



Direct Testimony of Kerry Smith

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**Q. Please state your name and business address.**

A. My name is Kerry Smith. My business address is 4001 Rodney Parham Drive, Little Rock, Arkansas 72212.

**Q. By whom are you employed and in what capacity?**

A. I am employed by Windstream Communications as Staff Manager of Wholesale Services. I am testifying in this proceeding on behalf of Windstream Kentucky East, LLC ("Windstream").

**Q. Please describe your experience with Windstream and in the telecommunications industry.**

A. I received a Baccalaureate of Science in Accounting from the University of Arkansas at Little Rock in 1996 and a Baccalaureate of Arts in Finance in 2007. In 1995, I began my career in the telecommunications industry with Alltel Communications as an intern in the Revenue Accounting Department. I worked in various groups within Revenue Accounting such as Billing and Collections and Purchase of Accounts Receivable. After transitioning from an intern to a full-time employee at Alltel in December 1995 as an accountant in Settlement Accounting, my responsibilities included completing settlements between Alltel and various incumbent local exchange carriers ("ILECs"). Subsequently, I became Senior Accountant in Settlements where I was responsible for developing processes to address settlements issues brought about by emerging telecommunication technologies. Through the course of my involvement with settlement

1 procedures, I have participated in industry meetings and workshops involving various  
2 access records exchanges among ILECs on settlement record types such as 93-01, 92-99  
3 and CAT-11 records. Additionally, I participated in the conversion of settlement related  
4 items after Alltel's purchase of the Verizon Kentucky properties in 2002, which included  
5 the Area Calling Service ("ACS") and IntraLATA Toll Originating Responsibility Plan  
6 ("ITORP") process for Kentucky, generally known as the Kentucky Restructured  
7 Settlement Plan. I have made presentations to industry conferences regarding how to  
8 properly use record exchange information and was a member of several ILEC Billing and  
9 Record Exchange groups in various states throughout Alltel's territory. I was responsible  
10 for ensuring compliance with required settlement record exchanges in North Carolina,  
11 Pennsylvania (where I served as chairman of the ITORP sub-committee of the  
12 Pennsylvania Telephone Association's Inter-Company Operations Committee for four  
13 years), Florida, Alabama, Mississippi, Kentucky, Georgia, Oklahoma, Missouri,  
14 Arkansas, Texas, South Carolina, New Mexico, Nebraska, New York and Ohio. As Staff  
15 Manager of Wholesale Services for Windstream, my current duties include issues related  
16 to switched access usage and responsibility for various LEC-to-LEC matters.

17  
18 **Q. What is the purpose of your testimony in this proceeding?**

19 A. The purpose of my testimony is to respond to assertions set forth in the Formal  
20 Complaint filed on December 28, 2006 by Brandenburg Telephone Company  
21 ("Brandenburg Telephone"), Duo County Telephone Cooperative Corporation, Inc.  
22 ("Duo County"), Highland Telephone Cooperative, Inc. ("Highland Telephone"),  
23 Mountain Rural Telephone Cooperative Corporation, Inc. ("Mountain Rural"), North

1 Central Telephone Cooperative Corporation (“North Central”), South Central Rural  
2 Telephone Cooperative Corporation, Inc. (“South Central”), and West Kentucky Rural  
3 Telephone Cooperative Corporation, Inc. (“West Kentucky”) (collectively, “RLECs”) in  
4 response to Windstream’s transit tariff filed with the Commission on December 1, 2006.  
5 Specifically, I will demonstrate that the RLECs have failed to show that Windstream’s  
6 transit tariff is inappropriate.

7  
8 **Q. When did Windstream file its transit tariff?**

9 A. Windstream filed its transit tariff on December 1, 2006.

10  
11 **Q. Why did Windstream file its transit tariff?**

12 A. Windstream filed its transit tariff in part because many of the RLECs were  
13 inappropriately using Windstream’s network to transit their traffic to third parties. (As  
14 Windstream noted previously in this proceeding, at least one RLEC, North Central, had  
15 been misrouting local transit traffic through Windstream's end offices but worked to  
16 correct the misrouting in late 2006.) Specifically, the relevant RLECs refused to move  
17 their traffic away from Windstream’s end offices, to negotiate a timely transit agreement  
18 with Windstream to utilize Windstream’s tandems, and otherwise to compensate  
19 Windstream for their use of Windstream’s network. Additionally, with respect to tandem  
20 transit service, Windstream is entitled to maintain a tariff offering for this service to  
21 provide a carrier with an alternative to negotiating an agreement.

