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April 21, 2009

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**APR 21 2009**

**PUBLIC SERVICE  
COMMISSION**

**VIA HAND DELIVERY**

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. 2007-0004***

Dear Mr. Derouen:

I have enclosed for filing in the above-styled case the original and eleven (11) copies of the following:

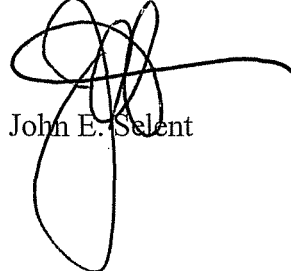
- (1) Direct Testimony of William W. Magruder;
- (2) Direct Testimony of Douglas Duncan Meredith; and
- (3) Petition for Confidential Treatment of certain information contained in the direct testimony of Mr. Meredith.

Please return a file-stamped copy to our delivery person.

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

Very truly yours,

DINSMORE & SHOHL LLP



John E. Selent

JES/lb

Jeff Derouen, Executive Director

April 21, 2009

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JES/lb

cc: All parties of record (*w/encl.*)

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* )

v. )

Windstream Kentucky East, Inc. )

*Defendant* )

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APR 21 2009

PUBLIC SERVICE  
COMMISSION

Case No. 2007-00004

PREFILED DIRECT TESTIMONY OF WILLIAM W. MAGRUDER

ON BEHALF OF THE

RURAL TELEPHONE COMPANY COMPLAINANTS

April 21, 2009

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**PREFILED DIRECT TESTIMONY OF WILLIAM W. MAGRUDER**

1 **Q. PLEASE STATE YOUR NAME, TITLE, AND ADDRESS.**

2 A. My name is William W. Magruder. I am Executive Vice President and Chief Executive  
3 Officer for Duo County Telephone Cooperative. Our company's address is P.O. Box 80, 2150 North  
4 Main Street, Jamestown, Kentucky 42629.

5 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL BACKGROUND.**

6 A. I hold a Bachelor of Science degree in Electrical Engineering from the University of  
7 Kentucky. I have approximately 40 years of experience working in the rural telephone company  
8 industry in Kentucky. I have testified before this Commission on numerous occasions in virtually  
9 every administrative case of industry importance that involves settlements and the restructuring of  
10 the telephone industry, including the divestiture of AT&T. I am also a former chairman of the  
11 National Exchange Carrier Association ("NECA") and have served as president of the Kentucky  
12 Telephone Association ("KTA") on numerous occasions and currently serve on the boards of US  
13 Telecom and KTA.

14 **Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR COMPANY.**

15 A. Duo County provides local exchange service to approximately 13,000 customers in rural,  
16 south central Kentucky. We serve all or parts of Russell, Adair, Cumberland and Casey counties.  
17 Many of our areas, unfortunately, have some of the lowest per capita income in the Commonwealth.  
18 I am particularly proud, however, that we have been providing modern state-of-the-art service to our  
19 customers for over 50 years. Today we provide the ability for all of our customers to access  
20 broadband service regardless of where they live in our rural area. We depend heavily on Universal  
21 Service Funds, access revenues and terminating revenues to keep our rates at a level that our  
22 customers can continue to afford to pay.

1 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY TODAY?**

2 A. The purpose of my testimony is to set forth some concerns and issues that the rural local  
3 exchange carriers (including the six other RLECs that are party to this case) ask the Commission to  
4 keep in mind as it evaluates Windstream's transit traffic tariff and its efforts to impose the terms and  
5 conditions of that tariff upon the RLECs. To that end, my testimony today is on behalf of not only  
6 Duo County, but also Brandenburg Telephone Company; Highland Telephone Cooperative, Inc.;  
7 Mountain Rural Telephone Cooperative Corporation, Inc.; North Central Telephone Cooperative  
8 Corporation; South Central Rural Telephone Cooperative Corporation, Inc.; and West Kentucky  
9 Rural Telephone Cooperative Corporation, Inc. I refer to this group, collectively, as "the RLECs." I  
10 also frequently refer to Windstream's tariff as, simply, "the tariff." In addition, I also refer generally  
11 in this testimony to "local" and "non-local" traffic. Unless I state otherwise, I will use these terms in  
12 the sense that an end-user would, such that "local" refers to calls that can be placed without an end-  
13 user incurring toll or long distance charges and "non-local" refers to calls for which an end-user  
14 would incur toll or long distance charges.

15 **Q. WHAT RELIEF DO THE RLECs SEEK FROM THE COMMISSION IN THIS**  
16 **MATTER?**

17 A. The RLECs seek two actions from the Commission.

18 First, the RLECs ask the Commission to reject and cancel the tariff. The manner in which  
19 Windstream filed the tariff was fundamentally unfair, and the tariff is unreasonable and confusing.  
20 The manner in which carriers exchange local traffic should be resolved not by tariff, but (as  
21 necessary) through intercarrier negotiations. Here, Windstream's tariff appears to require the RLECs  
22 to bear interconnection costs outside of our respective networks. To that end, the tariff seeks to  
23 obtain what no carrier has any right to obtain: RLEC payment for traffic exchange costs incurred

1 outside the RLEC network as a result of networking decisions forced upon them by Windstream  
2 and/or certain third-party carriers. Windstream should not be dumping this third-party traffic on us  
3 in any event.

4 Second – and this really goes hand-in-hand with the previous request – the RLECs ask the  
5 Commission to order that local transit services not be tariffed at all. Instead, the Commission should  
6 order that local transit services (to the extent they are desired or required) should remain within the  
7 exclusive province of intercarrier negotiations.

