

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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JUL 17 2009

PUBLIC SERVICE
COMMISSION

Case No. 2007-0004

PREFILED REBUTTAL TESTIMONY OF KERRY SMITH

ON BEHALF OF

WINDSTREAM KENTUCKY EAST, LLC

July 17, 2009

Counsel to Defendant:

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

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

4

5 **Q. Have you previously caused testimony to be prefiled in this proceeding?**

6 **A.** Yes, I filed Direct Testimony in this proceeding on behalf of Windstream Kentucky East,
7 LLC ("Windstream") on April 21, 2009.

8

9 **Q. What is the purpose of your testimony in this proceeding today?**

10 **A:** The purpose of my rebuttal testimony is to respond to certain assertions set forth in the
11 Direct and Supplemental Testimony of William W. Magruder and Douglas Duncan
12 Meredith filed on behalf of Complainants (herein, "the RLECs"). Specifically, I will
13 rebut the RLECs' erroneous assertions that Windstream's transit tariff at issue in this
14 proceeding is not an appropriate means for compensating Windstream when a carrier uses
15 Windstream's facilities for transit service and otherwise fails to negotiate an agreement
16 with Windstream to provide for such compensation.

17

18 **Q. Do you agree with the RLECs' contention (see, e.g., Magruder Direct Testimony**
19 **page 4, lines 8-19) that the RLECs are not "end-users or general customers of**
20 **Windstream" or that the charges for local transit service were not properly filed as**
21 **part of Windstream's local tariff?**

22 **A.** No, the RLECs' suggestion is without merit. To begin, the RLECs are or were using
23 Windstream's network to avail themselves of transit service. Thus, their suggestion that

1 they were not a customer of Windstream is wholly without merit. Additionally,
2 Windstream's transit traffic tariff applies to the transiting of local traffic, and the
3 provisions pertaining to the transiting of local traffic are set forth in Windstream's
4 General Customer Services Tariff which addresses many rates, terms, and conditions
5 pertaining to local traffic. The RLECs, who have not negotiated local transit traffic
6 agreements with Windstream, are or were using Windstream's network to perform such
7 local transit traffic functions. Put another way, the RLECs are or were using
8 Windstream's local transit traffic service (and are or were end users of Windstream with
9 respect to that service). The RLECs can choose to "unsubscribe" to Windstream's local
10 transit tariff service by routing their traffic without the use of Windstream's network or
11 by negotiating a proper transit agreement with Windstream. Consequently, Mr.
12 Magruder's suggestion that adding local transit tariff language to the local tariff was
13 "unfair" is self-serving as the RLECs certainly had been aware that they were directing
14 their originating local transit traffic to Windstream's network.

15
16 **Q. Do you agree with Mr. Magruder (Direct Testimony page 11, line 7) that the terms**
17 **of Windstream's transit tariff are "confusing and unworkable"?**

18 **A.** Absolutely not. Windstream's transit tariff sets forth clear and unambiguous terms
19 allowing a telecommunications service provider to indirectly connect with a carrier
20 subtending Windstream's tandem in order to send and receive local transit traffic through
21 a Windstream tandem. As explained in my Direct Testimony, Windstream's transit tariff
22 also includes a provision for connection at an end office, but that rate is included only as
23 a deterrent to provide an incentive for a carrier to properly route local transit traffic

1 through Windstream's tandem instead of an end office. Further, although the RLECs
2 argue that Windstream's transit tariff is unclear in its definition of local traffic, the clear
3 language of the tariff does not support that argument. Section S11.1.1(D) of the tariff
4 expressly defines local traffic as being “any intraLATA circuit switched call transiting
5 [Windstream’s] network that originates from and terminates to carriers other than
6 [Windstream], and for which [Windstream] does not collect toll charges or access
7 charges, either directly or indirectly, as the intraLATA toll provider for the end user”.
8 Thus, although the RLECs contend that the scope of intraLATA calls to which
9 Windstream's transit tariff applies is unclear, the definition expressly establishes that it
10 applies only to local calls. Toll and access charges are excluded.

