

Dinsmore & Shohl LLP
ATTORNEYS

Edward T. Depp
502-540-2347
tip.depp@dinslaw.com

April 16, 2009

RECEIVED

APR 17 2009

**PUBLIC SERVICE
COMMISSION**

VIA FEDERAL EXPRESS

Jeff Derouen, Executive Director
Kentucky Public Service Commission
211 Sower Blvd
P.O. Box 615
Frankfort, KY 40602-0615

**Re: *In the Matter of: Brandenburg Telephone Company, et al. v. Windstream
Kentucky East, Inc., Case No. 2007-00004***

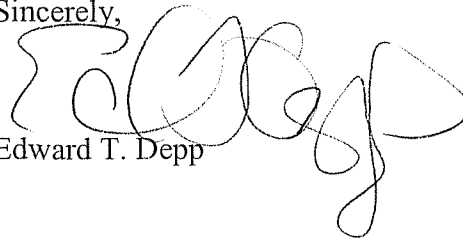
Dear Mr. Derouen:

I have enclosed, for filing in the above-styled case, the original and eleven (11) copies of the RLEC's Reply in Support of Their Motion to Amend Procedural Schedule. Please return a file-stamped copy in the self-addressed, postage prepaid envelopes furnished herewith.

Thank you, and if you have any questions, please call me.

Sincerely,

Edward T. Depp



ETD/lb

cc: All Parties of Record (w/encl.)

144893_1
36967-1

1400 PNC Plaza, 500 West Jefferson Street Louisville, KY 40202
502.540.2300 502.585.2207 fax www.dinslaw.com

**COMMONWEALTH OF KENTUCKY
BEFORE THE 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)	

**COMPLAINANTS' REPLY IN SUPPORT OF THEIR
MOTION TO AMEND PROCEDURAL SCHEDULE**

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. (collectively, the "RLECs"), by counsel and for their reply in support of their Motion to Amend Procedural Schedule ("Motion"), state as follows.

The Commission should grant the RLECs' Motion. The RLECs seek only: (i) to serve follow-up data requests arising from their review of the electronic cost study provided in response to the single round of data requests that have been served in this case; and (ii) to adjust the deadlines

for filing direct and rebuttal testimony based upon Windstream's responses to these supplemental data requests. These changes will not result in a change to the late-July hearing date, and they will result in no prejudice to any party, including Windstream.

Windstream objects to the Motion on the theory that the RLECs have allegedly not explained why the additional data requests are needed. This claim is utterly false. The Motion recites that:

Within the last three weeks, with its responses to the RLECs' first set of data requests, Windstream Kentucky East, Inc. ("Windstream") supplied an electronic version of what it claims is a Total Element Long Run Increment Cost Model (hereinafter, a "TELRIC study"). The TELRIC study is both voluminous and detailed.

(Motion at 2 (emphasis added).) A significant part of the volume and detail contained in that electronic version of the study lies in the formulae, source inputs, and mechanisms by which the study actually computes the rates that are in dispute. That same information is not contained in the .pdf version that Windstream improperly conflates with the Excel version.

Windstream then claims that the RLECs are somehow at fault for failing to obtain an electronic version of the study prior to serving their February 19, 2009 data requests. (Windstream Response at para. 3.) Again, this claim is meritless. The Commission first authorized data requests in this matter pursuant to its February 13, 2009 Order, which adopted the substance of the Commission Staff's February 9, 2009 Intra-Agency Memorandum. (A copy of the Intra-Agency Memorandum is attached to the Motion at Ex. 1.) That Intra-Agency Memorandum further reflected the parties' express contemplation that additional discovery may be appropriate in this case. While Windstream did not overtly agree that a second round of data requests was permissible, it likewise never expressed the novel idea that the RLECs should be denied crucial evidence for failing to obtain discovery prior to the time a discovery schedule had even been entered in this case.