8 **Q. BEFORE WE GET INTO THE RLECs' POSITION WITH RESPECT TO THE**  
9 **SUBSTANCE OF THE TARIFF, PLEASE EXPLAIN TO THE COMMISSION WHAT YOU**  
10 **MEAN WHEN YOU SAY THAT "THE MANNER IN WHICH WINDSTREAM FILED THE**  
11 **TARIFF WAS FUNDAMENTALLY UNFAIR?"**

12 A. There were a number of problems associated with Windstream's filing of the tariff. By way  
13 of background, the Commission will recall that what I refer to generally as "the tariff" is not actually  
14 an entire new tariff, at all. The "tariff," as it were, is actually an amendment to Windstream's general  
15 customer services tariff, which is historically an end-user tariff. The RLECs, however, are not end-  
16 users or general customers of Windstream. The RLECs are carriers whose end-users may place calls  
17 to (or receive calls from) end-users of other carriers, but we are not end-users. Consequently, there  
18 was no reason for the RLECs to have been following Windstream's periodic amendments to what  
19 has historically always been an end-user tariff.

20 Thus, the RLECs had no reason to be aware that - on December 1, 2006 - Windstream filed  
21 an amendment to its general customer services tariff. Likewise, the RLECs had no reason to know  
22 that the same amendment purported to impose charges not on end-users of Windstream service, but  
23 on carriers. We had no notice that Windstream's filing purported to be effective immediately. And,

1 we had no notice that the Commission would approve Windstream's filing, effective December 16,  
2 2006. In short, we had no reasonable way of knowing that Windstream had done anything that  
3 purported to affect our rights until the tariff had already been approved. That is what we seek here:  
4 the opportunity that Windstream denied us in early December of 2006.

5 **Q. HOW, THEN, DO CARRIERS TYPICALLY OFFER SERVICES TO, AND IMPOSE**  
6 **CHARGES UPON, ONE ANOTHER?**

7 A. In my experience, carrier-to-carrier services are established, rendered, and charged in one of  
8 three ways, none of which involve the application of a general customer services tariff. For non-  
9 local traffic, carriers typically provide service pursuant to access tariffs. Duo County has one;  
10 Windstream has one; almost all carriers have them. And, in almost all instances, those access tariffs  
11 are used to address the terms and conditions of carrier-to-carrier services associated with what I have  
12 described as "non-local" traffic.

13 Conversely, intercarrier traffic and services not addressed by these access tariffs are almost  
14 always addressed in some form of intercarrier agreement, such as an interconnection agreement,  
15 EAS agreement, or other arrangement. My point here is simply that carriers have historically  
16 addressed intercarrier services and obligations through either: (i) their access tariffs; or (ii)  
17 intercarrier agreements.

18 There may also be certain extraordinary circumstances where carrier-to-carrier relationships  
19 could be mandated by Commission order, accounting for a potential third source of obligations.

20 In short, however, the transit terms Windstream seeks to impose on the RLECs arise from its  
21 traditional end-user tariff, and not these traditional sources of intercarrier obligations. Therefore, it  
22 would be unfair to subject the RLECs to Windstream's proposed terms when we had no meaningful  
23 opportunity to negotiate or contest them in the first place.

1 **Q. I WOULD LIKE TO TURN YOUR ATTENTION, NOW, TO THE SUBSTANCE OF**  
2 **THE TARIFF. PLEASE EXPLAIN YOUR UNDERSTANDING OF THE TARIFF THAT IS**  
3 **AT ISSUE IN THIS MATTER.**

4 A. My general understanding of the tariff is that Windstream is seeking to charge an originating  
5 carrier for switching and transporting that carrier's local traffic to a third-party carrier. So if, for  
6 example, a CLEC end-user were to originate an extended area service ("EAS") call to an RLEC end-  
7 user, and if Windstream provides an intermediary switching function for that traffic, then the CLEC  
8 would be responsible to pay Windstream's tariffed transit rate for that service. The same would  
9 appear to be true in reverse.

10 Having said that, it appears that the tariff would not apply to originating carriers who: (i)  
11 have an interconnection agreement addressing the same service; (ii) are renegotiating an expired  
12 interconnection agreement addressing the same service; or (iii) have some other intercarrier  
13 agreement addressing the same service.

14 It is unclear how Windstream would deliver that traffic to us, as the tariff does not state what  
15 type of facilities should carry the traffic at issue. Windstream has not approached us to establish any  
16 such facility.

17 **Q. SO, COULD WINDSTREAM HAVE AVOIDED THE ENTIRE ISSUE BY**  
18 **ENTERING INTO A TRANSIT AGREEMENT WITH THE RLECs?**

19 A. Quite possibly. Provided Windstream would not insist upon unreasonable demands like  
20 requiring the RLECs to pay for costs (including transit costs) of exchange local traffic outside of our  
21 networks, we would have worked with Windstream to negotiate an appropriate agreement. But  
22 Windstream has refused to rescind its tariff and pursue that avenue with us.



1 Now, I should note that because the RLECs are not required to bear the costs (including  
2 transit costs) of exchanging local traffic outside of their networks, a transit agreement is really not  
3 even necessary. But, we have been open to that compromise. Windstream, however, is obviously  
4 using its tariff as a means of coercing a different negotiated resolution than it could otherwise  
5 achieve. And, if it can get away with it, why wouldn't it? After all, as long as the tariff remains in  
6 place, Windstream suffers practically no consequences from insisting on an agreement that  
7 effectively mirrors the terms of its tariff.

8 Quite simply, Windstream's tariff disincentivizes productive negotiation and undermines the  
9 RLECs' rights. As I understand it, Windstream offers the RLECs the option of signing Windstream's  
10 proposed transit agreement, or else Windstream claims to hold that carrier to the tariff. By tariffing  
11 transit services, Windstream has nothing to lose. For example, I understand that Highland  
12 Telephone (who is in a unique position among the RLECs because it is it the only one of us who  
13 actually subtends a Windstream tandem) has now waited more than five months for a substantive  
14 response to its most recent redlines of a proposed agreement to supersede the terms of Windstream's  
15 tariff.

