

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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**PUBLIC SERVICE  
COMMISSION**

In the Matter of:

Brandenburg Telephone Company; Duo County )  
Telephone Cooperative Corporation, Inc.; Highland )  
Telephone Cooperative, Inc., Mountain Rural )  
Telephone Cooperative Corporation, Inc.; North )  
Central Telephone Cooperative Corporation; South )  
Central Rural Telephone Cooperative Corporation, )  
Inc And West Kentucky Rural Telephone )  
Cooperative Corporation, Inc. )  
)  
Complainants ) Case No. 2007-00004  
v. )  
)  
Windstream Kentucky East, Inc.; and )  
Windstream Kentucky West, Inc. )  
)  
Defendants )

**Windstream Kentucky East, LLC's Response In Opposition  
To Complainants' Motion To Amend Procedural Schedule**

Windstream Kentucky East, LLC for its Response In Opposition to the Complainants' Motion To Amend Procedural Schedule states:

1. Although Complainants now seek to amend the agreed upon procedural schedule in this matter for a second time,<sup>1</sup> they fail to set forth reasons justifying their request to amend the procedural schedule, or to impose the burden on Windstream of responding to another round of data requests.

2. At the February 6, 2009 Informal Conference in this matter the parties agreed to leave flexibility within the prehearing schedule to accommodate a second round of requests, *if needed*.<sup>2</sup> (emphasis supplied). At no time did Windstream agree that a second round of data

<sup>1</sup> Windstream agreed to the initial request.

<sup>2</sup> Memorandum of February 6, 2009 Informal Conference at 1 (February 9, 2009).

requests was appropriate. Indeed, Windstream's objection to a second round presumably was, at least in part, the basis for the caveat "if needed."

3. The Complainants' motion fails to demonstrate any real need for the additional data requests. Complainants claim the second round of data requests is now required to "analyze the study to determine whether, it is, a true TELRIC study, and, further, to determine whether the resulting rates are fair, just and reasonable,"<sup>3</sup> They omit, however, any mention of the fact that Windstream provided their counsel (who presumably provided it to their consultant) a copy of the TELRIC study at 4:17 p.m. on January 9, 2009.<sup>4</sup> Thus, the Complainants' counsel and their expert had more than thirteen months prior to serving the February 19, 2009 data requests to review and analyze the TELRIC study and to craft inquiries that could serve as the basis for data requests. Their failure to do so, or to seek an electronic version of the study during the intervening year, does not rise to the level of necessity.

4. Windstream further objects to the Complainants' request to serve additional data requests on the ground that requiring Windstream to respond to additional data requests from the Complainants' is unreasonably burdensome. In their first round of data requests the Complainants propounded 37 data requests (more than 45 if subparts are counted). Although not binding on the Commission, Windstream notes the CR 33.01 limits parties in civil proceedings to 30 interrogatories without leave of court. Complainants fail to put forth any basis for propounding additional requests. In addition, requiring Windstream's counsel and staff to prepare responses to additional data requests while they are preparing testimony to be filed in this matter is unduly burdensome.<sup>5</sup>

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<sup>3</sup> Complainants' Motion To Amend Procedural Schedule at 2-3 (April 15, 2009).

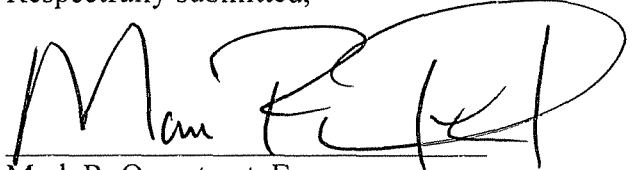
<sup>4</sup> See, Exhibit 1.

<sup>5</sup> Even if the Commission were to grant that portion the Complainants' motion seeking an extension of the date for filing testimony, it would unreasonably require Windstream personnel to discontinue work on their testimony,

For the reasons set forth hereinabove, Windstream Kentucky East, LLC respectfully requests that the Complainants' Motion To Amend Procedural Schedule be denied.

This 16<sup>th</sup> day of April, 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark Overstreet". The signature is stylized with large, sweeping letters and a prominent flourish at the end.

Mark R. Overstreet, Esq.  
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COUNSEL FOR WINDSTREAM  
KENTUCKY EAST, LLC

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answer the data requests, and then resume work on the testimony. Such interruptions lead to inefficiencies and interfere with Windstream's ability to meet its obligations under the laws of this Commonwealth and the other states were it operates.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail and United States First Class Mail, postage prepaid, on this 16<sup>th</sup> day of April, 2009 upon:

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A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', written over a horizontal line.

Mark R. Overstreet



-----Original Message-----

From: Overstreet, Mark R.

Sent: Wednesday, January 09, 2008 4:17 PM

To: 'tip.depp@dinslaw.com'

Subject: Confidential Documents Subject to Non-Disclosure Agreement

Importance: High

Tip:

Attached are Appendices A and B to Windstream Kentucky East's December 4, 2007 Petition for Confidential Treatment. As we discussed, you agree not to disclose this information to any person or entity (including your clients) who has not executed an NDA and Certificate of Authorized Reviewing Representative. In addition, to the extent information contained in Exhibit B relates to a particular company you agree not to disclose that information to any person outside your law firm (including any other clients) without the consent of the entity whose account balance would be disclosed.

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