22  
23 **Q. What does Windstream’s transit tariff provide?**

1 A. The transit tariff is publicly on file with the Commission, but as a general overview it  
2 allows a telecommunications service provider to indirectly connect with a carrier  
3 subtending Windstream's tandem to send and receive local transit traffic through a  
4 Windstream tandem. The transit tariff applies only in the event that the  
5 telecommunications service provider avails itself of Windstream's network to transit its  
6 traffic to third parties and does not negotiate an agreement with Windstream for tandem  
7 transit service. The transit tariff sets forth a rate of \$0.0030 for tandem routed transit  
8 traffic and also includes a higher end office transit rate of \$0.0045 as a deterrent (as  
9 discussed below) for any carrier misusing Windstream's end offices to provide tandem  
10 service.

11

12 **Q. Were the rates in the transit tariff developed using a total element long run**  
13 **incremental cost ("TELRIC") basis?**

14 A. Yes. I am not an attorney, and I understand that the issue of whether the law requires  
15 transit rates to be TELRIC-based is a legal issue to be briefed by the attorneys. However,  
16 I can state that the rates in the transit tariff are, nevertheless, TELRIC-based because  
17 TELRIC was the model most readily available to Windstream for the development of its  
18 transit rates.

19

20 **Q. Did Windstream provide a copy of its TELRIC cost study to the RLECs?**

21

22 A. Yes. Windstream provided a .pdf copy of the TELRIC cost study that it used to develop  
23 both the end office and tandem transit rates to the RLECs' representatives in December  
24 2007. Because the individual RLECs had not executed the parties' nondisclosure

1 agreement at that time, Windstream provided a copy only to the RLECs' representatives  
2 who had executed the nondisclosure agreement.

3  
4 **Q. What response did Windstream receive from the RLECs regarding this cost study?**

5 A. Until the filing of discovery in this matter on March 20, 2009, Windstream received no  
6 follow up questions or inquiries from the RLECs for more than one year regarding the  
7 cost study provided to them in December 2007.

8  
9  
10 **Q. Does Windstream's transit tariff include a rate for end office transit?**

11 A. Yes.

12  
13 **Q. Does Windstream agree that the RLECs, or any party, may use Windstream's end  
14 offices to transit traffic to third parties subtending Windstream's network?**

15 A. No. End offices are classified as Class 5 facilities which are not designed to function as  
16 tandem facilities. In fact, I am not aware that any RLEC in this proceeding has disputed  
17 that fact or that any of them hold out their own end offices to be used as tandem facilities  
18 (and certainly not for free).

19  
20 **Q. Why then did Windstream include an end office rate in its transit tariff?**

21 A. Windstream included an end office transit rate strictly as a deterrent to the RLECs  
22 continuing to misuse Windstream's end offices to transit their traffic to third parties. At  
23 the time that Windstream filed its transit tariff, the RLECs that were continuing to  
24 misroute their traffic through Windstream's end offices (and without compensation to

1 Windstream) had failed to take action to reroute their traffic properly. The proper course  
2 of action would be to route the transit traffic to a Windstream or other appropriate  
3 tandem.

4  
5 **Q. Was the transit tariff successful in this regard?**

6 A. Yes. Since the filing of Windstream's transit tariff, several of the RLECs have cooperated  
7 with Windstream to route their transit traffic away from Windstream's end offices.  
8 However, I should note that one RLEC, Brandenburg Telephone, continues to misroute  
9 traffic through Windstream's end office in Elizabethtown (and without any compensation  
10 to Windstream). As noted in this proceeding and in Case No. 2008-00203, Brandenburg's  
11 traffic is not destined for delivery to a carrier that subtends Windstream's network and,  
12 therefore, may not be properly considered transit traffic. Although it has been suggested  
13 that Brandenburg Telephone's traffic delivered through Windstream's end office in  
14 Elizabethtown is transit traffic, Brandenburg Telephone, nevertheless has refused to  
15 reroute the traffic away from Windstream's end office and through the proper tandem in  
16 Louisville and further has failed otherwise to compensate Windstream for the continued  
17 use of Windstream's network. The other RLECs in this matter, however, have since  
18 worked to reroute their transit traffic away from Windstream's end offices and, in fact,  
19 away from Windstream's network altogether.

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21  
22 **Q. Does Windstream intend to withdraw the section of the transit tariff setting forth a**  
23 **rate for end office transit service?**

1 A. Initially, Windstream intended to withdraw the higher end office transit rate from the  
2 transit tariff once the offending RLECs had rerouted their traffic properly through a  
3 tandem, since as I noted previously, this end office transit rate was intended only to deter  
4 certain RLECs from continuing to misroute their traffic. However, given the actions of  
5 Brandenburg Telephone described above and in more detail in Case No. 2008-00203,  
6 Windstream has not been able to withdraw the end office transit tariff rate. Regardless,  
7 Windstream does not hold out its end offices to third parties as providing tandem  
8 functionalities and will retain the higher end office transit tariff rate to deter such action  
9 and ensure proper compensation to Windstream for so long as a carrier like Brandenburg  
10 Telephone continues its abuse of Windstream's network.

