. That development is the issuance of the FCC's National Broadband Plan (NBP), which was released on March 16, 2010." (Pennsylvania Public Utility Commission Order entered on May 11, 2010, pg. 22, Docket No. C-20027195).

Additionally, Verizon asserts incorrectly that the relief it seeks in this proceeding “is entirely consistent with what Windstream says the FCC inevitably will do.” Astoundingly, Verizon also contends;

Verizon asks the Commission to reform and reduce Windstream’s intrastate switched access rates, with particular focus on eliminating the so-called non-traffic-sensitive revenue requirement (“NTSRR”). If the Commission were to grant that relief, its actions would be in precise harmony with the steps Windstream expects the FCC to take.

As set forth below, Verizon’s assertion that the relief it seeks in this case in any way resembles reform, particularly reform of the sort being contemplated by the FCC, is absurd.

When Verizon first filed its complaint, Windstream East and Windstream West asked this Commission to consider the issue of access rate reform in the context of a meaningful, global proceeding that considered as well the particular circumstances of alternatively regulated carriers.<sup>2</sup> Verizon opposed that effort and made it clear, with the support of intervening parties, that this case was about targeted rate reductions only and not about any such global reform. Verizon and the intervenors prevailed on that point, and it was determined that this case would consider only Verizon’s request for targeted rate reductions against the Windstream companies and not broader access rate reform issues. Interestingly, two years later, AT&T has filed its separate petition seeking its own brand of comprehensive access reform. Although AT&T’s

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<sup>2</sup> Windstream East and Windstream West note that they also indicated that such state piece-meal reform was less desirable than the reform contemplated by the FCC. While Verizon and the other intervenors attempt to argue that the current request by Windstream is merely duplicate of the prior request that this issue be stayed pending FCC action, that is inaccurate. The Windstream motion presently before the Commission is prompted by the FCC’s recent and express statements that it is initiating proceedings to address the issue of intrastate access reform. Specifically, on March 16 of this year, the FCC released the National Broadband Plan, which itself is not self-effectuating and will be implemented through various rulemakings. The FCC also issued a Broadband Action Agenda (“Agenda”) that outlines the rulemakings that will be initiated throughout the remainder of this year. Among the many issues that the Agenda encompasses, specific action on universal service and intercarrier compensation reform is scheduled to begin in 2010. In fact, on April 21, 2010 the FCC released a Notice of Inquiry and Notice of Proposed Rulemaking (“NPRM”) seeking comment on how to reform the existing federal universal service mechanisms. A similar NPRM addressing intercarrier compensation reform is scheduled to be released in the fourth quarter of this year.

petition is dubious considering it comes on the heels of the FCC launching intrastate switched access reform, AT&T's petition nevertheless attempts an actual reform package, which is remarkably different from Verizon's complaint in the instant proceeding. Verizon should not be allowed to pass off its targeted expense reduction requests as so-called "reform."

In keeping with the Commission's determination that this case not be about global access reform and only be about whether the rates of the Windstream companies are just and reasonable, Windstream East and Windstream West sought discovery from Verizon to show the level of access minutes that Verizon is terminating in the territories of other Kentucky RLECs – many of whom have access rates higher than those of the Windstream companies. Windstream West and Windstream East sought data to show whether the Verizon IXC is actually terminating more access minutes in the other RLEC territories at higher access rates. Simply put, this case cannot be, as Verizon suggests, merely an issue of the Windstream rates being too high if Verizon may be shown to be doing more business in other locations that have higher rates. Yet, despite Verizon's successful efforts to make this case only about the Windstream companies' rates, Verizon nevertheless opposed Windstream's discovery on that very rate issue.

Based on Verizon's actions described above and the assertions by AT&T and Sprint, the Commission has determined that this proceeding is not about global access reform and that Verizon is not required to produce rate comparison data. Therefore, from Verizon's perspective, this case is about only one thing – achieving targeted expense reductions from two carriers. It should be noted that despite Verizon's actions to have this case be only about targeted expense reductions, there has not been any shred of evidence that Verizon (or the other intervenors for that matter) is committed to flowing those expense reductions through to end user customers. To liken Verizon's requests for targeted expense reductions to the type of meaningful,

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comprehensive access reform being undertaken by the FCC (or even that at least attempted by AT&T in its separate petition) is careless.

