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January 8, 2010

RECEIVED

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PUBLIC SERVICE  
COMMISSION

**VIA OVERNIGHT MAIL**

Mr. Jeff Derouen  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, KY 40602

Re: Petition of Windstream Kentucky East, LLC, for Arbitration of an  
Interconnection Agreement With New Cingular Wireless PCS, d/b/a AT&T  
Mobility  
KPSC 2009-00246

Dear Mr. Derouen:

Enclosed for filing in the above-referenced case are the original and five (5)  
copies of AT&T Mobility's Motion to Compel.

Should you have any questions, please let me know.

Sincerely,

  
Mary K. Keyer

Enclosure

cc: Parties of Record

768278

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF WINSTREAM KENTUCKY )  
EAST, LLC, FOR ARBITRATION OF AN )  
INTERCONNECTION AGREEMENT WITH ) CASE NO. 2009-00246  
NEW CINGULAR WIRELESS PCS, )  
D/B/A AT&T MOBILITY )

**AT&T MOBILITY'S MOTION TO COMPEL**

New Cingular Wireless PCS, LLC d/b/a AT&T Mobility, on behalf of itself and its wireless operating affiliates (collectively "AT&T Mobility"), files its Motion to Compel pursuant to the Commission's January 5, 2010, Order. AT&T Mobility seeks an order from the Commission requiring Windstream Kentucky East, LLC ("Windstream") to respond to two AT&T Mobility data requests. This motion will list the two disputed data requests, followed by Windstream's response and AT&T Mobility's argument in support of an order compelling an appropriate response.

The applicable discovery standard is set out in Rule 26.02(1) of the Kentucky Rules of Civil Procedure:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Each data request below involves information relevant to Windstream's cost study and to AT&T Mobility's analysis of it. Proper responses to these requests are vital for AT&T Mobility to conduct a proper analysis of the study and the data and assumptions underlying it. Therefore, all requests are appropriate, and Windstream should be compelled to respond properly to them.

#### **1. AT&T MOBILITY DR-6**

Provide all Windstream's annual reports and Form 477 reports for Kentucky filed with the Federal Communications Commission ("FCC") since January 1, 2004.

##### Windstream Response

Windstream East objects to this request as being overly broad and vague, and not likely to lead to any relevant or discoverable information in this proceeding. Additionally, Windstream East objects to this request on the grounds that it requests confidential, proprietary and competitively sensitive information.

##### Argument Supporting Motion to Compel

Important factors in Windstream's cost study are line counts; *i.e.*, number of access lines, number of private lines, etc. For example, costs attributable to private lines cannot be recovered through rates charged for transporting and terminating third-party traffic. Similarly, the number of access lines is relevant in determining appropriate sizing of a forward-looking transport and termination network. Also, the reports Windstream files with the FCC likely contain operating or financial information and time lines that are different from information contained in reports filed with the Kentucky Public Service Commission.

The reports sought in this data request will aid AT&T Mobility in verifying whether the line counts used in Windstream's cost study are appropriate. These reports may aid AT&T Mobility in verifying the reasonableness of other values used in Windstream's cost study, such as retail/wholesale splits. Despite repeated requests, Windstream has refused to produce the requested reports.

Windstream claims that the requested reports contain "confidential, proprietary and competitively sensitive information." This concern can be ameliorated by Windstream's seeking confidential treatment for the requested data, as Windstream has done for several other data requests in this proceeding.

## **2. AT&T MOBILITY DR-98(a)**

Windstream Kentucky East provided in response to AT&T Mobility's First Data Request #60 a 2009 demand forecast for each MOU category used in its cost study. The following queries are with respect to this forecast.

- a. Provide all documents relied upon by Windstream to develop this forecast.

### Windstream Initial Response

The Windstream East cost study used historical information and forward-looking assumptions to determine minute of use trends.

### Windstream Supplemental Response

Windstream East objects to this request on the grounds that it requests confidential, proprietary and competitively sensitive information.

### Argument Supporting Motion to Compel

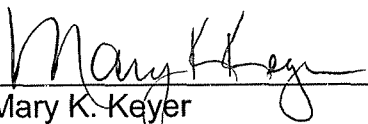
This data request asked for supporting documents. Because the requested information (involving the forecasted demands employed in Windstream's cost study) is

an important component of Windstream's study, Windstream should be required to produce all supporting documentation - or else state that no supporting documentation exists. Windstream's claim that the requested documentation is competitively sensitive can be ameliorated by Windstream's seeking confidential treatment for the requested data, as Windstream has done for several other data requests in this proceeding. This is the only supporting documentation that Windstream has failed to provide.

Windstream has not explained why this supporting documentation should be treated any differently than other documentation supporting its cost study.

WHEREFORE, AT&T Mobility requests an order from the Commission, compelling Windstream to respond to AT&T Mobility's Data Requests 6 and 98(a).

Respectfully submitted,



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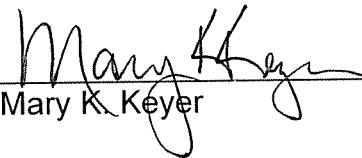
COUNSEL FOR NEW CINGULAR  
WIRELESS PCS, D/B/A AT&T MOBILITY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof via U.S. Mail, this 8th day of January 2010.

Honorable Robert C. Moore  
Attorney At Law  
Hazelrigg & Cox, LLP  
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