11

12

13

14 **Q. Did Windstream also include a tandem transit switching rate in its transit tariff?**

15

16 A. Yes. The tandem transit switching rate is not intended as a deterrent and is being made  
17 available to carriers in the event that they choose to subscribe to tandem transit service  
18 from Windstream via tariff in lieu of a negotiated transit agreement.

19

20 **Q. Has any carrier chosen to subscribe to the tandem transit tariff service?**

21 A. Yes. Windstream's experience, and preference for that matter, is that most carriers  
22 negotiate an agreement providing for such tandem transit service. However, since the  
23 filing of Windstream's transit tariff, one carrier in Kentucky has used Windstream's  
24 tandem to transit its traffic to third parties subtending Windstream's network and has  
25 remitted payment to Windstream for such service pursuant to the transit tariff.

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**Q. Given Windstream's stated preference for negotiated agreements, does Windstream have agreements providing for tandem transit service?**

A. Yes. Windstream has many negotiated agreements with carriers in Kentucky (including the Intervenors in this case) setting forth the rates, terms, and conditions for tandem transit service.

**Q. Do any of the agreements you reference above provide for transit service through a Windstream end office?**

A. No, they absolutely do not.

**Q. Did Windstream attempt to negotiate such a tandem transit agreement with the RLECs?**

A. Yes. Windstream initially approached the RLECs in an attempt to negotiate movement of their traffic away from Windstream's end offices and entry of an appropriate tandem transit agreement that would require the RLECs to compensate Windstream for their use of Windstream's network.

**Q. Were the RLECs receptive to such negotiations?**

A. No. While they indicated that they would negotiate with Windstream, they made it clear that they would do so only after they completed negotiations with AT&T Kentucky for transit service. Despite the RLECs' representations, Windstream learned that the RLECs were not actively engaged in negotiations with AT&T Kentucky. Thus, while the RLECs

1 were refusing to enter into a tandem transit agreement with Windstream in a timely  
2 fashion, they were also refusing to move their transit traffic away from Windstream's end  
3 offices and also to compensate Windstream for their continued use of Windstream's  
4 network. After Windstream filed its transit tariff, Windstream attempted again to  
5 negotiate agreements with the RLECs by requesting that the Commission enter a  
6 temporary suspension of the tariffed rates and enter a schedule providing for definite  
7 negotiation timeframes (including Windstream serving a bona fide request on the RLECs,  
8 the RLECs requesting copies of Windstream's cost support for the tariffed local transit  
9 rates, and Windstream providing monthly status reports).

10  
11 **Q. Since the filing of Windstream's transit tariff, have any of the RLECs entered into**  
12 **negotiations with Windstream for a transit agreement?**

13 A. Yes, while I have discussed the RLECs throughout my testimony in a collective manner,  
14 I should note that Highland Telephone is situated differently from the other RLECs.  
15 Windstream is Highland Telephone's tandem provider. Highland Telephone has been  
16 working to reach a tandem transit agreement with Windstream. I am not directly involved  
17 in those negotiations, but I understand that due to concerns with the pendency of this  
18 matter, Windstream has not returned the last draft of the agreement to Highland  
19 Telephone but does acknowledge Highland Telephone's efforts to negotiate an  
20 agreement.

21  
22 **Q. Is Windstream's transit tariff appropriate?**

1 A. Yes. As noted, Windstream continues to prefer negotiated transit agreements, but in the  
2 event that a carrier desires to purchase services pursuant to the tariff instead or that a  
3 carrier refuses to negotiate a proper agreement, then the transit tariff ensures that  
4 Windstream is appropriately compensated for the use of its network by that carrier.  
5 Indeed, the RLECs' opposition to the notion of a transit tariff is astounding given that  
6 they have or concur in access tariffs that include charges for tandem switching of access  
7 traffic. Put another way, the RLECs (namely, Mountain Rural, South Central,  
8 Brandenburg Telephone, Duo County, and West Kentucky) recover tandem transit  
9 charges for access traffic which is similar to Windstream's transit tariff which recovers  
10 tandem transit charges for local traffic. For example, in the access tariff (PSC KY No.  
11 2A) of Duo County in which all of the RLECs concur, a "Tandem Switching" rate is  
12 referenced to recover "a portion of the costs of switching traffic through an access  
13 tandem." (Duo County tariff page 6-8.5; §6.1.3(A)(3)(a))

14  
15  
16 **Q. Have the RLECs or the intervenors experienced any actual harm as a result of the**  
17 **presence of Windstream's transit tariff?**