16 For these reasons, the tariff must be rejected so that carriers can (as necessary) effectively  
17 negotiate the arrangements by which they will link their networks for the exchange of local traffic.  
18 (I emphasize local because, as I explained above, it is customary for carriers to address the terms and  
19 conditions of non-local (that is, toll and access) traffic through tariffs.)

20 **Q. ARE THERE ANY OTHER REASONS WHY IT MIGHT BE MORE APPROPRIATE**  
21 **FOR TRANSIT SERVICES TO BE PROVIDED PURSUANT TO AGREEMENT, RATHER**  
22 **THAN TARIFF?**

1 A. Certainly. I can think of at least four reasons why it is appropriate to address transit services  
2 through agreements, rather than tariffs.

3 First, third-parties desiring to exchange traffic with the RLECs on a local basis should make  
4 arrangements with the RLECs for an interconnection or EAS agreement, as appropriate for the traffic  
5 at issue. I am not a lawyer, but my limited understanding of the Telecommunications Act of 1996  
6 compels the same conclusion: a carrier who seeks to exchange local traffic with another carrier  
7 needs to negotiate the terms of an agreement for the exchange of that traffic. I know that if I was a  
8 CLEC, for example, and I decided to provide local service somewhere in Kentucky (or anywhere,  
9 for that matter), one of the first things I would do is figure out which carriers have local calling to  
10 that area and take appropriate steps to ensure the appropriate exchange of traffic with those carriers.  
11 Of course, an agreement between a CLEC and an RLEC in this example would allow those parties to  
12 properly set forth their rights and responsibilities with respect to traffic that may be delivered by an  
13 intermediary transit provider like Windstream.

14 Without such an agreement, the RLECs are effectively robbed of their rights and ability to  
15 properly address the the traffic that is destined for our networks. So, from a general perspective, it is  
16 just fundamentally fair that the two carriers whose end-users may call each other should have an  
17 agreement for the exchange of their traffic.

18 And, this brings me to my second reason why it is appropriate to address transit scenarios  
19 through agreements, rather than tariffs. Quite simply, the transit arrangement addressed by  
20 Windstream's tariff forces the RLECs to rely upon Windstream for the identification and  
21 measurement of the traffic that Windstream delivers to our networks. I testified earlier that many of  
22 our service territories have some of the lowest per capita income in the Commonwealth. Even so,  
23 we have been providing state-of-the-art service (including broadband access) to our customers for

1 more than 50 years. In order to do so, we depend heavily on Universal Service Funds, access  
2 revenues, and terminating revenues to keep our rates at a level that our customers can continue to  
3 afford to pay.

4           Consequently, we are not willing to place the continued viability of our customers' service in  
5 the hands of Windstream. We have no way to assure completeness or accuracy in Windstream's  
6 identification and measurement methods. Moreover, because we would have no way of auditing or  
7 verifying Windstream's records, Windstream also has no accountability for errors in its data.  
8 Windstream does not serve our customers. Windstream will not have to explain to our customers  
9 why we cannot properly address the traffic entering our network or collect charges based on our own  
10 billing records. Windstream does not answer to our customers about our rates. And, Windstream is  
11 not responsible for ensuring that we continue to provide affordable, state-of-the-art services to the  
12 most rural parts of the Commonwealth.

13           Windstream, in short, has no incentive to protect the interests of our customers, and while it  
14 may not quite be "the fox guarding the henhouse," I think it is no stretch to suggest that  
15 Windstream's proposed solution leaves us unable to "guard our henhouses." If carriers want to  
16 exchange local traffic with us, then they should come to us so that we can negotiate appropriate  
17 terms by which to measure, monitor, and otherwise address the traffic we exchange. Contrary to  
18 Windstream's implicit assertions, transit arrangements are not always appropriate, and they are never  
19 appropriate where they require an RLEC: (i) to bear the outside-the-network costs (including transit  
20 costs) of exchanging traffic with a third-party; and (ii) to unreasonably rely upon the measurement  
21 and identification records of a disincentivized third-party. In this manner, at least we get a voice at  
22 the table with respect to those decisions rather than – as is currently the case – being forced to accept  
23 the terms Windstream has unilaterally placed in its tariff.

1           And, this leads me to the third reason why it is more appropriate for transit arrangements to  
2 be addressed in agreements, rather than tariffs. As it is, Windstream's tariff attempts to impose upon  
3 the RLECs an obligation to pay Windstream for interconnection services provided outside the  
4 RLECs' networks. Again, I am not a lawyer, but my understanding is that the Commission has  
5 previously determined that the RLECs' obligations to exchange local traffic do not extend beyond  
6 their networks and that the Telecommunications Act of 1996 only requires RLECs to provide  
7 interconnection that is equal to what the ILEC does for itself or with other carriers, but not some  
8 form of superior arrangement.

9           In light of those decisions, it seems inappropriate to suggest that Windstream can now (by  
10 tariff) unilaterally force the RLECs to abide by transit terms and conditions that impose obligations  
11 contrary to those from which the RLECs were already absolved. At the very least, it is completely  
12 unfair to suggest that the RLECs' rights to contest their liability for transit charges can be railroaded  
13 by an intermediary (like Windstream) simply tariffing terms that would otherwise be subject to the  
14 negotiation of an intercarrier agreement.

15           Fourth, the tariffing of transit rates chills the opportunity for carriers to effectively negotiate  
16 appropriate rate, terms, and conditions. This case is a perfect example. Because we were effectively  
17 denied the opportunity to meaningfully negotiate any transit issues with Windstream and/or third-  
18 party carriers, we have been forced to institute what may effectively become a full-blown rate case to  
19 contest the appropriateness of the tariffed rates. We do not think that the analysis needs to progress  
20 that far, because we believe that: (i) local transit services should not be tariffed in any event; and (ii)  
21 beyond-our-network costs like transit charges should not be assessed against the RLECs. But, this is  
22 already an expensive proceeding, and it will be made significantly more so by forcing the RLECs to  
23 bear the burden of disproving the rates that Windstream forced upon them by fiat.

