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June 8, 2009

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PUBLIC SERVICE
COMMISSION

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

RE: Case No. 2008-00335—*Insight Communications v. Windstream*

Dear Mr. DeRouen:

We are counsel to Intervenor Big River Telephone Company (“Big River Telephone”) in the above referenced case. By motion filed May 15, 2009 Insight Communications (“Insight”) has asked the Commission to enter a procedural order and briefing schedule. Insight’s motion presumes the issues before the Commission are purely legal, that facts may be stipulated and no factual testimony is needed. Big River Telephone has had no objection to the stipulated facts proposed by Insight, and has been reviewing a proposed factual stipulation received from Windstream.¹ By this letter, however, Big River Telephone notifies the Commission that Windstream has recently invented yet another mechanism by which it can delay and/or prevent its customers from switching their local service from Windstream to a competing carrier. This changes the facts, and Big River Telephone disagrees specifically with Stipulation No. 29 proposed by Windstream.

On June 1, 2009 Windstream altered the interface to its ironically-entitled “Express” system that CLECs use to begin the number porting process. That “Express” system now requires a competing carrier that is acquiring the business of a Windstream customer to provide that customer’s “PIN” associated with its Windstream account. Given the stealth with which Windstream created and distributed the “PIN,” that number is extremely unlikely to be known by the customer wishing to switch providers.

This new scheme is similar to the requirement that a competing carrier supply the Windstream “Express” system with the switching customer’s account number, as described at paragraphs 17-24 of Insight’s complaint. When Insight alleged that requiring an account number to validate a port was unreasonable because few customers know their account number

¹ Windstream’s proposed stipulation was filed with the Commission on June 5.

Jeff DeRouen
June 8, 2009
Page 2

[Complaint at ¶ 24], Windstream defended itself by claiming “customers have account numbers readily available to them through various sources such as monthly billing statements.” [Motion to Dismiss at ¶ 26]

The new “PIN” requirement cannot be defended even on those grounds. The “PIN” requirement constitutes a demand for information that not only is not included on monthly billing statements, but that *customers apparently do not even know exists*.

During the week since this new, unnecessary, and arbitrary requirement was imposed, Windstream customers attempting to change carriers have been unable to provide their “PIN” to Big River Telephone. They have been unaware that they have a “PIN,” and none of them had requested any such number be issued by Windstream. As a result, a customer must call Windstream to find out what his “PIN” is, so that he can report that “PIN” to Big River Telephone, so that Big River Telephone can then report it back to Windstream. The process is annoying to the customer, consumes his time unnecessarily, and perhaps causes him to question whether switching his service is worth the hassle. In addition, and even more insidiously, since the PIN seems to be required *only to accomplish porting to a CLEC*, a customer’s request for the PIN signals Windstream that the customer is planning to change carriers. This enables Windstream to immediately target retention efforts on the customer.

To investigate this matter undersigned counsel has reviewed recent billing statements sent by Windstream. Statements sent during May 2009 do not include a “PIN” or any reference whatsoever to the fact that Windstream has assigned a “PIN” to its customers. Therefore, it is not surprising that prospective customers of Big River Telephone have been unable to supply a “PIN” to Big River Telephone upon request. Further investigation reveals that Windstream inconspicuously added the “PIN” to a single field on its *April* invoices, then placed a highly misleading description of the PIN *on a different page in approximately eight point font*, stating, *inter alia*:

INFORMATION REGARDING YOUR NEW CAPP PASSCODE

Good News! Effective April 2009 Windstream is launching a new Customer Account Protection Plan (CAPP) to provide increased security to you. CAPP will help protect you against unauthorized changes or access to your account by requiring a specific passcode for a third party to change your service provider or access your account information. A CAPP passcode has been assigned to your account and appears only on this bill. (underlining added)

This statement is false. Windstream was not requiring the use of a “passcode” by Big River Telephone during April 2009, and there would likely have been no instance where a Windstream customer would have been asked for the “PIN” during the following month. Windstream waited to implement its “Protection Plan” until a month when the only way for most customers to locate the “PIN” would be by calling Windstream. This furtive implementation of the “PIN” requirement does not enhance customer protection. Rather, the “PIN” is all about Windstream *market share* protection. Moreover, it is illegal, violating not only federal law, but also PSC regulations that prohibit additional ILEC verification of carrier changes.

Jeff DeRouen
June 8, 2009
Page 3

Windstream's contrived "PIN" requirement appears, at a minimum, to be a cynical attempt to end run a recent Federal Communications Commission decision holding that an ILEC violates the Telecommunications Act of 1996 when it begins retention marketing efforts upon receipt of a Local Service Request from a competitor. *Bright House Networks, LLC v. Verizon Cal., Inc.*, 23 FCC Rcd 10704 (2008), *aff'd*, *Verizon California v. FCC*, 555 F.3d 270 (D.C. Cir. Feb 10, 2009). Here, the effect is the same—the "PIN" request from a Windstream customer is the same type of signal that an ILEC may not "unfairly exploit" when received in advance through interaction necessary to effect a carrier change. If the "PIN" request triggers any retention marketing, Windstream is in violation. *See* 23 FCC Rcd 10704 at ¶ 13.

The "PIN" requirement also conflicts with clear policy the Commission codified in 807 KAR 5:062, Section 3, prohibiting Kentucky's ILECs from undertaking independent verification of telecommunications carrier changes. That 1996 regulation was intended to remedy the anti-competitive ILEC practice of refusing to permit a carrier change until the ILEC had consulted with their customers themselves. The Commission refused to allow Kentucky's ILECs to hobble their customers' choice of carriers through insistence upon unreasonable and unwieldy verification procedures disguised as customer protection. The policy is a wise one, and must be enforced here as well.

Windstream's "protection plan" is a transparent attempt to interfere with the competitive market and is especially troublesome given the allegations already before the Commission in Insight's complaint. Windstream is violating the regulation. The Commission has authority to penalize Windstream for violating regulations and should issue an order requiring Windstream to show cause why it should not be penalized \$2,500 for each offense. KRS 278.990.

Please indicate receipt of this letter by placing your file stamp on the extra copy and returning to me via the enclosed, self-addressed, stamped envelope.

Very truly yours,

STOLL KEENON OGDEN PLLC



Douglas F. Brent

DFB:

cc: Parties of Record