11
12 **Q. Are the RLECs required to purchase local transit service from Windstream only**
13 **through transit tariff?**

14 **A.** No. The RLECs could (and in fact Windstream would prefer that the RLECs) negotiate
15 an appropriate transit agreement with Windstream for the exchange of the RLECs’ local
16 traffic through Windstream’s tandem offices. Mr. Magruder acknowledged in his Direct
17 Testimony (see, *e.g.*, page 6, line 21) that negotiating such an agreement is an option but
18 only so as long as Windstream would not require payment of transit charges by the
19 RLECs. The RLECs’ unwillingness to pay for their use of Windstream’s network to
20 exchange their traffic indirectly to third party carriers confirms that negotiation of
21 appropriate transit agreements with the RLECs would be pointless. In fact, as I noted in
22 my Direct Testimony, Windstream previously attempted to negotiate an agreement with
23 the RLECs, but the RLECs declined to engage in any meaningful negotiations.

1 Nevertheless, at this time, it appears that transit agreements may not be necessary as the
2 RLECs (other than Highland Telephone and Brandenburg) are not routing their local
3 traffic through Windstream's network. Contrary to Mr. Magruder's suggestion in his
4 Direct Testimony on page 9 at line 15 implying that Windstream's transit tariff leaves the
5 RLECs "unguarded," Windstream has always been willing to negotiate in good faith a
6 reasonable transit agreement. Ironically, Mr. Magruder complains on page 5, line 11 of
7 his Supplemental Testimony that the RLECs "have been exposed to lost revenues." Yet,
8 at the same time, the RLECs contend that they should not have to pay transit charges to
9 Windstream either through the tariff or through a negotiated agreement. Thus, the
10 RLECs' argument is that Windstream should allow the RLECs to use Windstream's
11 network without any compensation to Windstream. The RLECs' refusal to compensate
12 Windstream for their use of Windstream's network leaves Windstream, to use Mr.
13 Magruder's term, "unguarded" and open to the unreasonable confiscation of its network
14 by the RLECs.

15
16 **Q. Mr. Magruder's entire testimony seems to suggest that the RLECs have to use**
17 **Windstream's network to route their local transit traffic to a third party. Do you**
18 **agree?**

19 **A.** No. The RLECs are free to establish direct connections with third party carriers with
20 whom the RLECs exchange traffic. In the event that the RLECs directly connect with the
21 third party carriers, then Windstream's transit tariff would be irrelevant. However, if the
22 RLECs choose to indirectly connect with such third party carriers through the use of
23 Windstream's network and decide also not to enter into a transit agreement with

1 Windstream, then Windstream's transit tariff ensures that the RLECs compensate
2 Windstream for their decision to use Windstream's network to exchange their traffic. The
3 RLECs should not be permitted, however, to avoid the cost of direct connection by using
4 Windstream's network to indirectly deliver their traffic to the third party carriers for free.

5
6 **Q. Does the RLECs' testimony confirm whether they or the terminating third parties**
7 **with whom the RLECs are exchanging traffic have sought such direct connections**
8 **with each other?**

9 **A.** No. Additionally, Windstream does not have any information regarding such negotiations
10 that may or may not have occurred between the RLECs and third party carriers.
11 However, I can say that my review of the transit traffic flowing from the RLECs through
12 Windstream's network indicates that the RLECs (with the exceptions of Highland
13 Telephone and Brandenburg as addressed in my Direct Testimony) have made alternative
14 arrangements to exchange their local traffic with third party carriers. In the case of
15 Highland Telephone, it entered into negotiations with Windstream, but those negotiations
16 broke down because Highland Telephone continued to insist that it should not be required
17 to compensate Windstream under an agreement.

18
19 **Q. Do you agree with Mr. Magruder's contention (see, e.g., Supplemental Testimony,**
20 **page 3 at line 4) that Windstream should not terminate third party traffic on the**
21 **RLECs' network without authorization or agreement?**

22 **A.** No. This suggestion has no relevance to Windstream's transit tariff. Mr. Magruder's
23 comments describe third party traffic terminating to the RLECs (and not traffic

1 originating from the RLECs). If Windstream were to do as Mr. Magruder suggests,
2 Windstream would be blocking third party traffic. Indeed, such a suggestion also seems
3 to imply that Windstream would need to reciprocally block the RLECs' traffic
4 terminating to the third party carriers. Mr. Magruder's proposal is meant to muddy the
5 issue at hand which is the RLECs' compensation to Windstream for their use of
6 Windstream's network to indirectly connect to third parties. More appropriately, if the
7 RLECs desire to terminate their indirect connections with third parties, then the RLECs
8 may negotiate direct connections with the applicable third parties. For the RLECs to
9 suggest that Windstream should police the RLECs' connections with third parties or that
10 the RLECs may simply avoid negotiations with third parties by directing their RLEC
11 traffic through Windstream's network without any compensation by the RLECs to
12 Windstream is self serving in the extreme.

