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") request for comments in the March 10, 2011 Order issued in this docket ("*Order*").

COMMENTS ON SUBSTANTIVE ISSUES

For the reasons explained in their December 20, 2010 Comments and throughout the record in this proceeding, Windstream West and Windstream East do not believe that the Commission has jurisdiction to order a reduction of their intrastate switched access rates or those of any carrier alternatively regulated under KRS 278.543. Without waiving their rights, Windstream offers the following assessment of the "AT&T Plan for Kentucky Switched Access Reform" (the "AT&T Plan").[1] Submission of these Comments is with the full reservation of

[1] *See* AT&T's Petition and Complaint Seeking Reduction of Intrastate Switched Access Rates, Kentucky Public Service Commission Case No. 2010-00162 at Exhibit F.

rights as set forth previously in Windstream West and Windstream East's December 20, 2010 Comments as well as throughout the record herein.[2]

Notwithstanding the foregoing, Windstream acknowledges that AT&T's Plan sets forth a more comprehensive access reform plan beyond the targeted and less than prudent proposal previously advocated by Verizon.[3] Nevertheless, AT&T's Plan is deficient regarding certain critical components that must be addressed in order to comprise a comprehensive switched access reform plan. Comprehensive switched access reform must include appropriate transitions and meaningful revenue replacement opportunities. The AT&T Plan includes a funding mechanism and basic local rate increases which are both key components to any viable switched access reform plan. However, the AT&T Plan fatally fails to provide for a transition period, instead opting for a flash-cut to interstate switched access rates, and its silence is deafening regarding a basic local service benchmark rate.

Requiring carriers to reduce intrastate switched access rates to interstate levels in a flash cut creates several problems. For example, by imposing a flash-cut to interstate rates, incumbent local exchange carriers ("ILECs") would initially recover a small percentage of their total revenue reductions through basic local service rate increases and would depend from the outset on the funding mechanism for a large portion of their forgone intrastate switched access revenues. The initial fund size required by such a flash cut would require immediate assessment of potentially-burdensome end-user surcharges for all impacted carriers. In the alternative, a

[2] *See* Comments of Windstream Kentucky West, LLC and Windstream Kentucky East, LLC, filed Dec. 20, 2010 at pp. 1-2.

[3] Windstream observes that before imposing any mandatory intrastate switched access reductions, the Commission should determine whether existing intrastate switched access rates are unjust and unreasonable or warrant reform. To this end, Windstream reiterates that its intrastate switched access rates are already among the lowest in the Commonwealth and that the rates of Windstream East (through its predecessor in interest), already have been materially reduced. The remainder of these Comments address the components of a meaningful switched access reform plan to the extent the Commission were to make a determination as to the necessity of reform.

more prudent approach would be for ILECs to transition intrastate switched access rates, both traffic-sensitive and non-traffic sensitive, to interstate levels over a reasonable transition period of five years.

A reasonable transition period has two primary advantages. First, it would avoid the creation of an unnecessarily large funding mechanism. Second, it would provide the impacted carriers the time required to reasonably adjust their business plans and strategy. CLECs should also be afforded a reasonable timeframe for intrastate reductions as they would not have access to the funding mechanism and would be required to recoup all revenue reductions from their end-users or other changes to their business models. The significant revenue reductions for all carriers and the resulting adjustments to business plans should not be underestimated. To do so, would be to the detriment of consumers, providers, and ultimately Kentucky's telecommunications infrastructure. Revenue from intrastate switches access charges is used to maintain and deploy high-quality service throughout the Commonwealth, particularly in rural areas. Carriers would be left with a choice between attempting to maintain such revenue through dramatic retail rate increases and/or substantially reducing network investment.

The importance of reforming intrastate switched access in a manner that is transparent to, but not overly burdensome on, consumers cannot be overstated. While the AT&T Plan does include a reference to establishing a benchmark, the Plan lacks important detail about how such a benchmark would be established. This detail is critical. If implemented improperly or established at an inappropriate level, the benchmark could have an unreasonable effect on consumers and unwisely dramatically skew the market. If the benchmark is set too high, for example, ILEC end users may be expected to shoulder too great of a share of supporting the public switched telecommunications network ("PSTN") that should otherwise be more widely distributed among end users of the PSTN. In contrast, if the benchmark is set too low, ILECs will not be encouraged to seek a reasonable portion of their foregone intrastate switched access revenue from their end users. Moreover, the effect of the AT&T Plan on consumers cannot be left for determination at a later date. A basic local service benchmark is a key element of any meaningful reform plan and must be established at the same time that all other components of the access reform plan are developed.

With respect to these deficiencies in the AT&T Plan and to the extent that the evidence were to support that existing rates are unjust and unreasonable or in need of reform, Windstream proposes establishing a basic local service benchmark of $17.00, which would include any mandatory expanded area service charges, but not include the federal Subscriber Line Charge. A benchmark rate at this level would achieve a balance between the two aforementioned extremes. Establishing a benchmark at the outset of reform creates certainty for consumers and carriers. Additionally, the Commission should consider the best process through which carriers would begin increasing rates to reach the benchmark.

