

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

Brandenburg Telephone Company, et. al.)
)
Complainants)
)
v.)
)
Windstream Kentucky East, LLC)
)
Defendant)

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JUN 10 2009

PUBLIC SERVICE
COMMISSION

Case No. 2007-00004

RESPONSE TO RLEC MOTION TO AMEND PROCEDURAL ORDER

Windstream Kentucky East, LLC (“Windstream East”), by counsel, hereby submits this Response to the Motion to Amend Procedural Order or, in the Alternative, Order Windstream's Transit Rates Unfair, Unjust, and Unreasonable (“RLECs' Motion”) filed by Complainants (the “RLECs”)¹ on June 8, 2009:

1. Windstream East consistently has maintained that any cost study ultimately is irrelevant to the issues in this proceeding as transit rates are not required by law to be TELRIC-based. Nevertheless, because Windstream East had used an available TELRIC cost model as a proxy to determine the transit rates at issue, it initially filed a copy of the requested cost study in a .pdf (“imaged”) format in December 2007.

2. For more than a year, until the RLECs' initial discovery requests to Windstream were filed in this matter on February 19, 2009, Windstream East received no request or inquiry from

¹ The RLECs include 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.

the RLECs to provide the cost study in another format, nor did the RLECs follow up with Windstream East regarding any other aspect of the cost study.

3. On March 11, 2009, the RLECs sought an extension of time in which to file their initial discovery responses as some of the RLEC representatives were attending a Kentucky Telephone Association meeting. Windstream East did not oppose the RLECs' request but asked that the response date be extended for all parties to avoid prejudice to any party. The date was extended for all parties from March 12 to March 20, 2009.

4. In their initial discovery requests to Windstream submitted on February 19, 2009, the RLECs asked over thirty-five questions but included only minimal questions regarding Windstream East's cost study which had been filed since December 2007. With direct testimony due on April 21, 2009, the RLECs sought another round of discovery on April 15, 2009, claiming that they needed further discovery regarding Windstream East's cost study which, again, the RLECs had for more than a year.

5. The RLECs served their additional discovery questions to Windstream East on May 5, 2009, and Windstream East provided responses thereto on May 19, 2009. Several of Windstream East's responses noted that the RLECs could review the extremely voluminous requested documents at Windstream East' corporate headquarters in Little Rock, Arkansas upon reasonable notice.

6. Windstream East received no further communication from the RLECs regarding the discovery responses for ten days until late in the afternoon on Friday, May 29, 2009. At that time, counsel for the RLECs notified counsel for Windstream East that the RLECs' expert witness needed to travel to Little Rock to review the requested documents and was only available

on the following Tuesday and Wednesday (June 2nd and 3rd). Despite having barely one business day's notice, Windstream East arranged accommodations for the RLECs' witness.

7. Upon arriving in Little Rock the morning of June 2, the RLECs' witness advised Windstream East's representatives that he had been notified by the RLECs' counsel that he was required to be in Little Rock on June 2nd and 3rd in order to review the cost study materials. However, the witness stated that he had conference calls on other matters through the morning of June 2nd and could not convene with Windstream East representatives until later that morning or early afternoon. Windstream East provided accommodations for the RLECs' witness to take his conference calls.

8. Later in the day on June 2nd, the RLECs' witness met with Windstream representatives to review the documents. Contrary to the allegations set forth in the RLECs' Motion, the documents that were requested by the RLECs in the prior data requests were made available to the RLEC witness.

9. After reviewing the documents, however, the RLECs' witness had several additional questions regarding the cost study or Windstream East's methodology. Windstream East representatives answered some of the questions, but advised the witness that for several of the questions, they would need to verify some of the information with an employee who was on vacation at that time. The additional questions were as follows: (1) How was the common cost allocated in light of the investment having been moved? (2) How was the ratio for the common allocations to tandem in the switch model developed? (3) What detail supported the development of the circuit and switch P&C factors? (4) Why was 5% additional material added for "Other Material" on the materials factor page? (5) What is the standard fiber size used in the cable optimization process? and (6) Why did the tandem amount for Ashland change?

10. The additional questions by the witness effectively constituted further discovery by the RLECs. Windstream East had previously objected to further discovery attempts by the RLECs as Windstream East believes same are procedurally improper and also ultimately irrelevant to this proceeding. Nevertheless, in an effort to accommodate the RLECs' witness, Windstream East representatives made a good faith attempt to answer the further discovery attempts on an informal basis and without requiring that the RLECs submit formal discovery through another request to the Commission.