18  
19 A. No. Although they claim to have suffered harm, the record is without any substantiation  
20 of such claims. In the case of the intervenors who have negotiated tandem transit  
21 arrangements with Windstream, the transit tariff is irrelevant as it expressly only applies  
22 in the absence of a negotiated agreement. In the case of the RLECs who have not  
23 negotiated tandem transit agreements, they have not experienced any harm to date and  
24 only have been required to properly reroute their traffic (with the exception of  
25 Brandenburg Telephone who has failed to do so) and otherwise have been asked to  
26 compensate Windstream for their use of Windstream's network. Indeed, the only matter

1 to which the RLECs have pointed in support of their asserted claim of “harm” is actually  
2 a misnomer. What the RLECs have mislabeled as actual “harm” is more accurately the  
3 requirement to compensate another carrier for their use of that carrier’s network to transit  
4 their traffic. In fact, if the requirement to compensate another carrier for the use of that  
5 carrier’s tandem were actual “harm” as the RLECs have suggested, then the RLECs  
6 would be said to have been inflicting harm on the carriers to whom they have assessed a  
7 tandem switching charge for access traffic.

8  
9 **Q. Given your response above regarding asserted actual “harm,” what do you**  
10 **understand is the primary reason that the RLECs have stated that they continue to**  
11 **oppose Windstream’s transit tariff?**

12 A. Again, the RLECs have not asserted any substantiated claim of actual harm. In their  
13 recent filings, they have asserted (without supporting proof) that they are primarily  
14 concerned that they may experience some future harm, specifically that third parties may  
15 pass traffic onto their networks through Windstream’s network and they would be unable  
16 to collect reciprocal compensation from the third parties.

17  
18  
19 **Q. Are the RLECs’ stated concerns regarding reciprocal compensation accurate?**

20  
21 A. Absolutely not. As an initial remark, it is ironic that the RLECs have asserted that they  
22 could experience harm from having traffic delivered to their networks without  
23 compensation given their actions in directly routing their transit traffic through  
24 Windstream’s network without any compensation to Windstream. As to their claims  
25 about foregone reciprocal compensation, however, the RLECs are misguided. As is

1 common in transit arrangements, Windstream would provide the RLECs with records  
2 reflecting the originator of the third party traffic thereby providing the RLECs the ability  
3 to bill the third parties for the traffic being routed indirectly through Windstream's  
4 network to the RLECs' networks. In fact, Highland Telephone already receives such  
5 transit records from Windstream.

6

7 **Q. Does this conclude your direct testimony?**

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9 A. Yes, at this time.

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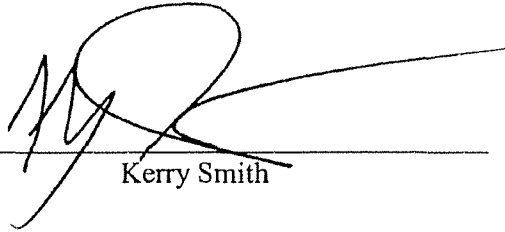
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**AFFIDAVIT**

STATE OF ARKANSAS )

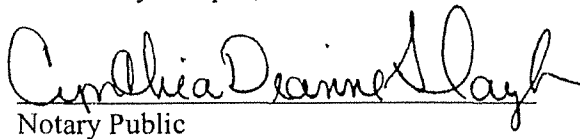
COUNTY OF PULASKI )

Kerry Smith, being duly sworn according to law, deposes and says that he is employed by Windstream Communications, Inc. as Staff Manager of Wholesale Services; that in this capacity he is authorized to and does make this Affidavit on behalf of Windstream Kentucky East, LLC ("Windstream"); and that the facts set forth in the foregoing testimony are true and correct to the best of his knowledge, information and belief.

  
Kerry Smith

Sworn and Subscribed to before me this 21<sup>st</sup> day of April, 2009.

(SEAL)

  
Cynthia Dianne Slay  
Notary Public

My Commission Expires:

August 10, 2016



CERTIFICATE OF SERVICE

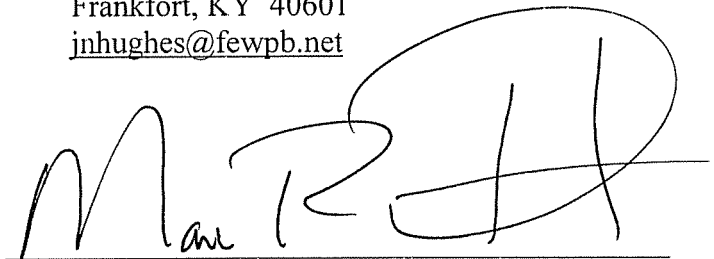
I hereby certify that a copy of the foregoing was United States First Class Mail, postage prepaid, on this 21<sup>st</sup> day of April, 2009 upon:

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

Mark R. Overstreet