

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:)
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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 MOTION TO COMPEL

Comes Windstream Kentucky East, LLC (“Windstream East”), by counsel, and hereby files its Motion to Compel pursuant to the Commission’s September 13, 2010 Order in this matter. Windstream East seeks an order from the Commission requiring New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility (“AT&T Mobility”) to respond to four Windstream East discovery requests, pursuant to Kentucky Rules of Civil Procedure, Rule 26.02(1). Each of these discovery requests involve information relevant to Windstream East’s analysis of a traffic study provided to it by AT&T Mobility. Without this information, the traffic study provided to Windstream East is invalid. Windstream East needs a valid traffic study to analyze the issue of the proper percentage for determining interMTA traffic between the parties, one of the issues subject to this arbitration proceeding. Therefore, Windstream East’s requests are appropriate and AT&T Mobility should be compelled to respond properly to them.

I. Windstream East’s Supplemental Data Request No. 1

Windstream East’s Supplemental Data Request No. 1 asks AT&T Mobility to “provide all work papers, including source documents, supporting AT&T’s traffic study provided to Windstream East. Work papers should include, to the extent they exist, all

documentation supporting cell site locations, how data was separated between Windstream East-originated and AT&T-originated calls, how a Windstream-East originated call was determined to terminate within the MTA in which it originated, how a Windstream East-originated call was determined to terminate outside the MTA in which it was originated, etc.” Regarding the portion of the request seeking “all work papers, including all source documents, supporting AT&T’s traffic study...”, AT&T Mobility responded by indicating that its traffic study was created by examining raw Call Detail Record information “through the use of specialized software,” such that no work papers exist. In other responses, AT&T Mobility explains that the specialized software is a model using Oracle Database. (*See, e.g.*, AT&T Mobility Responses to Request Nos. 4, 5 and 10.) However, AT&T Mobility did not provide Windstream East with a copy of the Oracle-based model constituting its traffic study. Clearly, AT&T Mobility’s failure to provide the traffic study model is unresponsive to Windstream East’s request and the Commission should order its production.

Additionally, AT&T Mobility stated in its response that Call Detail Records (“CDRs”) were provided to Windstream East. However, no full call detail records have ever been provided. A full CDR would include the telephone number (NPA-NXX-Line Number) of the customer placing the call and the customer receiving the call. Instead, AT&T Mobility has only provided call detail records at the NPA-NXX level. Given the prevalence of number porting, NPA-NXX level data will not accurately identify Windstream East-originated-only traffic -- line number level data is required. Thus, AT&T Mobility should be required to provide the CDRs with line number level data and include the originating Local Routing Number (“LRN”), as originally requested by

Windstream, so that Windstream East can validate the AT&T Mobility traffic study. If AT&T Mobility is unable to provide the originating LRN, then AT&T Mobility may include the Jurisdictional Information Parameter (“JIP”) associated with the Windstream switches. (*See, also*, Section IV., infra.)

AT&T Mobility responded in pertinent part regarding all documentation supporting cell site locations as follows: “The locations of AT&T Mobility’s cell sites are proprietary and highly confidential – both for competitive and national security reasons...AT&T Mobility objects to producing to Windstream the actual cell site locations by state and country.” The only information regarding this Data Request that AT&T Mobility has provided thus far is a code for the cell tower used for the call without providing any way for Windstream East to verify the exact address of the cell tower. The addresses of the cell sites are essential to Windstream East’s ability to confirm the jurisdiction of the calls covered by AT&T Mobility’s traffic study in order for the appropriate compensation to occur between the parties. The location of cell sites for ANY wireless carrier are available through several means--there are websites that pinpoint the locations of cell towers; the FCC maintains public records regarding certain cell phone towers, and indeed, if a tower is located on government property in Kentucky, the lease with the location and information about the tower is a public record. Additionally, the parties have an NDA in place, so that any information shared by AT&T Mobility will be considered confidential and not for use outside Windstream East's need to validate the information included in AT&T Mobility’s traffic study.

II. Windstream East’s Supplemental Data Request No. 3

Windstream East's Supplemental Data Request No. 3 asks AT&T Mobility to "Explain in detail the method and identify the programs and specific methods of calculation employed by AT&T in its traffic study to determine if a particular call was originated by a Windstream East end user."

AT&T Mobility's response states that "if a Windstream East subscriber calls an AT&T Mobility subscriber, the AT&T Mobility network will receive a Mobile Terminating ("MT") record of the event (*as long as the AT&T Mobility subscriber is not roaming on another network*)." (italics added).

