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October 23, 2009

RECEIVED

OCT 23 2009

PUBLIC SERVICE
COMMISSION

Via Hand-Delivery

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

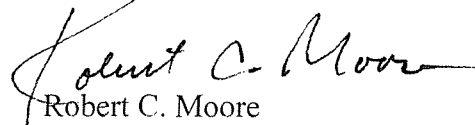
Re: Windstream Kentucky East, LLC's ("Windstream") Petition for Arbitration
Case No. 2009-00246

Dear Mr. Derouen:

Please find enclosed for filing Windstream Kentucky East, LLC's Response to the Motion to Strike filed on behalf of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility in the above-referenced proceeding. I have enclosed one original of Windstream's Response and 10 copies.

Thank you for your attention to this matter.

Respectfully submitted,


Robert C. Moore

RCM/dsg
Enclosures

c: Stacy Majors

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)
)
Petition of Windstream Kentucky)
East, LLC for Arbitration of an)
Interconnection Agreement with New)
Cingular Wireless PCS, LLC, D/B/A)
AT&T Mobility) Case No. 2009-00246

WINDSTREAM KENTUCKY EAST, LLC'S
RESPONSE TO NEW CINGULAR WIRELESS PCS, LLC D/B/A AT&T
MOBILITY'S MOTION TO STRIKE

Comes Windstream Kentucky East, LLC (“Windstream East”), by counsel, and responds as follows to New Cingular Wireless PCS, LLC d/b/a AT&T Mobility’s (“AT&T Mobility”) Motion to Strike:

Throughout this arbitration proceeding, Windstream East has maintained that the parties negotiated certain unresolved issues regarding the proposed interconnection agreement between the parties, although AT&T Mobility has represented otherwise. Specifically, in its Motion for Partial Dismissal (“Motion”), AT&T Mobility asserts that it did not negotiate Windstream East’s claim for originating access and offers in support of that statement an affidavit from Mr. William H. Brown. Mr. Brown’s affidavit notes the date this issue was raised by Windstream East and the date that AT&T Mobility declined further discussions. However, neither the Motion nor Mr. Brown’s affidavit explains that the parties discussed this issue further in a telephone conference between the times noted by AT&T Mobility.

Windstream East's sole purpose in filing the information that it did was to defend against and correct the information submitted by AT&T Mobility which Windstream East

believed to be inaccurate, and to identify the issues that had been subject to negotiation by the parties before the arbitration petition was filed with the PSC. Indeed, AT&T Mobility filed with its Motion for Partial Dismissal the Affidavit of William H. Brown which discusses in detail the negotiations between the parties. Should Windstream's Response to AT&T's Motion for Partial Dismissal be stricken, which should not be the case, then AT&T's Motion and supporting Brief should be stricken for the same reason. It is improper and inequitable for AT&T Mobility to file a pleading and then at the same time seek to quash Windstream East's ability to respond and present defenses to those pleadings. Windstream East is in no way trying to "open the floodgates" and create a situation where the parties are bombarding the Kentucky Public Service Commission with correspondence between the parties, as AT&T Mobility suggests in its Motion to Strike. If AT&T Mobility's Motion to Strike is granted, then its information presented to the Commission concerning detailed negotiations between the parties will remain in error, and Windstream East will have been denied a reasonable opportunity to defend against the incorrect information.

The purpose of arbitration under 47 U.S.C. 252 is to reach a decision on unresolved issues between parties to interconnection negotiations. Windstream East's Exhibit 1 to its Response to AT&T Mobility's Motion for Partial Dismissal ("Response") was included solely to make the Commission aware of the reality of the circumstances surrounding the parties' discussions, not just AT&T Mobility's inaccurate representation of them, and to point out that there is an unresolved issue that was the subject of negotiations that needs to be part of this arbitration. Very simply, the sole purpose was to

reflect what Windstream East believes is an accurate portrait of the matters negotiated between the parties.

Furthermore, while Windstream East does not consider the information to have been a settlement offer of the type protected under the applicable authority and was not labeled as such, KRE 408 nevertheless allows for evidence to be offered to prove bias or prejudice of a witness. The inclusion of Exhibit 1 in Windstream East's Response shows that AT&T Mobility's witness exhibited bias against Windstream East and in favor of AT&T Mobility by omitting a pertinent fact of a discussion between the parties regarding an unresolved issue in the negotiation of an interconnection agreement.

Additionally, information contained in the emails in Windstream East's Exhibit 1 was information already made publicly available. The only information in the emails contained in Exhibit 1 related to issues in the draft interconnection agreement between the parties, and the dialogue between the parties establishing that they desired to schedule a meeting to discuss outstanding, unresolved issues. Windstream East's draft interconnection agreement was filed with Windstream East's Petition for Arbitration. That Petition was not filed under seal of confidentiality for the reason that it included the last draft negotiated between the parties, which included any specific information contained in Exhibit 1. Therefore, the information in that draft agreement, which included any specific information contained in Exhibit 1, was already public information *prior* to the filing of Windstream East's Response. Significantly, the information in the emails was information generated by Windstream East, the discloser of the information and not by AT&T Mobility. Pursuant to the Information Exchange Agreement ("IEA") between the parties, it is the recipient of information who has the duty to protect the

confidentiality of information from the discloser of that information; the discloser may allow information to be publicly disclosed. AT&T Mobility has not pointed to any other information in the emails that it asserts should be considered confidential and proprietary.

Exhibit 1 to Windstream East's Response should not be stricken from the record, and Windstream East should be permitted a reasonable opportunity to submit facts necessary to identify the issues that had been negotiated prior to the filing of the arbitration petition and to defend against AT&T Mobility's positions. The information in the emails was not perceived by Windstream East to be nor labeled by Windstream East as a settlement agreement, and the information supports that AT&T Mobility actually did discuss the issue of originating access, which is an outstanding, unresolved issue between the parties that should be subject to this arbitration proceeding, despite AT&T Mobility's attempt to deny the existence of this issue.

WHEREFORE, Windstream East respectfully requests that the Commission deny AT&T Mobility's Motion to Strike.

Date: 10/23/09

Respectfully Submitted,

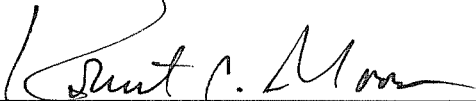
By: 

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502-227-2271

Stacy Majors
Regulatory Counsel
Windstream Communications, Inc.
4001 Rodney Parham Road
Little Rock, Arkansas 72212-2442

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was sent via hand delivery on this the 23rd day of October, 2009 on Jeff R. Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602-0615 and by first class mail, postage pre-paid on Mary K. Keyer, General Counsel/AT&T Kentucky, 601 West Chestnut Street, Room 407, Louisville, Kentucky 40203, on Paul Walters, Jr., 15 East 1st Street, Edmond, Oklahoma 73034, and on Tiffany Bowman, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602-0615.



Robert C. Moore