

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MOUNTAIN RURAL TELEPHONE)	
COOPERATIVE CORPORATION, INC.)	CASE NO.
)	2006-00198
COMPLAINANT)	
)	
V.)	
)	
KENTUCKY ALLTEL, INC.)	
)	
DEFENDANT)	

O R D E R

On May 12, 2006, Mountain Rural Telephone Cooperative Corporation, Inc. d/b/a Mountain Telephone ("Mountain Telephone") filed a formal complaint against Kentucky Alltel, Inc.¹ (now "Windstream"). The focus of the complaint is the appropriate amount of compensation from Windstream due to Mountain Telephone for the completion of traffic handled by Mountain Telephone for Windstream. Formerly, the settlement process employed by Mountain Telephone consisted of BellSouth Telecommunications, Inc. ("BellSouth") collecting all the traffic on its trunks and assessing fees. Now, Mountain Telephone is trying to replace this process with its own Carrier Access Billing System ("CABS"), allowing Mountain Telephone to determine the amount of compensation due for traffic it is delivering, rather than relying on BellSouth to make

¹ Through a corporate merger and reorganization, Kentucky Alltel, Inc. became Windstream East, Inc. ("Windstream"). Windstream as the successor corporation is now the party of record.

such determinations. The dispute focuses on whether Mountain Telephone has the right to assess a non-traffic-sensitive revenue charge from its access tariff on traffic labeled by Windstream as “optional calling.” Mountain Telephone asserts that it is seeking to charge its tariffed rate for switched access services and that Windstream is refusing to pay the tariffed rate to cover its intra-LATA toll and optional calling plan traffic which Mountain Telephone terminates. Mountain Telephone says that Windstream is obligated to pay this switched access charge, including the non-traffic-sensitive rate. Windstream asserts that tariff is inappropriately applied to some of this traffic.

In response to this complaint, Windstream filed a motion to dismiss the complaint, a motion for discovery and injunctive relief, and an answer to the complaint. The May 30, 2006 motion to dismiss and for discovery and injunctive relief asserts that the tariff of Mountain Telephone alone is insufficient to determine which minutes, including the optional calling or area calling service (“ACS”) minutes, should be included in the calculation. In support of its motions, Windstream states that the traffic-sensitive rate elements are set forth in the carriers’ access tariffs and that Windstream does not dispute these charges. The non-traffic-sensitive rate elements are calculated by Mountain Telephone and, according to Windstream, have been inappropriately applied to its terminated traffic. Windstream disputes all calculations regarding the non-traffic-sensitive rate elements.

On June 7, 2006, Mountain Telephone filed its response to Windstream’s motions and filed a motion for summary judgment. Mountain Telephone asserts that there are no genuine issues of fact because the filed rate doctrine requires the

application of its tariff to the traffic terminated on behalf of Windstream. Moreover, Mountain Telephone asserts that Windstream's claim that an historical agreement providing for the termination of this traffic at no fee is meaningless. Mountain Telephone has no copy of such an agreement, and Windstream cannot produce the agreement.

On June 19, 2006, Windstream responded to Mountain Telephone's motion for summary judgment. Windstream asserts that the carrier common line charge, part of the non-traffic-sensitive rate elements, is inappropriately applied to some of the traffic that Mountain Telephone has terminated. The development of Mountain Telephone's rate and the issue of whether the tariff applies to optional calling minutes are in dispute. On June 26, 2006, Mountain Telephone replied to Windstream's response to its motion for summary judgment.

Mountain Telephone has provided prima facie evidence that an actual complaint exists between itself and Windstream. According to Mountain Telephone, Windstream wants to use Mountain Telephone's switched access services, as related to the optional calling minutes, for free. Mountain Telephone asserts that all traffic terminated by it on behalf of Windstream should be assessed the non-traffic-sensitive rates based on calculations made by Mountain Telephone. Windstream, on the other hand, asserts that Mountain Telephone is inappropriately assessing these charges on its traffic. Windstream is seeking records and information typically utilized to determine traffic disputes of the nature in question in this proceeding.

The Commission finds that Windstream's motion to dismiss the complaint should be denied because it appears that genuine factual issues are in dispute. The motion for

discovery should be granted and a procedural schedule established. Likewise, Mountain Telephone's motion for summary judgment should be denied because Windstream has shown that there are genuine factual issues in dispute. Finally, Windstream should be granted injunctive relief to the extent that Mountain Telephone should be prohibited from terminating Windstream's service related to the dispute in question while this case is pending.

The Commission, being sufficiently advised, HEREBY ORDERS that:

1. Windstream's motion to dismiss is denied.
2. Mountain Telephone's motion for summary judgment is denied.
3. Mountain Telephone shall not terminate Windstream's service related to this complaint during the pendency of this proceeding.
4. The parties shall abide by the schedule set forth in Appendix A, attached hereto and incorporated herein, unless otherwise ordered by the Commission.

Done at Frankfort, Kentucky, this 1st day of September, 2006.

By the Commission

ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2006-00198 DATED SEPTEMBER 1, 2006

Written requests for information shall be filed with the
Commission and served electronically on all parties no later than 9/14/06

Responses and all objections to requests for information
shall be filed and served electronically no later than 9/28/06

Supplemental requests for information shall be filed with the
Commission and served electronically on all parties no later than 10/5/06

Responses and objections to supplemental requests for
information shall be filed and served electronically no later than 10/19/06

Direct testimony of all witnesses shall
be filed and served electronically no later than 11/2/06

Rebuttal testimony shall be filed and served electronically no later than..... 11/14/06

Public hearing is to begin at 9:00 a.m.,
Eastern Standard Time, in Hearing Room 1
of the Commission's offices at 211 Sower
Boulevard, Frankfort, Kentucky to be scheduled