1 Windstream, of course, knows this, and there is no incentive for it to offer (for example) the  
2 significantly lower transit rates it notes are available to some CLECs. I do not know the detailed  
3 history of the negotiations between Windstream and Highland, but I expect this may be a significant  
4 reason why Highland has been unable to negotiate an acceptable transit agreement with Windstream  
5 to date.

6 **Q. DO YOU HAVE ANY OTHER PROBLEMS WITH WINDSTREAM'S TARIFF?**

7 A. Yes. The tariff contains terms that are confusing and unworkable.

8 For example, Section 11.1.1(D)(1) of Windstream's tariff claims to apply only to "Local"  
9 traffic. It then defines that scope of traffic as including intraLATA calls for which Windstream does  
10 not collect toll or access charges. The tariff does not, however, identify the scope of intraLATA  
11 calls for which Windstream does not collect toll or access charges. Perhaps more importantly, the  
12 tariff fails to address the very real possibility that – however Windstream may define that scope of  
13 traffic in practice – it may very likely conflict with the RLECs' tariff-defined local calling area.  
14 Windstream's answers to our initial discovery requests betray a complete failure to recognize this  
15 obvious ambiguity in the application of Windstream's tariff. Conceivably, it would permit  
16 Windstream to assess local transit charges on access traffic.

17 In addition, the tariff terms are unreasonably ambiguous and confusing with respect to  
18 Windstream's treatment of calls to Internet Service Providers ("ISPs") located beyond the RLECs'  
19 local calling areas (and potentially outside the Commonwealth). The proper jurisdictionalization of  
20 calls to ISPs is the subject of much dispute in the industry as to the proper intercarrier network cost  
21 responsibilities. As such, Windstream cannot know whether calls to ISPs should properly be  
22 considered "local" within the meaning of Section 11.1.1(D)(1) of its tariff. Again, Windstream's  
23 answers to our initial discovery requests betray a complete failure to recognize this obvious

1 ambiguity in the application of its tariff. Conceivably, it would permit Windstream to assess local  
2 transit charges on non-local ISP traffic.

3 Furthermore, Section 11.1.1(D)(2) of Windstream's tariff provides that the tariff applies to  
4 CMRS calls that "originate and terminate within the same Major Trading Area (MTA)." However,  
5 Windstream cannot know the location of a mobile end-user of a CMRS Provider at the time that  
6 mobile end-user places or receives a call. Therefore, it is unclear how Windstream will be able to  
7 accurately apply this provision of its tariff, because it will be impossible for Windstream to  
8 determine whether a third-party CMRS call is intraMTA or interMTA in nature.

9 In addition, the tariff does not ensure that the RLECs will receive sufficient records to  
10 adequately identify originating third-party carriers and (when appropriate) bill those third-party  
11 carriers. Specifically, Section 11.1.2 of the tariff provides that Windstream will provide the  
12 terminating carrier with "industry standard call detail records, where available, for its use in billing  
13 the originating Telecommunications Service Provider for the termination of Transit Traffic."  
14 (Emphasis added.) In the very next sentence, however, the tariff explains that such records very well  
15 may not be available when it provides that "unavailability of such call detail records does not ...  
16 create any liability to the terminating Telecommunications Service Provider on the part of  
17 Company." In summary, then, Windstream agrees to provide billing records "where available," and  
18 it then states that the failure to do so "does not ... create any liability" to the carrier (here, the  
19 RLECs) needing that information. This is completely unacceptable.

20 **Q. WHAT CONCLUSIONS DO YOU DRAW FROM THIS?**

21 A. Windstream's tariff is unreasonably ambiguous, and it is incapable of practical application.  
22 In fact, it appears that Windstream developed its tariff language without any consideration of the  
23 inconsistencies and complications I have identified. Once more, this amplifies the reason why

1 negotiation with carriers would better afford the opportunity for all carriers to address the details of  
2 these important terms and conditions.

3 **Q. IN LIGHT OF THIS, HOW DO YOU BELIEVE THE COMMISSION SHOULD**  
4 **RESOLVE THIS MATTER?**

5 A. I believe the Commission should reject and cancel Windstream's tariff and order that local  
6 transit arrangements should not be tariffed, but should be addressed through the customary  
7 intercarrier agreement negotiation process. Windstream, as a potential intermediary for that traffic  
8 exchange, should never be permitted to dictate the terms by which we exchange local traffic with  
9 those third-party carriers.

10 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

A. Yes, it does. Thank you.





**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by first class United States mail, postage prepaid on this 21<sup>st</sup> day of April, 2009, on the following individual(s):

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\_\_\_\_\_  
*Counsel to Complainants*

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Brandenburg Telephone Company; Duo County )  
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Central Telephone Cooperative Corporation; South )  
Central Rural Telephone Cooperative Corporation, Inc.)  
and West Kentucky Rural Telephone Cooperative )  
Corporation, Inc. )

*Complainants* )

v. )

Windstream Kentucky East, Inc. )

*Defendant* )

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PUBLIC SERVICE  
COMMISSION

Case No. 2007-00004

PREFILED DIRECT TESTIMONY OF DOUGLAS DUNCAN MEREDITH

ON BEHALF OF THE

RURAL TELEPHONE COMPANY COMPLAINANTS

April 21, 2009

*Counsel to Complainants:*

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(502) 585-2207 (fax)

1 **Q: PLEASE STATE YOUR FULL NAME, PLACE OF EMPLOYMENT**  
2 **AND POSITION.**

3 A: My full name is Douglas Duncan Meredith. I am employed by John  
4 Staurulakis, Inc. (“JSI”) as Director – Economics and Policy. JSI is a  
5 telecommunications consulting firm headquartered in Greenbelt,  
6 Maryland. My office is located at 547 Oakview Lane, Bountiful, Utah  
7 84010. JSI has provided telecommunications consulting services to  
8 rural local exchange carriers since 1963.

