

BEFORE THE COMMONWEALTH OF KENTUCKY

PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE INTRASTATE)	ADMINISTRATIVE
SWITCHED ACCESS RATES OF ALL)	CASE NO.
KENTUCKY INCUMBENT AND COMPETITIVE)	2010-00398
LOCAL EXCHANGE CARRIERS)	

**COMMENTS OF WINDSTREAM KENTUCKY WEST, LLC
AND WINDSTREAM KENTUCKY EAST, LLC**

OVERVIEW

Windstream Kentucky West, LLC (“Windstream West”) and Windstream Kentucky East, LLC (“Windstream East”) (collectively, “Windstream”) respectfully submit these Comments in response to the Kentucky Public Service Commission’s (“Commission’s”) request for comments in its November 5, 2010 Order issued in this docket (“*Investigative Order*”). The Commission consolidated the separate proceeding initiated by Verizon in Docket No. 2007-00503 into this inquiry which it opened to gather input from all Incumbent Local Exchange Carriers (“ILECs”) and intervening Competitive Local Exchange Carriers (“CLECs”) in an effort to “examine the switched access rates of Kentucky incumbent and competitive carriers.”¹ Windstream East and Windstream West generally are supportive of comprehensive, rational intercarrier compensation reform undertaken on a national basis.

As discussed below, Windstream East and Windstream West are not statutorily obligated to participate in this Kentucky proceeding, and they submit these comments while they await a ruling from the Kentucky Court of Appeals regarding the issue of their constitutional rights as alternative regulated carriers to be exempt from this proceeding. Submission of these comments,

¹ *Investigative Order* at 1.

however, as with all other prior submissions in Docket No. 2007-00503 (which now is consolidated with and incorporated into this instant proceeding) is with the full reservation of rights by Windstream West and Windstream East. As set forth in greater detail in the appeal pending before the Kentucky Court of Appeals in Case No. 2009-CA-1973, Windstream's collective position is that the Commission does not have jurisdiction over the intrastate switched access rates or to order reductions in such rates of alternatively regulated carriers like Windstream West and Windstream East.²

THRESHOLD JURISDICTIONAL ISSUE

As an initial comment, Windstream West and Windstream East note that contrary to the assertion of the Commission in the *Investigative Order*, the 2006 statutory amendments do not preserve the Commission's authority to assess the justness and reasonableness of Windstream's intrastate switched access rates or to order reductions in such rates as discussed on the record preserved herein and before the Court.

To reiterate the overview of Windstream's position on this issue, in 2006, the General Assembly significantly revised the law governing telecommunications service, which revisions took effect July 12, 2006. One of the new provisions, KRS 278.543, states "Any telephone utility, at its discretion and without commission approval, may elect to adopt the price regulation plan set forth below." On July 12, 2006, Windstream elected under KRS 278.543 to opt into the full bargain created by the General Assembly. This bargain entails operating under the price regulation plan in KRS 278.543 that "caps" an electing utility's rates for basic local exchange

² Windstream East and Windstream West support a generic access reform investigation over the type of targeted action pursued separately by Verizon against Windstream, but as noted exhaustively in Windstream's filings, any such generic investigation in Kentucky also must take into account the rights of alternatively regulated carriers to be exempt therefrom.

and intrastate switched access services.³ With regard to intrastate switched access services, KRS 278.541(3) specifically states:

Electing utilities shall retain on file with the commission tariffs for basic local exchange services and *intrastate switched-access services*. Tariffs filed in accordance with subsection (2) of this section *shall be deemed valid and binding* upon the effective date stated in the tariff. (Emphasis added.)

KRS 278.543(4) provides that an electing carrier's rates for "intrastate switched-access service shall not exceed its rates for this service that were in effect on the day prior to the date the utility filed its notice of election."

In establishing the caps on an electing utility's basic local exchange service and intrastate switched access service, the General Assembly at the same time enacted KRS 278.543(6) which provides, "An electing utility's rates, charges, earnings, and revenues *shall be deemed just and reasonable* under KRS 278.030 and administrative regulations promulgated thereunder upon election." (Emphasis added). Windstream elected to operate under the new statutory regime and cap applicable rates in return for being statutorily exempt from the burdens of certain administrative processes such as the one initiated by Verizon in Docket No. 2007-00503, now consolidated into the instant proceeding. Windstream East and Windstream West accepted the bargain that was offered by the General Assembly – the right to encounter fewer administrative burdens and less agency scrutiny in return for competing pursuant to market scrutiny at their existing PSC-approved basic and intrastate switched access rates.