Upon the entry of the procedural schedule in this matter, the RLECs asked for the very thing they needed to address the rate issue: an Excel version of the study, with formulae intact. Having just now provided that Excel version, Windstream attempts to stymie further discovery about the formulae, source inputs, and mechanisms by which that model computed the rates at issue here. The RLECs need this information, and one can only assume that Windstream's opposition to this reasonable request shows the level of its own concern regarding the sufficiency of its cost study. The RLECs need additional discovery with respect to the cost study in order to effectively prosecute their case, and the Commission should grant that reasonable request. This is especially true when, as here, the requested amendment to the procedural schedule will not result in a continuance of the hearing or prejudice to any party.

Windstream, of course, claims it will be prejudiced by the requested procedural amendments. However, a Commission order authorizing the RLECs to take additional discovery related to Windstream's study does not result in "prejudice." It results in due process. "Prejudice" would be prohibiting the RLECs from undertaking this most basic supplemental discovery with respect to a central issue in this case. *See American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission*, Ky., 379 S.W.2d 450, 456 (1964). This is especially true considering that the parties contemplated this very topic of discovery during the February 6, 2009 informal conference.

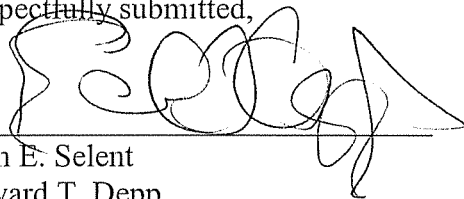
Moreover, there is no prohibition against the RLECs serving data requests in supplement to their previous 37 data requests to Windstream. Discovery in Commission cases is routinely far more extensive than has occurred here. *See In the Matter of Application of Kentucky-American Water Company, a/k/a Kentucky American Water for Certificate of Convenience and Public Necessity Authorizing construction of Kentucky River Station II ("KRS II"), Associated Facilities, and*

Transmission Line; Case No. 2007-00134 (permitting Kentucky-American Water Company to serve 134 compound initial data requests and 60 compound supplemental data requests upon intervenor Louisville Water Company for response within the same timeframes as contemplated here). This is particularly true where, as the Motion indicates, the requests will go only to a central issue in the case: Windstream's alleged justification for its tariffed transit rates.

Finally, it is absurd to suggest that Windstream will be prejudiced by having more time to prepare its direct testimony. More likely, Windstream is simply grasping at straws to conjure a reason – any reason – why it should not have to provide additional data related to its alleged justification for its transit tariff rates.

For all the foregoing reasons, the Commission should grant the RLECs' Motion.

Respectfully submitted,



John E. Selent

Edward T. Depp

Holly C. Wallace

DINSMORE & SHOHL LLP

1400 PNC Plaza

500 West Jefferson Street

Louisville, Kentucky 40202

(502) 540-2300 (telephone)

(502) 585-2207 (facsimile)

Counsel to RLECs

CERTIFICATE OF SERVICE

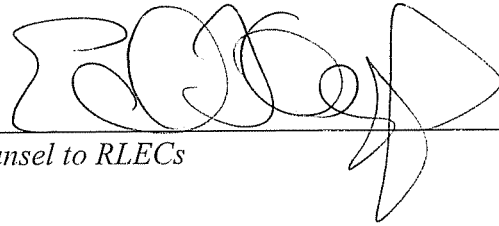
I hereby certify that a copy of the foregoing was served via electronic mail and United States First Class Mail, sufficient postage prepaid, on this 16th day of April, 2009 upon:

Mark R. Overstreet
Stites & Harbison PLLC
421 West Main Street
PO Box 634
Frankfort, Kentucky 40602
moverstreet@stites.com

Douglas F. Brent
Kendrick R. Riggs
C. Kent Hatfield
Stoll, Keenon & Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202
Douglas.Brent@skofirm.com

Dennis G. Howard, II, Esq.
Kentucky Attorney General's Office
Suite 200
1024 Capital Center Drive
Frankfort, KY 40601
dennis.howard@ag.ky.gov

John N. Hughes
124 W Todd Street
Frankfort, KY 40601
jnhughes@fewpb.net



Counsel to RLECs