

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

The Application of Windstream Communications,)	
Inc. for a Declaratory Order Affirming that)	
The Interconnection Regimes under KRS 278.530)	Case No. 2015-00283
and 47 U.S.C. § 251 are Technology Neutral)	

SUPPLEMENTAL BRIEF OF CINCINNATI BELL TELEPHONE COMPANY LLC

On August 6, 2018, the Commission entered an Order requesting that the parties file supplemental briefs that: 1) respond to the issues raised in the initial briefs; and 2) provide updates on relevant, federal law. This is the Supplemental Brief of Cincinnati Bell Telephone Company, LLC (“CBT”) in response to that Order.

This proceeding was commenced by Competitive Carriers of the South, Inc. (“CompSouth”) filing a petition for declaratory order. CompSouth requested the Commission to declare that interconnection under the federal Telecommunications Act and KRS 278.530 is technologically neutral. Since the filing of the petition, all of the members of CompSouth except Windstream Communications, Inc. (“Windstream”) have withdrawn from this proceeding and it is now the sole petitioner.

The petition offered no detail on what that would mean with respect to any particular physical interconnection arrangement. Windstream’s initial brief is also lacking any such detail.

I. The Requirements For Issuance of a Declaratory Ruling Still Have Not Been Met.

In Opinion 2013-015, the informal opinion that Windstream seeks to formalize here, Staff noted that tw telecom’s request had asked for a “generic interpretation of a law” and not the “outcome of a specific factual scenario.” The Staff Opinion concluded that “each petition for

arbitration stands on its own, and each case is ‘tied to factual circumstances or otherwise circumscribed in various ways’ and does not guarantee interconnection with an IP network.”¹

Windstream has not provided “a complete, accurate, and concise statement of facts upon which” the Commission could issue a declaratory ruling. 807 KAR 5:001, Section 19(2)(b). Its initial brief does not describe any specific network configuration, any particular interconnection request, nor any particular interconnection arrangement that is sought or any proposed contractual interconnection terms. In short, the request is so generic as to be meaningless even if issued.

Nor has Windstream properly invoked KRS 278.530(1). That statute only applies when “another telephone company . . . refuses to permit” it to connect its lines. There is no evidence in this case that Windstream has been refused interconnection by any telephone company in Kentucky, or that Windstream is currently seeking interconnection with any other telephone company. Thus, Windstream is not “a person substantially affected” within the meaning of 807 KAR 5:001, Section 19.

Windstream’s arguments in favor the Commission having jurisdiction to issue a declaratory ruling on federal law are circular and unpersuasive. It argues that the Commission has jurisdiction to issue a declaratory judgment interpreting federal law because 47 U.S.C. § 252 charges the Commission with reviewing interconnection agreements and that would require the Commission to interpret federal law. But this is not a § 252 proceeding. All parties would likely agree that the Commission has jurisdiction to review and approve interconnection agreements presented to it either by agreement or in the course of an arbitration proceeding. This case is

¹ Opinion at p. 5.

neither. Windstream is asking the Commission to opine in the *absence* of an actual arbitration proceeding. Nothing in the Kentucky or federal statute authorizes that action.

Windstream's argument based on the Commission's statutory authority to determine its own jurisdiction is also toothless. The Commission could certainly declare that it has jurisdiction to decide an arbitration case involving a disputed interconnection agreement, but that accomplishes nothing. Declaring that the Commission has jurisdiction to resolve an interconnection dispute and actual resolving it are two completely different things. At this point, the Commission's jurisdiction under the Telecommunications Act to resolve an interconnection dispute has not been invoked and there is no basis for the Commission to render an abstract opinion when it does not even know what the disputed issues might be if a case were ever brought.

II. Windstream Concedes That It Cannot Force TDM Carriers to Interconnect in IP Format.

The Petition in this case asked the Commission to declare that interconnection was "technology neutral" but did not specify exactly what it sought as a practical matter. Because of the vagueness of the petition, CBT had assumed that part of the relief sought was to force TDM carriers to interconnect with IP carriers in IP format. However, in its opening brief, Windstream conceded that it cannot require a TDM network to interconnect using an IP interconnection.² Competitive carriers have always had the ability to convert their traffic to TDM and require interconnection, so there is nothing for the Commission to declare with respect to interconnection arrangements between IP and TDM networks.

² CompSouth Initial Brief, p. 34 n. 66.

III. There Is No New FCC Precedent Relevant to the Petition.

The Commission requested that the parties provide updates on relevant federal law. To CBT's knowledge, the FCC has still not required interconnection between networks in IP format. As Windstream conceded,³ the FCC has only held that the § 251 interconnection scheme applies when traffic is exchanged in TDM format. The FCC has still not declared communications transmitted solely in IP format to be "telecommunications" traffic or declared that the § 251 / § 252 statutory scheme applies to IP interconnection.

IV. Conclusion

There is no legal basis for the Commission to issue a declaratory ruling on the federal Telecommunications Act without a pending arbitration case. Under Kentucky law, KRS 278.530 requires that a telephone company first seek and be refused interconnection by another telephone company, but there is no evidence that any IP carrier has done so. Windstream has presented no details to the Commission that would allow it to make a meaningful declaratory ruling. There is no specific interconnection situation requiring resolution. It would be impossible and unwise to prejudge an unknown situation through an abstract and generic ruling. The Commission should deny the request for declaratory ruling.

Respectfully submitted,

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³ CompSouth Initial Brief, p. 37.

CERTIFICATE OF SERVICE AND FILING

Counsel certifies that the foregoing is a true and accurate copy of the same document being filed in paper medium with the Commission within two business days, that the electronic filing was transmitted to the Commission on September 5, 2018, and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

This 5th day of September, 2018

/s/ Douglas E. Hart
Douglas E. Hart
Attorney for Cincinnati Bell
Telephone Company LLC