



Holly C. Wallace
502-540-2309
holly.wallace@dinslaw.com

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via Federal Express

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

Re: *In the Matter of: Adoption of Interconnect Agreement Between South Central Rural Telephone Cooperative and Sprint Communications Company, L.P. by Windstream Communications, Inc.; Case No. 2008-00477*

Dear Mr. Derouen:

The purpose of this letter is to reply to Windstream Communications, Inc.'s ("Windstream Communications") response to South Central Rural Telephone Cooperative Corporation, Inc.'s ("SCRTC") objection to the attempted adoption of the interconnection agreement between SCRTC and Sprint Communications Company, L.P. ("Sprint") (the "Agreement").

As a matter of law, the Agreement is no longer available for adoption by other carriers because the "reasonable period of time" to adopt the Agreement has expired. Telecommunications carriers such as Windstream Communications do not have an unlimited right to opt into interconnection agreements under 47 U.S.C. §252(i). The regulations of the Federal Communications Commission ("FCC") expressly limit the right of a telecommunications carrier to opt into an interconnection agreement to a "reasonable period of time after the approved agreement is available for public inspection under §252(h) of the Act." 47 C.F.R. §51.809(c). Although the term "reasonable period time" is not defined in the regulation, the FCC provided guidance regarding the meaning of the term in its *First Report and Order*.¹

¹ First Report and Order, *Implementation of Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, FCC 96-325, CC Docket Nos. 96-98 and 95-185 (rel. August 8, 1996) ("*First Report and Order*").

We agree with those commentators that suggest that agreements remain available for use by requesting carriers for a reasonable amount of time. Such a rule addresses incumbent LEC concerns over technical incompatibility, while at the same time providing requesting carriers with a reasonable time during which they may benefit from previously negotiated agreements. In addition, this approach makes economic sense, since the pricing and network configuration choices are likely to change over time, as several commentators have observed. Given this reality, it would not make sense to permit a subsequent carrier to impose an agreement or term upon an incumbent LEC if the technical requirements of implementing the agreement have changed.

First Report and Order, at ¶1319.

The flexible standard established by the FCC clearly provides that an interconnection agreement does not necessarily remain available for adoption throughout the full term of the agreement. Rather, an interconnection agreement only remains available for adoption for a "reasonable period of time" after it is approved by the state commission. 47 C.F.R. §51.809(c).

In the present case, the Agreement was approved by the Kentucky Public Service Commission (the "Commission") with an effective date of June 1, 2006. The term of the Agreement was two years and expired on June 1, 2008. Windstream Communications did not file its notice of adoption until November 14, 2008, five months after the term of the Agreement expired. Under no reasonable interpretation of the FCC's regulations can five months past the expiration of the Agreement's term be considered a "reasonable period of time" in which to adopt it. In addition, as stated above, SCRTC has provided 90-day notice to Sprint that it is terminating the Agreement. Therefore, the "reasonable period of time" in which to adopt the Agreement has long since expired and the Agreement is no longer available for adoption by Windstream Communications. *See* 47 C.F.R. §51.809(c); *see also First Report and Order*, at ¶1319.

Moreover, the unavailability of the Agreement for adoption does not prevent Windstream Communications from operating as a CLEC within the incumbent territory of SCRTC. In accordance with the Telecommunications Act of 1996 (the "Act"), Windstream Communications may make a bona fide request for interconnection with SCRTC and negotiate the terms and conditions of an interconnection agreement with SCRTC as provided in 47 U.S.C. §252.

In conclusion, the "reasonable period time" for Windstream Communications (or any other telecommunications carrier) to adopt the Agreement has expired. Therefore, pursuant to the Act, 47 C.F.R. §51.809(c) and the *First Report and Order*, Windstream Communications may not opt into the Agreement.

FOREIGN EXCHANGE ("FX") TRAFFIC

With regard to the FX traffic issue, Windstream Communications' summary of an alleged conversation between the General Manager of SCRTC and Windstream Kentucky East, LLC's ("Windstream ILEC") business customer ("the Bank") is patently incorrect. At no time did the General Manager state to the Bank or to Windstream ILEC that SCRTC is unable to provide the services sought by the Bank. SCRTC provides a comprehensive range of telecommunications services to its customers. There are no telecommunications services that SCRTC is unable to provide to its customers within its territory. Therefore, the statement that SCRTC is amenable to an FX arrangement with Windstream ILEC because SCRTC is unable to provide the services sought by the Bank is incorrect. SCRTC is more than capable of providing any telecommunications services to the Bank that the Bank may seek.

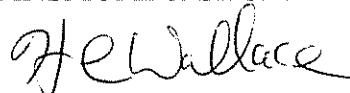
Moreover, SCRTC's willingness to explore the possibility of entering into a FX arrangement with Windstream ILEC was based on SCRTC's understanding that Windstream ILEC had in good faith misconstrued the boundary between Windstream ILEC and SCRTC. Based on the January 13, 2009 letter filed in this case by Windstream Communications/Windstream ILEC, it now appears that Windstream ILEC's efforts to serve a customer within the service territory of SCRTC is not based upon a good faith error in recognizing the boundary between the two ILECs, but rather is an unlawful incursion into the incumbent territory of SCRTC. Additionally, given Windstream Communications does not have any numbering resources and does not otherwise appear to be capable of providing service at this time, one could only conclude that Windstream ILEC's incursion into SCRTC's service territory contemporaneous with Windstream Communications' attempt to opt into an interconnection agreement that is no longer available for adoption is nothing more than a concerted effort by Windstream ILEC to unlawfully provide service within the territory of SCRTC under the guise of Windstream Communications.

For these two reasons, specifically: (1) because the Agreement is no longer available for adoption, and (2) because the attempt to adopt the Agreement is a thinly-veiled attempt by Windstream ILEC to unlawfully operate in SCRTC's incumbent territory, the Commission should deny Windstream Communications' attempt to adopt the Agreement.

Thank you, and if you have any questions with regard to this matter, please call us.

Very truly yours,

DINSMORE & SHOHL LLP



Holly C. Wallace

cc: Mark R. Overstreet, Esq.
Max Phipps

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Donnie Bennett
John E. Selent, Esq.
Edward T. Depp, Esq.

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