13
14 **Q. In their testimony, did the RLECs suggest changes to Windstream's TELRIC cost**
15 **study?**

16 A. Yes, although I should emphasize again that transit rates need not be established pursuant
17 to TELRIC methodologies. While the attorneys will brief this issue, I can say that
18 ultimately, none of the RLECs' testimony regarding changes or asserted flaws in the cost
19 study has any impact on Windstream's transit tariff rates. For this reason, Windstream
20 does not believe it is necessary to address in detail Mr. Meredith's testimony, but I will
21 address a couple of points below.

22

1 **Q. Was Windstream required to have used, as suggested by Mr. Meredith**
2 **(Supplemental Testimony page 6, line 1), Softswitch technology in modeling its**
3 **switch and calculating its switch investment used to develop transit rates?**

4 **A.** No, Mr. Meredith is incorrect that use of this technology is a requirement. Although
5 Softswitch technology can be used to provide transit service, Mr. Meredith is incorrect in
6 stating that it is a major failure of Windstream's study to not use it. At the time the cost
7 study was prepared, Softswitch technology was not readily available to Windstream, nor
8 feasible to use in Windstream's calculations. While Mr. Meredith states that Softswitch
9 technology may be one half the cost of the technology used by Windstream, Mr.
10 Meredith fails to identify that the cost mentioned in his statement is a bare minimum cost
11 for the Softswitch technology, which does not include all the software and hardware
12 redundancy required to connect the Softswitch to the network as it currently exists.
13 Regardless, use of Softswitch technology is not a requirement, and Mr. Meredith's
14 opinion that it was "required" is merely an opinion. Again, ultimately the issue has no
15 bearing on Windstream's transit tariff rates.

16
17 **Q. Do you agree with Mr. Meredith's assertions (Supplemental Testimony, page 10)**
18 **that there should be operational efficiency in a forward-looking cost model?**

19 **A.** I disagree with the statement that there should be some operational efficiencies with the
20 Softswitch technology. As I pointed out in the prior response, Windstream does not
21 currently experience efficiencies with the Softswitch technology. Windsteram has
22 experienced higher installation costs and recurring maintenance fees with the Softswitch
23 technology due to the additional requirements necessary to make the bare bones

1 Softswitch compatible with the existing network. This effectively removes some if not all
2 of the cost savings and operational efficiencies that Mr. Meredith implies the Softswitch
3 has over older technology.

4
5 **Q. Do you agree with Mr. Meredith's statement that Windstream used incorrect joint**
6 **assignments in its cost study (Supplemental Testimony, pages 7 and 8)?**

7 **A.** Yes. In general, Windstream agrees that all three of the joint assignments identified by
8 Mr. Meredith could have been incorrectly assigned to the tandem portion of the
9 calculation. In general, he is correct that those items, by themselves, would not be
10 assigned to the tandem function. It is unclear if those items are correctly labeled as
11 separate and independent items of equipment or if they include other equipment that
12 could be assigned to the tandem (such as the central processor, the brains of the switch
13 and not separately identified elsewhere in the cost study). We would have to evaluate the
14 entire study to determine if these three items were considered separate and independent
15 and did not include other equipment used by the tandem.

16
17 **Q. Since the discovery responses were filed in this matter, has Windstream had an**
18 **opportunity to run an updated TELRIC cost study from the version Windstream**
19 **originally produced in this proceeding in response to the RLECs' First Data**
20 **Request Nos. 19 and 20?**

21 **A.** Yes. Again, Windstream does not believe that a TELRIC cost study ultimately has any
22 relevance to the final transit tariff rates in this proceeding. Nevertheless, with the passage
23 of time since Windstream first submitted its transit tariff rates, Windstream revisited its

7
1 initial cost study. The results were updated rates of \$0.0041 for the tandem transit service
2 and \$0.0055 for the deterrent end office routing (as compared to the filed tariffed rates of
3 \$0.0030 for the tandem rate and \$0.0045 for the deterrent end office rate). Windstream is
4 not seeking to substitute these updated rates for the filed tariffed rates. A confidential
5 copy of the updated study is attached to my Rebuttal Testimony as Exhibit A (filed under
6 seal), and Windstream also is providing a confidential copy of the updated study as a
7 supplement to the aforementioned data requests.
8

9 **Q. Does this conclude your Rebuttal Testimony?**

10 **A. Yes.**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by United States First Class Mail, postage prepaid, on this 17th day of July, 2009 upon:

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