9 **Q: PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AND**  
10 **EDUCATIONAL BACKGROUND.**

11 A: As the Director of Economics and Policy at JSI, I assist clients with  
12 the development of policy pertaining to economics, pricing and  
13 regulatory affairs. I have been employed by JSI since 1995. Prior to  
14 my work at JSI, I was an independent research economist in the  
15 District of Columbia and a graduate student at the University of  
16 Maryland – College Park.

17  
18 In my employment at JSI, I have participated in numerous  
19 proceedings for rural and non-rural telephone companies. These  
20 activities include, but are not limited to, the creation of forward-  
21 looking economic cost studies, the development of policy related to  
22 the application of federal safeguards for rural local exchange carriers,  
23 the determination of Eligible Telecommunications Carriers pursuant  
24 to the Communications Act of 1934, as amended (“Act”), and the  
25 sustainability and application of universal service policy for  
26 telecommunications carriers.

27

1           In addition to assisting telecommunications carrier clients, I have  
2           served as the economic advisor for the Telecommunications  
3           Regulatory Board of Puerto Rico since 1997. In this capacity, I  
4           provide economic and policy advice to the Board Commissioners on  
5           all telecommunications issues that have either a financial or economic  
6           impact. I have participated in numerous Arbitration panels established  
7           by the Board to arbitrate interconnection issues under Section 252(b)  
8           of the Telecommunications Act of 1996 (the “Act”).

9  
10           I am participating or have participated in numerous national  
11           incumbent local exchange carrier and telecommunications groups,  
12           including those headed by NTCA, OPASTCO, USTA, and the Rural  
13           Policy Research Institute. My participation in these groups focuses on  
14           the development of policy recommendations for advancing universal  
15           service and telecommunications capabilities in rural communities and  
16           other policy matters.

17  
18           I have testified or filed pre-filed regulatory testimony in various states  
19           including Kentucky, Indiana, New Hampshire, Vermont, Maine, New  
20           York, Michigan, Wisconsin, North Dakota, South Dakota, South  
21           Carolina, Texas, Utah, and Tennessee. I have also participated in  
22           regulatory proceedings in many other states that did not require formal  
23           testimony, including Florida, Louisiana, Mississippi, North Carolina,  
24           Puerto Rico and Virginia. In addition to participation in state  
25           regulatory proceedings, I have participated in federal regulatory  
26           proceedings through filing of formal comments in various proceedings  
27           and submission of economic reports in an enforcement proceeding.

28

1 I have a Bachelor of Arts degree in economics from the University of  
2 Utah, and a Masters degree in economics from the University of  
3 Maryland – College Park. While attending the University of Maryland  
4 – College Park, I was also a Ph.D. candidate in Economics. This  
5 means that I completed all coursework, comprehensive and field  
6 examinations for a Doctorate of Economics without completing my  
7 dissertation.

8 **Q: ON WHOSE BEHALF ARE YOU TESTIFYING?**

9 A: I am testifying on behalf of Brandenburg Telephone Company, Duo  
10 County Telephone Cooperative Corporation, Inc., Highland  
11 Telephone Cooperative, Inc., Mountain Rural Telephone Cooperative  
12 Corporation, Inc., North Central Telephone Cooperative Corporation,  
13 South Central Rural Telephone Cooperative Corporation, Inc. and  
14 West Kentucky Rural Telephone Cooperative Corporation, Inc.  
15 (“RLECs”)

16 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

17 A: My purpose in providing this testimony to the Commonwealth of  
18 Kentucky Public Service (“Commission”) is to provide testimony  
19 demonstrating that the purported “TELRIC” cost study filed by  
20 Windstream Kentucky East, Inc. (“Windstream”) appears  
21 fundamentally flawed and should not be used to develop a transit  
22 service rate. I note that Windstream's data relates to transit rates that I  
23 understand to be inapplicable to the RLECs under applicable law.  
24 Nevertheless, I offer my professional opinion that – even if  
25 Windstream's transit tariff were applicable to the RLECs – the  
26 Commission should determine that the cost support offered by

1 Windstream is inadequate and does not comply with the economic  
2 cost principles for a study of this nature.

3 **Q: PLEASE DESCRIBE THE ISSUE ADDRESSED IN THIS**  
4 **PROCEEDING.**

5 A: The issue in this proceeding is whether Windstream is permitted to  
6 file a local tariff that establishes the terms and conditions for transit  
7 traffic. Transit traffic handled by Windstream is traffic that neither  
8 originates nor terminates with Windstream customers; instead, this  
9 traffic is originated by third parties and is terminated by the RLECs or  
10 vice versa via an intermediary, also known as a “Transit” provider.  
11 Windstream is a transit provider in Kentucky due to customary  
12 routing of traffic between parties. The local traffic transited by  
13 Windstream is traffic subject to the requirements of Section 251 and  
14 252 of the Communications Act of 1934, as amended (“Act”) and the  
15 regulations of the Federal Communications Commission (“FCC”)  
16 implementing specific provisions of the Act.

17 **Q: FOR PURPOSES OF PREPARING YOUR TESTIMONY, HAVE YOU**  
18 **REVIEWED AN EXCEL WORKBOOK CONTAINING**  
19 **WINDSTREAM’S PROPOSED COST STUDY?**

20 A: Yes. I have reviewed the Windstream’s Excel workbook consisting of  
21 seventeen (17) worksheets. I have performed a limited review of the  
22 cost study and have formed preliminary opinions related to the same.  
23 At the time of filing this prefiled direct testimony, I still have a  
24 number of questions related to the source data used in the study and  
25 the mechanics of the study that were not available prior to receiving  
26 the Excel workbook because as I have compared the two, the printed  
27 version of the worksheets did not provide adequate detail.

