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June 19, 2009

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

RECEIVED

JUN 23 2009

PUBLIC SERVICE
COMMISSION

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

Dear Mr. DeRouen:

Big River Telephone Company (“Big River Telephone”) files this letter to reply to the June 12, 2009 letter filed on behalf of Windstream in the referenced case.

In our June 8 letter we explained that Windstream is interfering with the number porting process and violating a Commission regulation prohibiting it from independently verifying carrier change requests. Rather than respond to these very serious allegations about its anticompetitive behavior, Windstream claims that Big River Telephone “has violated the parties’ interconnection agreement” by bringing the issue to the Commission’s attention. Big River Telephone will respond briefly to this claim.

First, not long after Big River Telephone intervened in this complaint case Windstream purported to *cancel* the parties’ interconnection agreement. [Exhibit 1] Ironically, Windstream now demands strict compliance with an agreement it has tried to take away from Big River Telephone.

Second, if the agreement is part of the law of this case, the Commission should take notice of Section 9.3, which requires the parties to negotiate in good faith new terms to implement changes in law. Here, Windstream claims that its new “PIN” requirement implements its “four fields” policy. Windstream earlier claimed that the policy itself implements a declaratory ruling of the FCC. *See* Windstream Answer at ¶ 15. Big River Telephone does not accept Windstream’s misuse of snippets of the FCC’s order to justify a practice so obviously in conflict with what the FCC actually sought to achieve. But if this is a change of law issue, Windstream should be in negotiations with all of its interconnection co-parties. Windstream has

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refused to negotiate with Big River Telephone.

Third, months ago Windstream told the Commission it “is more than willing to participate” in an investigation of its practices related to number porting. Windstream Answer at ¶ 2. The new “PIN” requirement is such a practice. The Commission should take Windstream at its word.

Finally, Big River Telephone is not constrained from asking the Commission to immediately investigate the second largest ILEC in the state for flouting the rules governing carrier changes. None of the other Kentucky ILECs that interconnect with Big River Telephone are interfering with simple port requests in this manner, and a swift Commission response to Windstream will discourage other carriers from concocting similar “PIN” plans that violate the law and interfere with facilities-based local competition.

KRS 278.040 provides enforcement power to the Commission and the Commission should exercise it here. Windstream is violating 807 KAR 5:062, Section 3, a regulation that implements KRS 278.535. In enacting this statute the General Assembly gave the Commission additional enforcement tools and enhanced penalties to protect customer choice in a competitive market. KRS 278.535(6) states that upon finding a provider has violated the slamming regulations the Commission “shall order the provider to take corrective action as necessary.” Corrective action in this case would be an immediate end to a practice so obviously intended to hobble all of Windstream’s local competitors. In addition, for violating the carrier change regulation the maximum penalty prescribed by the statute is *\$10,000 per violation*. *Id.* The Commission has authority to penalize Windstream for violating the law and should issue an order requiring Windstream to show cause why it should not be penalized for each offense.

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

A handwritten signature in black ink, appearing to read 'DRB', with a long horizontal line extending to the right.

Douglas F. Brent

Enclosure

cc: Parties of Record



Scott Terry
Staff Manager – Negotiations
501-748-5397

Windstream Communications
4001 Rodney Parham Road
Mailstop: 1170 B1F2-1212A
Little Rock, AR 72212
t: 501-748-5397
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scott.a.terry@windstream.com

November 11, 2008

Big River Telephone Company, LLC
Attn: Kevin Keaveny
Vice President – Engineering & Operations
24 S. Minnesota Ave.
Cape Girardeau, MO 63702
314-225-2207
kk@bigrivertelephone.com

--Via Certified Mail--

Re: Official Notice to Terminate the Adopted Interconnection Agreement in Kentucky Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996

Dear Kevin,

As I noted on the phone, Windstream Kentucky East, LLC, successor in interest to Verizon South f/k/a GTE South, Inc. ("Windstream") and AT&T of the South Central States, Inc. ("AT&T") are terminating and replacing the current interconnection agreement in effect between the parties.

This interconnection agreement is the one which Big River Telephone Company, LLC, pursuant to a letter dated January 20, 2006, adopted. Per section 4 of that letter, "Big River's adoption of the AT&T Terms shall become effective upon approval of this Agreement by the Kentucky Public Service Commission and shall terminate simultaneous with the termination of the AT&T Agreement".

Please let this letter serve as a Bona Fide Request for negotiation of an interconnection agreement between Big River and Windstream. I will prepare and email you a draft agreement for negotiation next week.

In the event Big River would prefer to adopt again, please let me know. All of our existing agreements are available for viewing via the following link:
http://psc.ky.gov/agencies/psc/reports/intercon_1.html

If you have questions regarding this termination notice, please let me know.

Sincerely,

Scott Terry

cc: Dan Logsdon