AT&T Mobility has stated that it has roaming agreements with other carriers, but that it does not have access to these records. However, AT&T Mobility includes call information for these roaming calls on its bills to end users, or at a minimum, includes the minutes for these roaming calls in the calculation of total minutes used by AT&T Mobility's end users on its bills to end users. As a result, AT&T Mobility *does* have access to this information. AT&T Mobility can and should contact its roaming partners to obtain the CDRs for the calls received by these AT&T Mobility end users using the roaming partners network. Without these minutes, the traffic study provided to Windstream East is incomplete, seriously flawed and therefore invalid. Again, this information is crucial to Windstream East's ability to analyze and validate the information in AT&T Mobility's traffic study.

III. Windstream East's Supplemental Data Request No. 8

In its Supplemental Data Request No. 8, Windstream East asked AT&T Mobility to identify "each and every person that was involved in the production, review, analysis, or any other aspect" of its traffic study. In its response, AT&T Mobility identified five

persons, each an AT&T in-house employee. However, subsequent responses disclose that AT&T Mobility engaged a contractor – LGR – to “parse and load” CDR data into the Oracle Database (AT&T Mobility Response to Supplemental Data Request No. 10), even though AT&T Mobility did not identify any LGR employees as involved in the traffic study in its Response to Supplemental Request No.8. Inasmuch as LGR is undoubtedly functioning as an agent of AT&T Mobility and LGR personnel worked on the traffic study, AT&T Mobility should have identified the relevant LGR personnel in the Response to Windstream East’s Supplemental Data Request No. 8, and the Commission should compel AT&T Mobility to identify such LGR personnel consistent with that data request. Windstream East needs such LGR personnel to be identified in order to assess whether any of such persons should be noticed for deposition in this proceeding.

IV. Windstream East’s Supplemental Request for Admission No. 4

Windstream East’s Supplemental Request for Admission No. 4 asks AT&T Mobility to “admit that AT&T provided originating NPA/NXX but not line numbers in the traffic study provided to Windstream East.”

AT&T Mobility’s response was to admit this, but AT&T Mobility states that “the line numbers were omitted to avoid a violation of federal CPNI rules.”

A customer's telephone number by itself is not customer proprietary network information (“CPNI”) under federal rules. (See 47 U.S.C. § 222(h), which includes telephone numbers as part of “subscriber list information”. Subscriber list information is defined as “any information identifying the listed names of subscribers of a carrier and such subscribers’ telephone numbers...that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format” and is excluded

from the definition of CPNI). At best, a telephone number could be considered CPNI only if the number is unpublished. If AT&T Mobility's only concern is confidentiality, this information will be considered confidential and not for use outside Windstream East's validation of the traffic study.

Additionally, if AT&T Mobility still objects to producing this information, Windstream East would be willing to accept information regarding Windstream East-originated calls only, since that information relates to Windstream East customers. As AT&T Mobility has already admitted to Windstream East (see AT&T Mobility Responses to Supplemental Request for Admission Nos. 1 and 2), the methodology employed by AT&T Mobility in the development of the traffic study provided to Windstream East allows for calls originated by carriers other than Windstream East to be included, which is a serious and fatal flaw in the study. AT&T Mobility must adjust the traffic study information so it relates only to Windstream East customers by including complete telephone numbers, the originating LRN or JIP (as noted in Section I, supra). The inclusion of this information is necessary for Windstream East to evaluate the traffic study to ensure that the model only includes calls originated by Windstream East customers.

CONCLUSION

As discussed, all of the above referenced items of information requested by Windstream East from AT&T Mobility are necessary in order for Windstream East to properly evaluate the traffic study provided to it by AT&T Mobility in conjunction with issues that are identified as being subject to this arbitration proceeding. Any concerns of AT&T Mobility regarding the confidentiality of such information provided to

Windstream East should be addressed by the NDA between the parties, which ensures that such information shall remain confidential.

WHEREFORE, Windstream East requests an order from the Commission, compelling AT&T Mobility to respond to Windstream East's Supplemental Data Request Nos. 1, 3, and 8 and Supplemental Request for Admission No. 4.

Date: 10/1/10

Respectfully Submitted,

By: Robert C. Moore

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was sent via hand delivery on this the 1st day of October, 2010 on Tiffany Bowman, 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.

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