

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

**SOUTH CENTRAL RURAL
TELECOMMUNICATIONS
COOPERATIVE, INC. and
SOUTH CENTRAL TELCOM,
LLC,**

Complainants,

v.

Case No. 2020- _____

**WINDSTREAM KENTUCKY
EAST, LLC,**

Defendant.

FORMAL COMPLAINT

Complainants South Central Rural Telecommunications Cooperative, Inc. (“SCRTC”) and South Central Telcom, LLC (“SCT”), by counsel, for their formal complaint against defendant Windstream Kentucky East, LLC (“Windstream”), hereby states as follows. (SCRTC and SCT will sometimes be referred to collectively as “South Central.”)

PARTIES

1. SCRTC’s full name and address are: South Central Rural Telecommunications Cooperative, Inc., 1399 Happy Valley Rd., Glasgow, KY 42142-0159. SCRTC is a cooperative formed under KRS Chapter 279. SCRTC provides telecommunications and broadband services in the counties of Adair, Allen, Barren, Green, Hart, Larue, Metcalf, Monroe and Nelson.

2. SCT’s full name and address are: South Central Telcom, LLC, 1399 Happy Valley Rd., Glasgow, KY 42142-0159. SCT is a Competitive Local Exchange Carrier providing telecommunications and broadband services in communities adjoining those served by SCRTC.

3. Windstream’s full name and address are: Windstream Kentucky East, LLC, 4001 N. Rodney Parham Rd., Little Rock, AR 72212. Windstream is a local exchange carrier subject to the Commission’s jurisdiction under KRS Chapter 278. Windstream owns utility poles in the City of Brownsville, Kentucky, among other places. Windstream also provides telecommunications and broadband services in Brownsville and elsewhere.

JURISDICTION

4. The Commission has exclusive jurisdiction to regulate “rates and service of utilities” within the Commonwealth. KRS 278.040(2). This jurisdiction includes pole attachment services. *Ky. CATV Assn. v. Volz*, 675 S.W.2d 393, 396 (Ky. Ct. App. 1983).

5. The Commission maintains original jurisdiction over, and authority to investigate, complaints that the “service of any utility . . . is unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained.” KRS 278.260(1).

6. This matter involves pole attachments, and therefore the Commission has original jurisdiction over this complaint. *Id.*

STATEMENT OF FACTS

7. SCRTC is a subcontractor helping to install a rural broadband network, the Kentucky Information Highway (popularly known as “Kentucky Wired”), throughout part of the Commonwealth of Kentucky. SCT is extending its competitive telecommunications and broadband services to the Brownsville area.

8. In November 2014, SCT and Windstream entered into a Pole Attachment License Agreement (the “Agreement”), attached as Exhibit 1. The Agreement provides for, among other things, completion of “make ready” work.

9. South Central has made application to Windstream in order to install facilities on certain Windstream utility poles located in Brownsville, Kentucky (the “Facilities”). Certain of these Facilities will be used to comply with SCRTC’s subcontractor obligations to Kentucky Wired; certain of them will be used for SCT to provide its own broadband and telecommunications services to the Brownsville community.

10. South Central’s effort has been stalled by Windstream’s failure to timely prepare and make ready those utility poles for South Central’s installation of the Facilities.

11. Windstream’s delay has, consequently, halted the deployment of broadband and other telecommunications services to the detriment of Kentucky Wired, the Brownsville community, and South Central.

12. Access to these services is as necessary in today’s world as electricity and wireline telephone services became in the 1920’s and 1930’s.

13. After multiple unsuccessful attempts to resolve the delays directly with Windstream, SCRTC reached out to Windstream through counsel on February 7, 2020. In that communication (the “Letter”), attached as Exhibit 2, SCRTC set forth a timeline documenting Windstream’s unreasonable delay and once again asking Windstream to make ready certain of its utility poles in Brownsville, Kentucky, so that SCRTC could install the Facilities. The Letter is incorporated herein by reference as if fully set forth.

14. To date, Windstream has not responded to the Letter.

VIOLATION OF KRS 278.030 AND 278.170

15. Windstream must “furnish adequate, efficient and reasonable service.” KRS 278.030(2). It may not discriminate by “unreasonable preference or advantage” in the service it provides. KRS 278.170(1).

16. Windstream has refused to provide South Central with adequate, efficient, reasonable and nondiscriminatory pole attachment services, as its failure to perform or authorize the performance of make ready services in the City of Brownsville, Kentucky continues to forestall the deployment of the Facilities and the provision of telecommunications and broadband services. Windstream’s failure violates KRS 278.030(2) and KRS 278.170(1).

17. The Commission should act promptly to order Windstream to immediately complete any necessary make ready work associated with South Central’s attachments to identified utility poles in Brownsville, Kentucky.

18. Otherwise, Kentucky Wired, the Brownsville community, and South Central will be substantially prejudiced by Windstream’s unilateral and unreasonable obstruction of service deployment in the area.

DEFAULT UNDER THE AGREEMENT

19. Section 8(B) of the Agreement requires Windstream, upon SCT’s application for a pole license, to (1) determine whether the requested attachment is feasible, (2) determine what make ready work is required, and (3) inform SCT of estimated make ready charges. (Ex. 1 at 7.)

20. Section 8(D) of the Agreement requires Windstream, upon SCT’s payment of estimated make ready charges, to complete the make ready work. (Ex. 1 at 8.)

21. Per Section 20(A)(2), Windstream’s failures to perform these duties constitute breaches of the Agreement and defaults under the Agreement. (Ex. 1 at 16.)

22. Section 20(C) of the Agreement requires Windstream, upon demand, to repay SCT's costs and expenses incurred in enforcing the Agreement. (Ex. 1 at 17.)

23. The Commission should act promptly to rectify Windstream's default under the Agreement.

24. Otherwise, Kentucky Wired, the Brownsville community, and South Central will be substantially prejudiced by Windstream's unilateral and unreasonable breaches of the Agreement's terms.

WHEREFORE, South Central respectfully requests that the Commission:

- A. Order Windstream to immediately prepare and make ready the specified utility poles in Brownsville or, in the alternative, permit South Central to make the specified attachments itself;
- B. Prescribe a reasonable timeframe within which Windstream must process and act on South Central's future pole attachment applications;
- C. Order Windstream to repay South Central's costs and expenses incurred in prosecuting this action; and
- D. Grant South Central any and all other legal and equitable relief to which it is or may be entitled.

Respectfully submitted,

/s/ John E. Selent

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