1    **Q:   MR. MEREDITH, HAVE YOU HAD OCCASION TO READ AND**  
2    **REVIEW THE REGULATIONS PROMULGATED BY THE FCC**  
3    **REGARDING THE DEVELOPMENT OF FORWARD-LOOKING**  
4    **ECONOMIC COST STUDIES THAT ARE BASED ON TOTAL**  
5    **ELEMENT LONG-RUN INCREMENTAL COST?**

6    A:   Yes. I am familiar with the FCC’s regulations regarding forward-  
7        looking economic cost studies. The FCC has developed a specific  
8        cost methodology that is required to be used by state commissions in  
9        making determinations related to Section 251 obligations under the  
10       Act.

11   **Q:   BASED ON YOUR EXPERIENCE AS A CONSULTANT,**  
12   **SPECIFICALLY IN YOUR CAPACITY AS ECONOMIC ADVISOR**  
13   **TO THE REGULATORY BOARD OF PUERTO RICO, ARE YOU**  
14   **COMFORTABLE WITH THE FCC REGULATIONS RELATED TO**  
15   **ECONOMIC COST STUDIES FOR SECTION 251**  
16   **INTERCONNECTION OBLIGATIONS?**

17   A:   Yes. I have the opportunity in Puerto Rico to serve as advisor to the  
18       Board in matters where the FCC’s economic cost regulations are  
19       required. I have also prepared economic cost studies for local  
20       exchange carrier clients used in calculating reciprocal compensation  
21       rates that fall under the rubric of Section 251 obligations.  
22       Additionally, I have developed total service economic cost studies for  
23       clients in Michigan applying a forward-looking cost methodology to  
24       develop intrastate and local pricing.

25   **Q:   PLEASE DESCRIBE THE FCC REGULATIONS CONCERNING**  
26   **ECONOMIC COST STUDIES USED FOR SECTION 251 AND 252 OF**  
27   **THE ACT.**

1           A:    The FCC regulations regarding the pricing of elements (Subpart F)  
2                   begin with 47 CFR §51.501. The FCC states in §51.503 that its  
3                   forward-looking economic cost-based pricing methodology is set forth  
4                   in §§51.505 and 51.511. The FCC also requires that rates comply  
5                   with rate structure rules set forth in §§51.507 and 51.509. So to  
6                   describe generally the FCC regulations, there are methodology  
7                   regulations and rate structure regulations involved in developing a  
8                   forward-looking economic cost (“FLEC”) study that complies with  
9                   FCC regulations.

10       **Q:    PLEASE EXPLAIN THE FCC’S METHODOLOGY REGULATIONS.**

11           A:    First, §51.505 identifies the requirements for forward-looking  
12                   economic cost or FLEC. FLEC is the sum of the total element long-  
13                   run incremental cost (“TELRIC”) of a network element and a  
14                   reasonable allocation of forward-looking common costs.

15  
16                   The name “TELRIC” is generally used in the industry as a placeholder  
17                   to identify the FCC’s overall pricing methodology. This is likely due  
18                   to the fact that the development of TELRIC-based pricing is the most  
19                   difficult and time consuming portion of developing FLEC-based  
20                   pricing. The only difference between FLEC and TELRIC is the  
21                   reasonable allocation of forward-looking common costs.

22       **Q:    DOES THE TELRIC REGULATION HAVE SPECIFIC COST**  
23       **REQUIREMENTS?**

24           A:    Yes, the FCC has very specific TELRIC regulations. The FCC  
25                   definition of TELRIC is:

26                   The total element long-run incremental cost of an element is the  
27                   forward-looking cost over the long run of the total quantity of the



1 facilities and functions that are directly attributable to, or  
2 reasonably identifiable as incremental to, such element, calculated  
3 taking as a given the incumbent LEC's provision of other elements.  
4 §51.505(b)

5 In addition to this specific regulation, the FCC requires TELRIC to  
6 include: (1) efficient network configuration; (2) forward-looking cost  
7 of capital; and (3) economic depreciation rates. Specifically related to  
8 my initial review of the Windstream study is the efficient network  
9 configuration requirement which requires:

10 The total element long-run incremental cost of an element should  
11 be measured based on the use of the most efficient  
12 telecommunications technology currently available and the lowest  
13 cost network configuration, given the existing location of the  
14 incumbent LEC's wire centers. §51.505(b)(1)

15 **Q: BEFORE I ASK YOU ABOUT THE SPECIFICS OF YOUR**  
16 **CONCLUSIONS REGARDING THE WINDSTREAM STUDY, DOES**  
17 **THE FCC HAVE REGULATIONS ADDRESSING THE**  
18 **REASONABLE ALLOCATION OF FORWARD-LOOKING**  
19 **COMMON COSTS?**

20 **A:** Yes. The FCC has regulations covering forward-looking common  
21 costs. These costs are defined as:

22 Forward-looking common costs are economic costs efficiently  
23 incurred in providing a group of elements or services (which may  
24 include all elements or services provided by the incumbent LEC)  
25 that cannot be attributed directly to individual elements or services.  
26 §51.505(c)(1)

27 There are restrictions in allocating common costs: the sum of a  
28 reasonable allocation of forward-looking common costs and the  
29 TELRIC of an element shall not exceed the stand-alone cost  
30 associated with the element; and

1                   the sum of the allocation of forward-looking common costs for all  
2                   elements and services shall equal the total forward-looking  
3                   common costs, exclusive of retail costs, attributable to operating  
4                   the incumbent LEC's total network, so as to provide all the  
5                   elements and services offered. §51.505(c)(2)(ii)

