

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

NOV 3 2008

PUBLIC SERVICE  
COMMISSION

In the Matter of:

JERRY ROSS

)  
)  
)  
)  
)  
)  
)

v.

Cast No. 2008-00449

WINDSTREAM KENTUCKY EAST, LLC.

**MOTION TO DISMISS AND**  
**ANSWER OF WINDTREAM KENTUKCY EAST, LLC.**

Windstream Kentucky East, LLC. (“Windstream”) hereby states as follows in response to the Complaint filed by Jerry Ross:

**MOTION TO DISMISS**

1. On May 22, 2008, Mr. Jerry Ross filed an informal consumer complaint (“Informal Complaint”) with the Kentucky Public Service Commission (“Commission”). In his Informal Complaint Mr. Ross stated that he was being billed incorrectly for services he had ordered from Windstream in November 2007. Mr. Ross said at that time and again in his recent formal complaint (“Complaint”) that his billed services from Windstream should be \$99.97 per month plus applicable fees and taxes. Mr. Ross stated that while Windstream had adjusted his monthly statement for three consecutive months, it was unwilling to continue with these monthly adjustments due to the fact that Mr. Ross’s dispute centered on the DISH portion of his statement which Windstream determined to be correct.

2. While Windstream did issue three months of courtesy credits in an effort to appease Mr. Ross, Windstream could not continue to do so since his wife had contacted DISH Network directly and added additional features to the original DISH network package. Thus, while Mr. Ross may have objected to the additional services, they were in fact ordered by and provided to his household. At the time of installation of Mr. Ross's DISH satellite service Mrs. Ross added an additional receiver. The advertised price of \$99.97 would not have included an additional receiver. On December 15, 2007, Mrs. Ross contacted DISH to add HBO, Cinemax, and change their original channel lineup from 200 channels to 250 channels. On March 12, 2008 Mr. Ross contacted DISH to remove HBO and Cinemax, but he did not remove the 250 Bonus Channel Package.

3. Mr. Ross's monthly statement from Windstream is accurate. Since his original order, his wife has contacted DISH directly and added a more robust channel line-up and an additional receiver. Further, Mr. Ross's current phone package with Windstream allows 100 free anytime minutes. However, his package provides for an additional charge of \$5 per month if he exceeds the 100 minutes threshold. Mr. Ross's household used approximately 166 minutes in August 2008.

4. Regrettably, Windstream believes that Mr. Ross's complaints are based on a misunderstanding as to what video satellite services his household subscribes and the associated charges for such services. Windstream has confirmed with DISH Network that the video service charges are correct and is happy to facilitate a review of the video packages and charges with Mr. Ross and his household to clarify any continuing misunderstanding.

5. While the Complaint and Informal Complaint against Windstream should be dismissed as the billing is correct, they should also be dismissed as they concern disputes only with services

received and ordered directly from DISH Network. DISH Network is a satellite entertainment provider. Windstream has provided Mr. Ross with a contact number for DISH Network since Windstream believed this was the most appropriate avenue for Mr. Ross to receive the explanatory information he needs for the satellite services that were ordered and provided. It is Windstream's understanding, however, that Mr. Ross will not contact DISH directly. In an effort to resolve Mr. Ross's original informal complaint, Windstream also facilitated a three-way call so that Mr. Ross and DISH could speak directly at which time DISH confirmed for Mr. Ross that the additions to his account were made from his residence and that he maintained an 18-month contract with DISH.

6. Windstream is not the proper party and the Commission is not the proper venue for the Complaint or Informal Complaint.

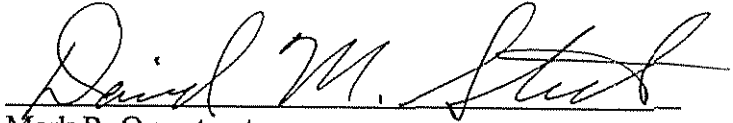
7. Windstream has expended tremendous time and resources to facilitate the resolution of Mr. Ross's concerns regarding his video DISH Network services. The factual record in this case warrants dismissal of the Complaint.

#### **WINDSTREAM ANSWER**

8. Windstream incorporates herein Paragraphs 1 to 7 above and states that it reserves all rights with respect to its position that the Complaint must be dismissed for lack of subject matter jurisdiction.

9. Windstream denies the allegations set forth in the Complaint unless expressly admitted herein or in the Motion to Dismiss and reserves the right to plead further in this matter as necessary. Windstream is a Delaware limited liability company, and its name is Windstream Kentucky East, LLC.

Respectfully submitted,



Mark R. Overstreet

David M. Stout

STITES & HARBISON, PLLC

421 West Main Street

P.O. Box 634

Frankfort, Kentucky 40602-0634

COUNSEL FOR:

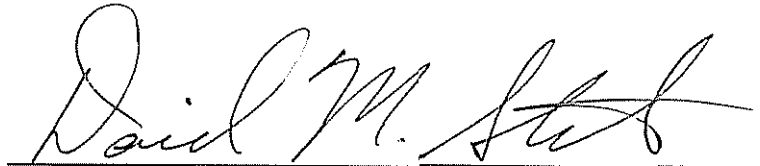
WINDSTREAM KENTUCKY EAST, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Motion to Dismiss and Answer of Windstream Kentucky East, LLC via United States Postal Service, First Class Mail, postage prepaid, upon:

Jerry Ross  
4976 Friendship Road  
Catlettsburg, Kentucky 41129

on this the 3<sup>rd</sup> day of November, 2008.



David M. Stout

17677:1:FRANKFORT