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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Brandenburg Telephone Company, et al)

Complainants)

v.)

Case No. 2007-00004

Windstream Kentucky East, LLC.)

Defendant)

MOTION TO DISMISS

Windstream Kentucky East, LLC (“Windstream”), by counsel, hereby submits this Motion to Dismiss prior to the date for filing a joint status report pursuant to the Public Service Commission’s order from November 2008. Windstream believes that the RLECs' complaint in this matter is now moot and that the parties' resources (including those of the Commission) are best utilized by dismissing the instant complaint and avoiding the necessity of filing further status reports.

Of the parties to the above-styled proceeding, Duo County Telephone Cooperative Corporation, Inc ("Duo County"); Mountain Rural Telephone Cooperative Corporation, Inc. ("Mountain Rural"); North Central Telephone Cooperative Corporation ("North Central"); South Central Rural Telephone Cooperative Corporation, Inc. ("South Central"); and West Kentucky Rural Telephone Cooperative Corporation, Inc. ("West Kentucky Rural) have removed any transit traffic from Windstream’s network. Windstream's transit tariff applies only to those parties without an agreement with Windstream who nevertheless are transiting Windstream's network to deliver traffic to third parties homed behind a Windstream tandem without compensation to Windstream. Because

the RLECs identified above currently are not transiting Windstream's network in this manner, the transit tariff no longer applies to them as of the date of this filing.¹

There are two other parties to the complaint – Highland Telephone Cooperative ("Highland") and Brandenburg Telephone Company ("Brandenburg"). With respect to Highland, Windstream is the tandem provider for Highland, and much of the traffic at issue concerns an affiliated wireless provider. The RLECs acknowledged previously that Highland is situated differently than the other RLECs pursuing the complaint. Windstream and Highland have been working and continue to work to reach an appropriate transit traffic agreement.

In the case of Brandenburg, Brandenburg continues to misroute certain traffic to Verizon through Windstream's end-office in Elizabethtown. As set forth in detail in Case No. 2008-00203, this traffic may not be considered transit traffic but rather represents an unlawful and unauthorized use of Windstream's network without just compensation. As noted in Case No. 2008-00203, Windstream has recommended that the transit tariff provides a good proxy rate that may be used to determine compensation due Windstream with respect to the Brandenburg/Verizon traffic.²

Given the significant progress that has been made with the majority of the complaining RLECs removing transit traffic off of Windstream's network or otherwise beginning negotiations for an appropriate agreement, Windstream believes that the Commission should dismiss the instant complaint as it is now moot. The RLECs bringing the complaint also seemingly have no standing at this point to pursue the current complaint as the tariff is inapplicable to them either for the reason that they are negotiating an agreement to apply in lieu of the tariff or that they have no transit traffic being delivered to Windstream's network. Further, all of the parties intervening in this matter have

¹ Certain of the identified parties are discussing any outstanding balances that may be owed for the prior use of Windstream's network to transit traffic.

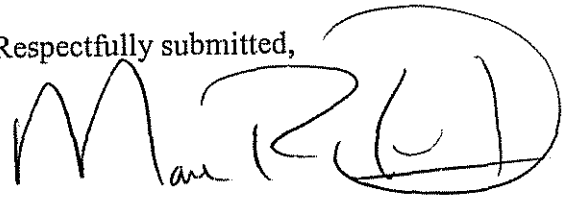
² In fact, as noted in the Brandenburg case, it was not until Windstream obtained certain traffic recordings that Windstream discovered that the traffic being sent through its network by Brandenburg was not actually transit traffic.

agreements with Windstream with respect to transit traffic. Should the parties fail to execute an appropriate agreement with respect to the Highland transit traffic or fail to reach agreement on any retroactive amounts due under the tariff, then any of those subject parties may pursue separate complaints on those specific issues. Finally, the issue of Brandenburg's traffic and the associated compensation due Windstream should be resolved in separate Case No. 2008-00203.

Without regard to the dismissal of the RLECs' instant complaint in this matter, such a dismissal should not affect Windstream's existing transit tariff. As noted, the transit tariff provides a proxy rate to be used in Case No. 2008-00203. Additionally, Windstream is entitled to maintain tariffed rates, terms and conditions for transit service in the event that any party in the future decides to use Windstream's network to transit traffic to a party homed behind a Windstream tandem. This is similar to Windstream's right to maintain a tariff charge for services such as call waiting or pole attachments in case that a subscriber purchases these services pursuant to tariff instead of through an individual service contract or pole attachment agreement. Windstream is greatly appreciative of Highland, Duo County, Mountain Rural, North Central, South Central, and West Kentucky Rural for their ongoing cooperation in this matter, including their efforts to remove any transit traffic from Windstream's network or to begin discussions for an appropriate agreement.

At this juncture, further action by the Commission in the current complaint is unwarranted and unnecessary. Windstream submits that, separate and apart from the issues in Case No. 2008-00203, any superfluous issues to the RLECs' complaint in this matter such as the Highland agreement or settlement of any retroactive amounts are best handled via direct negotiations between Windstream and the appropriate party. Windstream believes that continued action with respect to the RLEC complaint in this docket would be burdensome, counterproductive, and an inefficient use of resources.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark R. Overstreet". The signature is written in a cursive style with a large, prominent "M" and "R".

Mark R. Overstreet, Esq.
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CERTIFICATE OF SERVICE

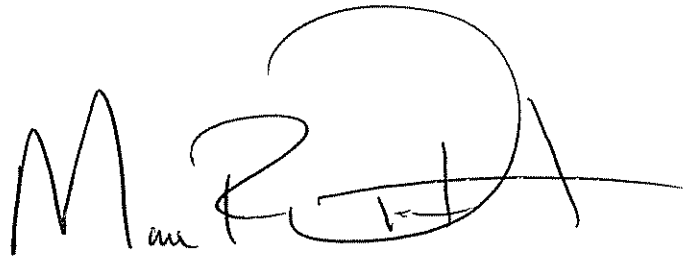
I hereby certify that a copy of the foregoing was served by first-class United States mail on this 8th day of December, 2008, to the following individual(s):

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A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', written over a horizontal line. The signature is stylized with large, sweeping letters.

Mark R. Overstreet