6   **Q:    IN ADDITION TO WHAT CONSTITUTES TELRIC, DOES THE FCC**  
7   **ALSO IDENTIFY WHAT CANNOT BE INCLUDED IN A FLEC**  
8   **STUDY?**

9    **A:**    Yes. The FCC identifies certain “factors” that shall not considered in a  
10           calculation of FLEC. These include: (1) embedded costs; (2) retail  
11           costs; (3) opportunity costs; and (4) revenues used to subsidize other  
12           services. § 51.505(d). I note that the incumbent LEC must “prove to  
13           the state commission that the rates for each element it offers do not  
14           exceed the FLEC per unit of providing an element.” §51.505(e). I  
15           understand that the first time Windstream has produced its cost study  
16           is in this proceeding. I therefore observe that the Commission has not  
17           yet had an opportunity to judge the quality of Windstream’s study that  
18           it proposes to use for its transit rate.

19   **Q:    YOU MENTIONED A PER UNIT FLEC. WHAT REQUIREMENTS**  
20   **EXIST FOR DEVELOPING FLEC ON A PER UNIT BASIS?**

21    **A:**    The FCC regulation §51.511 describes how to develop FLEC per unit.  
22           (a) The forward-looking economic cost per unit of an element  
23           equals the forward-looking economic cost of the element, as  
24           defined in §51.505, divided by a reasonable projection of the sum  
25           of the total number of units of the element that the incumbent LEC  
26           is likely to provide to requesting telecommunications carriers and  
27           the total number of units of the element that the incumbent LEC is  
28           likely to use in offering its own services, during a reasonable  
29           measuring period.

1 (b)(1) With respect to elements that an incumbent LEC offers on a  
2 flat-rate basis, the number of units is defined as the discrete  
3 number of elements (e.g., local loops or local switch ports) that the  
4 incumbent LEC uses or provides.

5 (2) With respect to elements that an incumbent LEC offers on a  
6 usage-sensitive basis, the number of units is defined as the unit of  
7 measurement of the usage (e.g., minutes of use or call-related  
8 database queries) of the element.

9 The methodology requires the use of a reasonable projection of the  
10 sum of the total number of units of the element that the ILEC is likely  
11 to provide in the future.

12 **Q: TURNING NOW TO THE FCC'S REGULATIONS ON RATE**  
13 **STRUCTURE, WHAT IS THE REGULATION REGARDING**  
14 **TANDEM SWITCHING?**

15 A: Tandem switching rates may be recovered through usage-sensitive  
16 charges, or in another manner consistent with the manner that the  
17 ILEC incurs these costs. *See* 47 CFR §51.509(e).

18 **Q: IN YOUR REVIEW OF THE WINDSTREAM COST STUDY**  
19 **SUBMISSION, CAN YOU CONCLUDE THAT THE STUDY**  
20 **COMPLIES WITH FCC COST PRINCIPLES REQUIRED IN**  
21 **SECTION 251 AND 252 PROCEEDINGS?**

22 A: No. At present there is not enough information in the record to judge.  
23 I do however have serious concerns regarding the study. First, is the  
24 age of the input data. Based on Windstream's response to the  
25 Commission Staff's discovery request No. 3, the input data is very  
26 old: 2003 investment data, 2005 financial data, 2003 vendor prices for  
27 cost of tandem switches, 2003 demand minutes of use, and 2000 local

1           minutes<sup>1</sup> The age of these critical input values is hardly forward-  
2           looking in 2009 or even in 2006 when the study was first used within  
3           Windstream to develop its transit tariff rate.

4  
5           My second concern relates to the use of forward-looking investment  
6           data. Although Windstream claims it has used forward-looking  
7           investment data, albeit six years old there is no way to tell how it  
8           developed these data from the study it has supplied. There are  
9           notations that a TELRIC database has information necessary for the  
10          development of the transit rate; however, this critical information was  
11          not supplied.<sup>2</sup> I cannot emphasize enough the importance of  
12          evaluating critically the assumptions used to develop forward-looking  
13          investment. FCC regulations require that this decision be based on  
14          most efficient technology and lowest-cost configuration.<sup>3</sup>

15  
16          My third concern relates to developing the FLEC per unit. As I  
17          described above, FLEC per unit is to be based on a reasonable  
18          projection of total forward-looking demand. The study appears to be  
19          inadequate when developing demand. One example that needs more  
20          investigation is the development of local minutes. The study uses five  
21          year growth factors. Given the initial local minute data is currently  
22          nine (9) years old. The study is looking at the past and is not forward-  
23          looking as is required by FCC regulation.

---

<sup>1</sup> Windstream Kentucky East, LLC's Responses to Commission Staff's Request, March 20, 2009, No. 3. CONFIDENTIAL.

<sup>2</sup> The worksheet labeled "Import Data" indicates that data was imported from a TELRIC database. The TELRIC database was not provided nor is it linked to the cells in this worksheet.

<sup>3</sup> 47 CFR §51.505(b)(1).

1 My fourth concern relates to the development of common cost  
2 allocations used in developing FLEC. Because the sourcing in the  
3 Excel workbook is poor or in most cases non-existent, I cannot  
4 determine whether Windstream has properly developed forward-  
5 looking common costs based on the most efficient technology  
6 available.

7  
8 My last major concern involves the use of economic depreciation  
9 rates, cost of capital and debt values that are simply inputs without  
10 any source or documentation. Without specific representations by  
11 Windstream concerning these and all other input in the model, there is  
12 not sufficient information to prove that the study comports to FCC  
13 regulations.

14  
15 I have not yet performed my review of the mechanics of the study and  
16 would likely have concerns about the use of the inputs in the model. I  
17 would expect to develop some recommendations regarding how the  
18 model uses inputs after a round of detailed discovery related to the  
19 model.