Windstream's position regarding the Commission's lack of jurisdiction to assess the justness and reasonableness of Windstream's intrastate switched access rates or the authority to

³ KRS 278.543(2)-(4).

order reductions in such rates was well-documented in Case 2007-00503, the record of which has been incorporated into and preserved in this docket. Windstream East and Windstream West will not belabor the topic of the Commission's jurisdiction by further discussing such arguments and, instead, states that they reserve their rights to challenge the Commission's jurisdiction at all stages of this proceeding, as well as in other proceedings and in other fora.⁴

COMMENTS ON SUBSTANTIVE ISSUES

Setting aside jurisdictional matters, Windstream and its affiliates in other states have already devoted substantial resources to presenting their positions on appropriate levels of switched access rates, both nationally, and before this Commission (the latter with regarding to intrastate switched access rates in Kentucky). Although Windstream's testimony in Case 2007-00503, as well as all other Windstream filings in such docket, have already been incorporated into the record of this proceeding, Windstream re-attaches for administrative convenience the Direct Testimony and Rebuttal Testimony of Cesar Caballero, Vice President – Regulatory Strategy. Such testimony carefully explains, among other things, the inappropriateness of a myopic single-issue analysis of intrastate switched access rates without considering matters such as a restructuring mechanism, retail rate flexibility, and an appropriate transition period. Windstream also attaches a Federal Communications Commission ("FCC") filing made by mid-size carriers, including Windstream, in which the carriers proposed a comprehensive Broadband Now Plan to address intercarrier compensation and Federal Universal Service ("USF") reform. These attachments serve to outline Windstream's position on the issues raised in this *Investigative Order*.

⁴ For example, these issues are still pending before the Kentucky Court of Appeals regarding the Commission's March 11, 2009 denial of Windstream's motion to dismiss the complaint in Docket No. 2007-00503.

As the Commission is aware, in early 2009, Congress directed the FCC to develop a National Broadband Plan (“NBP”) to ensure every American has “access to broadband capability.” Congress also required that this plan include a detailed strategy for achieving affordability and maximizing use of broadband to advance economic growth.⁵ The NBP includes sweeping and wide-reaching recommendations, including recommendations for intrastate switched access rate reform. The FCC is reportedly currently on schedule to release a Notice of Proposed Rulemaking in the first quarter of 2011 to address, among other intercarrier compensation reform issues, intrastate switched access reform. Therefore, Windstream East and Windstream West suggest that the Commission take into account in its own intercarrier compensation reform efforts the fact that the FCC already is undertaking a comprehensive national plan. This course of action is the most logical and effective use of all parties’ resources (particularly those of alternatively regulated carriers who are exempt from this state administrative proceeding) and is most likely to yield the most beneficial results for the citizens of Kentucky and the communities in which the companies operate.

For the reasons outlined above, Windstream West and Windstream East believe it is beyond the Commission’s jurisdiction to order a reduction of their intrastate switched access rates and premature to begin reforming the compensation structure just as reform is set to develop at the federal level. Nevertheless, Windstream offers the following principles to effective, meaningful, and comprehensive reform. Reform must be approached cautiously in order to ensure the full impact to consumers, providers, and the industry is fully understood. Proper intrastate switched access reform should include appropriate transitions and meaningful revenue replacement opportunities. Any rational approach to intercarrier compensation reform

⁵ Connecting America: The National Broadband Plan, released March 16, 2010 (<http://download.broadband.gov/plan/national-broadband-plan.pdf>).

must include a transition from implicit subsidies, in the form of a portion of intrastate switched access charges, to explicit revenue sources over a period of time that ensures end-user customers are not adversely affected.

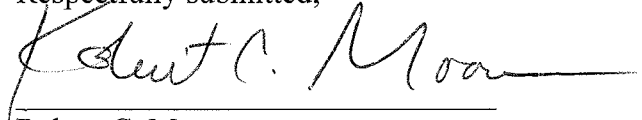
The FCC's strategy to reducing interstate switched access rates provides a useful template in patterning state reform. The Commission would be well served in utilizing the FCC's framework as it considers reforms at the state level, particularly for traditionally regulated carriers subject to the Commission's ratemaking jurisdiction. All carriers affected by reform should be afforded a meaningful period to transition rates in order to avoid rate shock to consumers and limit funding requirements. Carriers must be afforded a meaningful opportunity to recover lost revenue through the combination of an explicit funding mechanism that reduces the negative effect of reductions and through modest retail rate increases up to a benchmark rate. The funding mechanism should be supported equitably by all carriers benefiting from the rate reductions including LECs, IXCs, CMRS, and VoIP providers.

CONCLUSION

As discussed above, on the record herein, and at length in the attached documents, Windstream East and Windstream West believe that the Commission is reaching beyond its legal jurisdiction in this *Investigative Order* by suggesting that the intrastate switched access rates of alternatively regulated carriers are open for review. Additionally, intercarrier compensation reform is currently best addressed at the national level, where the FCC has the ability to leverage its vast resources and experience to enact comprehensive and meaningful reform. Any approach to intercarrier compensation reform must appropriately recognize the need to transition from implicit subsidies, in the form of a portion of intrastate switched access charges, to explicit

revenue sources over a period of time that generally ensures end-user customers are not adversely affected.

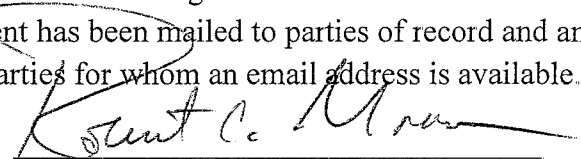
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert C. Moore". The signature is written in a cursive style with a large, looping initial "R".

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CERTIFICATION

I hereby certify that the electronic version of this filing made with the Commission this - 20th day of December, 2010 is a true and accurate copy of the documents filed herewith in paper form on December 20, 2010 and the electronic version of the filing has been transmitted to the Commission. A paper copy of the Read1st document has been mailed to parties of record and an electronic copy has been served electronically on parties for whom an email address is available.


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