11. The RLECs' Motion in all respects asserts incorrectly that "many documents were made available for inspection" but that "many other important documents responsive to the second round of requests were unavailable for inspection and review in Little Rock." (p. 2 of the RLECs' Motion) To reiterate, the requested documents were made available, as acknowledged by the RLECs' own witness who left the afternoon of June 2, 2009 without requiring further time on June 3, 2009 as he stated he had reviewed everything he needed to review. More accurately, what is outstanding are the responses to yet further discovery questions that Windstream East representatives agreed to provide on an informal basis as a courtesy to the RLECs' witness.

12. The RLECs' Motion is without merit, as is the RLECs' contention that Windstream East has exercised "obstructive acts to frustrates a meaningful review of its transit costs." (p. 4 of the RLECs' Motion) To the contrary, Windstream East filed a copy of a cost study it used as a proxy even though transit rates are not required to be TELRIC based. It has agreed to a prior extension requests by the RLECs when such requests did not result in prejudice to Windstream East (*e.g.*, the request for further discovery on a matter that the RLECs had had for over a year). Windstream East made two representatives available on barely one business day's notice and provided accommodations for the RLECs' witness to conduct other business. Finally,

Windstream East extended the courtesy of following up with the RLEC witness on several additional questions on an informal basis to avoid the need for a more formal discovery request. Indeed, none of these allegations of obstruction were raised with counsel for Windstream when the RLECs requested this extension on June 4, 2009. Indeed

13. Despite Windstream East's actions to accommodate the RLECs' requests, the RLECs have sought another last minute extension of another deadline in this proceeding and suggested that their lack of preparedness is the fault of Windstream East. The RLECs' Motion is factually and legally without merit.

14. With the supplemental testimony deadline being due on June 9, 2008, the RLECs contacted local counsel for Windstream East on June 4 to request an extension from June 9 to June 23 to file their supplemental testimony. In-house counsel for Windstream East was traveling until June 8, 2009. While counsel was confirming Windstream East's witness availability for the corresponding shift in dates for Windstream East's rebuttal testimony (prompted by the RLECs' request for extended testimony deadlines), the RLECs filed their Motion.

15. Windstream East generally agrees to extensions unless it is prejudiced thereby. In fact, its counsel contacted the RLECs' counsel on Monday, June 8, 2009 and stated Windstream had no opposition to the requested extension, but that because of the unavailability of its witness it needed until July 15, 2009 to file its Rebuttal..

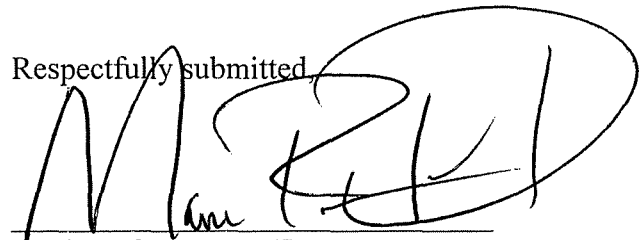
16. The RLECs have requested an extension until June 23 to file their supplemental testimony. If granted, then the date for rebuttal testimony would likewise need to be shifted to July 15, 2009 to accommodate Windstream East's witness availability. Windstream East does not object to these shifts in the schedule.

17. As the record in this matter clearly demonstrates that there has been no effort by Windstream East in this matter to obstruct any efforts by the RLECs. The RLECs' Motion should be denied in all respects except as to amend: (i) the date for the RLECs' testimony to June 23, 2009; and (ii) amend the date for Windstream's rebuttal testimony to July 15, 2009.

WHEREFORE, Windstream East requests that the Commission deny the RLECs' Motion in all applicable respects as set forth in this Response and grant all other relief to which Windstream East is entitled.

This 9th day of June, 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', is written over a horizontal line. The signature is stylized and somewhat cursive.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by e-mail transmission on June 9, 2009 upon the following persons:

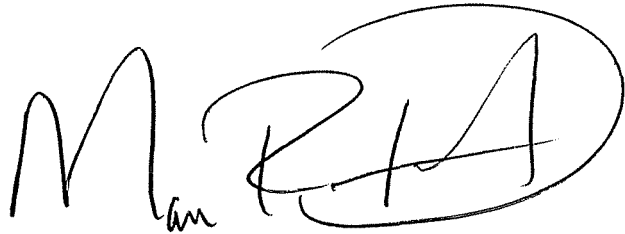
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A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', written over a horizontal line. The signature is stylized and cursive.

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