20 **Q: WHAT IS YOUR RECOMMENDATION TO THE COMMISSION**  
21 **REGARDING THE EXCEL WORKBOOK?**

22 A: I recommend the Commission consider the requirements of the FCC  
23 regarding TELRIC studies. Furthermore, the burden should be upon  
24 Windstream to prove that its study complies with FCC regulations. It  
25 is not sufficient for Windstream to allege that it complies. Based on  
26 the information currently before the Commission, I believe it should  
27 reject Windstream's transit tariff because the rates contained in it have  
28 not been properly justified. The setting of transit rates is a

1                    complicated matter, and as the problems with Windstream's "cost  
2                    study" show, services like this are better left to intercarrier  
3                    negotiations as necessary. In that manner, all affected carriers would  
4                    have a meaningful opportunity to have a say in the matter.

5    **Q:    DOES THIS CONCLUDE YOUR PREFILED DIRECT TESTIMONY?**

6                    A:    Yes.

**VERIFICATION**

I hereby verify that the foregoing testimony is true and accurate to the best of my knowledge and belief.

\_\_\_\_\_  
Douglas Meredith

STATE OF UTAH )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by DOUGLAS MEREDITH, to me known, this \_\_\_\_ day of April, 2009.

My commission expires:\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**CERTIFICATE OF SERVICE**

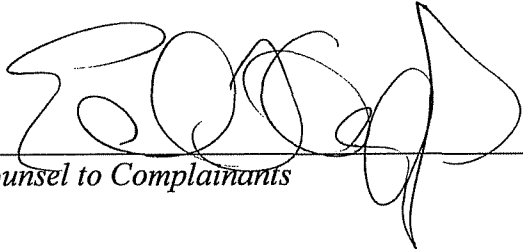
I hereby certify that a copy of the foregoing was served by first class United States mail, postage prepaid on this 21<sup>st</sup> day of April, 2009, on the following individual(s):

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\_\_\_\_\_  
*Counsel to Complainants*



COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RECEIVED

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. )

APR 21 2009

PUBLIC SERVICE  
COMMISSION

*Complainants* )

v. )

Case No. 2007-00004

Windstream Kentucky East, Inc. )

*Defendant* )

**PETITION FOR CONFIDENTIAL TREATMENT OF CERTAIN INFORMATION  
CONTAINED IN THE PREFILED DIRECT TESTIMONY  
OF DOUGLAS DUNCAN MEREDITH**

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 pursuant to 807 KAR 5:001 §7 and KRS 61.878(1)(a) and 61.878(1)(k), move the Public Service Commission of the Commonwealth of Kentucky (the "Commission") to accord confidential treatment to certain highlighted information contained in the prefiled direct testimony of Douglas Duncan Meredith

("Meredith") regarding the cost study which Windstream Kentucky East, LLC ("Windstream") submitted to the Commission on March 20, 2009, and as to which Windstream has filed a Petition for Confidential Treatment ("Petition") currently pending before the Commission. In support of this Petition, the RLECs state as follows.

**I. Applicable Law.**

807 KAR 5:001 §7(2) sets forth a procedure by which certain information filed with the Commission may be treated as confidential. Specifically, the party seeking confidential treatment of certain information must "[set] forth specific grounds pursuant to KRS 61.870 et seq., the Kentucky Open Records Act, upon which the commission should classify that material as confidential." 807 KAR 5:001 §7(2)(a)(1).

The Kentucky Open Records Act, KRS 61.870 *et seq.*, exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, KRS 61.878(c)(1) provides as follows:

[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would present an unfair commercial advantage to competitors of the entity that disclosed the records.

*Id.*

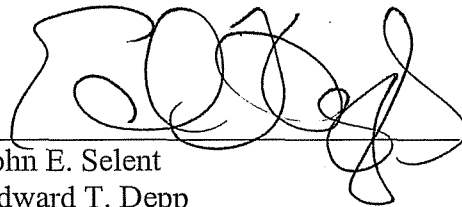
**II. Windstream's Petition for Confidential Treatment of Cost Study**

As Windstream argues in its Petition, the information in the cost study was disclosed to the Commission in connection with data requests propounded by Commission staff and the RLECs. Thus, the cost study information was disclosed to the Commission and was required by the Commission to be disclosed to it.

Moreover, Windstream asserts in its Petition that the cost study would be generally recognized as highly confidential, significant to its ability to provide competitive products, and could not be discovered through independent research. Windstream also asserts in its petition that a disclosure of the cost study would result in an unfair commercial advantage to its competitors resulting in a compromised competitive position for Windstream.

Therefore, the RLECs request the Commission, if the Commission finds that Windstream's Petition is meritorious and should be granted, to accord confidential treatment to the highlighted cost study references contained in the prefiled direct testimony of Meredith. Again, this highlighted testimony would be the same information that the Commission would treat as confidential if it grants Windstream's Petition for Confidential Treatment. In short, if the Commission grants Windstream's Petition, it should also grant this Petition.

Respectfully submitted,



John E. Selent  
Edward T. Depp  
Holly C. Wallace

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*Counsel to the RLECs*

**Certificate of Service**

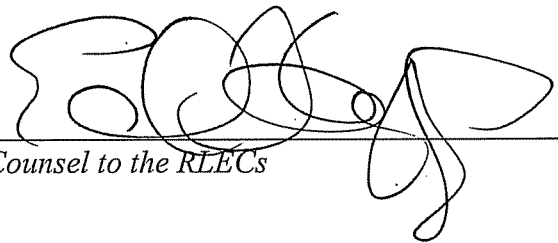
I hereby certify that a copy of the foregoing was served via electronic mail and United States First Class Mail, sufficient postage prepaid, on this 21<sup>st</sup> day of April, 2009 upon:

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