Verizon's complaint on its face proposed no reform and proposed instead only forced rate reductions for the Windstream companies with only a mere side note that any rate recovery could possibly be undertaken by Windstream West and Windstream East through increases to deregulated, nonbasic rates – *i.e.*, rates which by their nature are so competitive that the Legislature has deemed them fully deregulated for all carriers in the Commonwealth. (See, KRS 278.544.) Significantly, Verizon's New Jersey ILEC affiliate condemned such action as an unlawful taking by the New Jersey board and suggested that any such access rate reductions may only be ordered by a commission where the recovery may also be ordered by the commission on rates over which it has authority (e.g., basic rates). The New Jersey board describes the position set forth by Verizon's New Jersey ILEC affiliate:

Furthermore, Verizon requests that a subsequent pricing flexibility proceeding conclude before a reduction in Intrastate Access Rates are phased in. Otherwise, claims Verizon, such regulatory lag would be confiscatory to Verizon. Additionally, **Verizon argues that any argument that the Board should require a company to subsidize rate-regulated services with revenue from non-regulated services is an unsustainable policy that must be rejected.**

*(In the Matter of the Board's Investigation and Review of Local Exchange Carrier Intrastate Exchange Access Rates (Docket No. TX08090830); emphasis supplied; citations omitted.)*

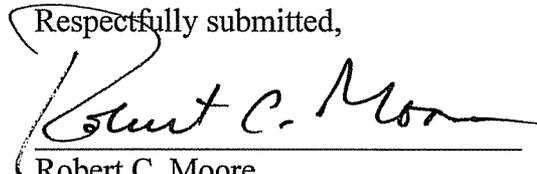
However, despite the position of its Verizon ILEC affiliate, the Verizon IXC in this case attempts to disguise this approach as “access reform.”

In summary, the Windstream Motion discussed the reasons why the latest action by the FCC indicates that the FCC has recently initiated clear action to undertake imminent access reform. The Windstream Motion also noted that the reform being considered by the FCC is the

type of global, comprehensive, and meaningful reform vital for companies like Windstream East and Windstream West, their customers, and the communities in which they operate. For Verizon to suggest that what it has requested the Commission do in this proceeding to the Windstream companies is “in precise harmony” with the FCC’s reform action is reckless and to the detriment of not only the Windstream companies but to the citizens of the Commonwealth.

WHEREFORE, Windstream West and Windstream East request that the Commission issue an order: (i) holding this matter in abeyance pending the earlier of the resolution of the FCC's proceedings on intrastate switched access reform as described above or a definitive, nonappealable ruling by the courts with respect to Windstream West and Windstream East's rights as alternatively regulated carriers; and (ii) granting all other appropriate relief to which Windstream West and Windstream East are entitled.

Date: May 26, 2010

Respectfully submitted,  


Robert C. Moore  
HAZELRIGG & COX, LLP  
415 West Main Street, 1<sup>st</sup> Floor  
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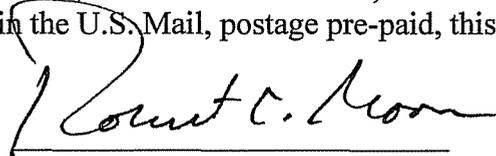
And

Kimberly K. Bennett  
Windstream Communications  
4001 Rodney Parham Road  
Little Rock, AR 72212-2442

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served upon Douglas F. Brent and C. Kent Hatfield, Stoll, Keenon Ogden, PLLC, 2000 PNC Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202, Dulaney L. O’Roark III, Vice President and General Counsel - Southern Region, Verizon, 5055 North Point Parkway, Alpharetta, Georgia

30022, John N. Hughes, 124 West Todd Street, Frankfort, Kentucky, 40601, Mary K. Keyer, General Counsel/AT & T Kentucky, 601 West Chestnut Street, Room 407, Louisville, Kentucky, 40203 and Tiffany Bowman, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602-0615, by placing same in the U.S. Mail, postage pre-paid, this the 26<sup>th</sup> day of May, 2010.

A handwritten signature in cursive script, reading "Robert C. Moore". The signature is written in black ink and is positioned above a horizontal line.

Robert C. Moore