

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TOUCHSTONE COMMUNICATIONS, INC.)	
AND ALEC, INC.)	
)	
COMPLAINANT)	
)	
V.)	CASE NO. 2005-00482
)	
WINDSTREAM KENTUCKY EAST, INC.)	
)	
DEFENDANT)	

O R D E R

Touchstone Communications, Inc. d/b/a ALEC, Inc. (“ALEC”) filed a complaint against Windstream Kentucky East, Inc. (“Windstream”) f/k/a Kentucky ALLTEL, Inc. regarding the recovery of fees for terminating Windstream’s local traffic from August 2000 to August 2005. ALEC states that it terminated 2.2 billion minutes of Windstream traffic for a total local and toll cost of \$6,797,050.15. ALEC asserts Windstream owes it \$8.6 million, including interest. ALEC’s complaint is filed pursuant to its interconnection agreement approved by the Commission on August 26, 1999.

ALEC further asserts that Windstream has failed to pay compensation for Internet Service Provider- (“ISP”) bound local traffic terminated by ALEC. Windstream’s refusal is based upon its belief that, in order for it to pay, the Federal Communications Commission (“FCC”) should have a final order with regard to the treatment of this ISP traffic and the applicability of a “bill and keep” compensation arrangement.

ALEC asserts that two periods of time are in question regarding this complaint: (1) for local traffic, the period of time after June 14, 2001 (the effective date of the FCC's ISP Remand Order) to August 2005; and (2) for toll traffic, the period from August 2000 to August 2005. Under the interconnection agreement, compensation for the termination of ISP-bound traffic considered local traffic is referred to as "reciprocal compensation." Also, the interconnection agreement provides for differing compensation rates for local and non-local traffic. This traffic is allocated as local based on a 95 percent local usage rate. Non-percent local usage traffic will be exempted and compensated at an intra-LATA toll access rate rather than the reciprocal compensation rate.

The interconnection agreement provides that ISP-bound traffic after June 14, 2001 would be terminated pursuant to the FCC's ISP Remand Order.¹ Article 5, Section 3.2.3, of the interconnection agreement provides that "at such time as a final FCC order becomes applicable, the parties shall meet to discuss implementation of the order and shall make adjustments to reflect the impact of the order including but not limited to adjustments for compensation required by the final FCC order."

ALEC asserts that the FCC's ISP Remand Order is final, binding, and non-appealable. ALEC further contends that the FCC has established a transitional cost recovery mechanism for the exchange of ISP-bound traffic.

Windstream filed a motion to dismiss in addition to its answer to the complaint. Windstream claims that the intra-LATA toll charges for traffic from August 2000 to

¹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order, CC Docket Nos. 96-98, 99-68, FCC 01-131 (rel. April 27, 1001).

November 2002 are improper because ALEC was not a party of interest at that time. Windstream further asserts that their interconnection agreement does not support compensation to ALEC for ISP-bound traffic, but instead, provides that neither party shall bill for such traffic. Windstream also claims that ALEC has failed to correctly quantify the traffic and provide supporting records.

Regarding whether ALEC is a proper party of interest, Windstream asserts that it and its predecessor have fully compensated the proper party of interest for traffic from August 2000 through November 2002.

Further, Windstream contends that ALEC is unilaterally “reinterpreting” the interconnection agreement to exact large sums of money from Windstream for one-way ISP-bound traffic. Regarding ALEC’s views that the ISP Remand Order is final and binding, Windstream asserts to the contrary that the matter has been appealed and remanded back to the FCC for additional proceedings.

ALEC also asserts that Windstream owes ALEC for toll traffic. Windstream’s response is that, to the extent money was due, it has been paid through November 2002. For periods after November 2002, Windstream asserts that ALEC has provided erroneous and unsubstantiated claims. Windstream says that it appropriately disputed these claims and that ALEC has not provided information to resolve the traffic dispute. According to Windstream’s reading of its interconnection agreement, ISP traffic is not included in local traffic and no compensation is necessary.

ALEC, in its response to Windstream’s motion to dismiss, states that the Commission has determined that a prima facie case has been met and that, therefore, dismissal is inappropriate. In response to Windstream’s statements that the payments

in question from August 2000 to November 2002 had previously been settled, ALEC asserts that the person representing settlement was not authorized to settle the claims.

ALEC also continues to assert that its interconnection agreement with Windstream supports the payment of compensation for ISP traffic. Finally, ALEC contends that it has supplied accurate information to Windstream in support of its claims for payment of toll traffic.

ALEC has provided prima facie evidence that an actual complaint exists against Windstream. 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 parties have agreed upon dates for the attached procedural schedule. Although some of the dates may have passed, the parties have already served interrogatories on each other and are conducting discovery.

The Commission, being sufficiently advised, HEREBY ORDERS that:

1. Windstream's motion to dismiss is denied.
2. The parties shall abide by the procedural schedule set forth in Appendix A, attached hereto and incorporated herein, unless otherwise ordered by the Commission.

Done at Frankfort, Kentucky, this 18th day of January, 2007.

By the Commission

ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2005-00482 DATED JANUARY 18, 2007

Written discovery requests shall be filed with the
Commission and served on all parties electronically 12/22/06

Responses and all objections to discovery shall be
filed with the Commission and served electronically 01/12/07

Supplemental discovery requests shall be filed with the
Commission and served on all parties electronically 01/23/07

Responses and objections to supplemental discovery
shall be filed with the Commission and served electronically 02/06/07

Direct testimony of all witnesses shall
be filed with the Commission and served electronically 02/20/07

Rebuttal testimony shall be filed and served electronically 03/06/07

Public hearing shall 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

Briefs to be filed electronically filed within 45 days of
release of transcript of hearing to be scheduled