Again, a measured approach is beneficial to both consumers and carriers in order to avoid rate shock by increasing rates too quickly. A measured approach also would allow ILECs a realistic opportunity to bill and collect this revenue from their end-users. While the AT&T Plan avoids addressing a specific benchmark rate, it does suggest an annual increase of $2.00 per line per month to retail basic local exchange service rates. There is no mention of an end date for these annual $2.00 increases and no mention of a final target benchmark rate. An increase of this magnitude can create “rate shock” and the consequences to consumers and carriers can be detrimental. These factors are elements the Commission should consider if it determines to move forward with intrastate switched access reform.

Depending on the ILECs' basic local service monthly rates, an increase of $2.00 per line per month, as suggested by AT&T, could represent a basic local service rate increase of 10% - 20% *per year*. Theoretically, over a five-year period, ratepayers could potentially experience a 50% - 100% increase in their basic local service rates as a result of the AT&T Plan. However, the reality is that many ILECs do not possess the ability to exert such market force due to competition. To the extent ILECs were to choose not to increase basic local service rates by that amount, ILECs would impute that amount against their distributions from any funding mechanism. Consequently, ILECs would almost certainly have to absorb these rate increases, which would then likely impact the ILECs' ability to maintain their current level of operating expenses as well as long term capital investment considerations in the Commonwealth.

To minimize such consequences, the Commission should consider capping an ILECs expected basic local service annual rate increases at $0.50 per line per month. Thus, so long as an ILEC has availed itself of the expected $0.50 per line per month rate increase, there would be no imputation against the ILECs funding mechanism draw – even if the ILECs basic local service rate were, at the time, well below the $17.00 benchmark. Once an ILECs basic local service rate were to reach $17.00 per line per month, no rate increases or further imputation against its funding mechanism draw would be expected because the benchmark would have been reached. If an ILEC failed to avail itself of any expected rate increase, however, the amount by which it failed to meet the expected rate increase would be imputed against its funding mechanism draw (total amount of forgone revenue for all affected lines for the funding year). Such imputation would be performed on an exchange-by-exchange basis to the extent that the sum of the ILECs rates varies by exchange. Such a benchmark and imputation mechanism would appropriately require ILECs to rebalance their basic local service rates to obtain more of their revenue from their end users while, at the same time, not inefficiently driving customers off of their networks due to rate shock.

In addition to the factors set forth above, the AT&T Plan would also increase uncertainty to consumers and carriers by proposing that "whenever changes occur to an ILEC's interstate switched access rates and/or rate structure, the ILEC shall implement identical changes to its provision of intrastate switched access services." Again, the AT&T Plan creates an unknown variable which serves only to complicate business planning and destabilize the market. Carriers must have an explicit intrastate switched access rate target to allow for proper business plans to be made. There is a possibility, however, that after any intrastate switched access reform plan had been implemented, interstate switched access rates may be reduced by FCC action or other changes. The Commission should not incorporate such ambiguous terms in any state plan. Instead, the Commission should reexamine intrastate switched access rates and determine whether further adjusts were necessary – otherwise, the initial interstate switched access rate targets should remain valid. Such an approach would provide carriers with a transparent and defined interstate rate level to which intrastate rates will be transitioned and allow for business plans to be developed without the risk of unknown future reductions without adequate mechanisms to recover possible subsequent reductions.

Finally, the AT&T Plan addresses contributions required from carriers to support the funding mechanism. The funding obligation is particularly important given the likely size of the funding mechanism that would be required by the proposed intrastate switched access rate reductions in the AT&T Plan. Imposing funding obligations on too few carriers would unreasonably increase the size of end user surcharges in a manner that would unreasonably impair the ability of contributing carriers to compete against other types of carriers which, while highly reliant on the PSTN, would not be fairly contributing to its support.

CONCLUSION

As discussed above and throughout the record herein, alternatively regulated carriers including Windstream East and Windstream West are outside the Commission's jurisdiction with respect to the issues in the *Investigative Order*. Without waiving such rights and upon a finding by the Commission that sufficient evidence exists that existing rates of applicable carriers are unjust and unreasonable or in need of reform, the AT&T Plan has merit but also suffers from the enumerated critical deficiencies. As a general matter, any plan for meaningful intrastate switched access reform should provide carriers and consumers a reasonable transition period and allow carriers a realistic opportunity for revenue recovery. To accomplish this goal, Windstream suggests certain edits to the AT&T Plan including a five-year intrastate switched access rate transition period, a $17.00 basic local service benchmark and annual increases limited to $0.50 per line per month. In addition, the Commission should apply the broadest possible contribution base to the proposed funding mechanism to minimize the impact of the surcharge on all contributing carriers and to ensure that all carriers benefiting from the used of the PSTN all shoulder their fair share.

Respectfully submitted,

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