

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.,

COMPLAINANT

v.

Windstream Kentucky East, LLC.

DEFENDANT.

CASE NO. 2007-00004

RECEIVED

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**PUBLIC SERVICE
COMMISSION**

**DEFENDANT'S RESPONSE TO MOTION TO STRIKE TESTIMONY OF KERRY
SMITH AND THE COST STUDY ATTACHED THERETO AS EXHIBIT A AND
SUBMITTED AS A SUPPLEMENTAL RESPONSE TO COMPLAINANTS' DATA
REQUESTS**

The Complainants, 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"), have moved to strike certain rebuttal testimony filed by Kerry Smith on behalf of Windstream Kentucky East, LLC ("Windstream") along with an updated TELRIC study attached to Mr. Smith's testimony as Exhibit A. As grounds for this motion, the RLECs maintain that they "repeatedly requested from Windstream, the TELRIC cost studies and cost study data that allegedly substantiate"

Windstream's tariffed transit rates, that Windstream engaged in "tactics designed to frustrate a meaningful review of its transit costs," and that Windstream only produced its most recent cost study on the eve of the hearing scheduled for this matter. The RLECs' arguments on this issue are without merit and should be rejected by the Commission.

The RLEC's assertions to the contrary, Windstream did not fail to disclose the TELRIC cost study. To the contrary, the original study was performed by Windstream in 2006 and was provided to the RLECs in PDF form in response to an informal request as early as December 4, 2007. The RLECs never requested that Windstream update this original study, instead limiting their data requests to the original study conducted by Windstream in support of its tariffed rates. This fact is confirmed by the language of the data requests referenced by the RLECs in their motion to strike Mr. Smith's testimony and the updated TELRIC study, in which the RLECs sought "a copy of all cost support data Windstream filed with the Commission at the time Windstream filed its Transit Tariff Rate" and "all underlying cost studies or work papers" showing that Windstream's "tariffed transit service rates [are] based on a TELRIC methodology."¹ There is no question that Windstream responded in full to these requests when it provided the RLECs with the original electronic spreadsheet in February, 2009.

The RLECs did not ask Windstream to provide an updated TELRIC cost study and no such study was performed by Windstream between the time it furnished the original study on December 4, 2007 and the time it prepared the updated study in July of 2009.

Windstream filed the updated study as an attachment to Mr. Smith's testimony on July 17, 2009. As such it was timely filed in accordance with the Commission's scheduling order. The RLECs nevertheless maintain that Windstream actually created the updated study on January 8, 2009, and that Windstream waited until the eve of the hearing to disclose it to the

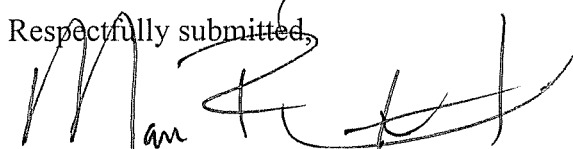
¹ Complainants' Initial Data Requests to Windstream Kentucky East, LLC, Requests 20 and 30 (February 19, 2009).

RLECs. The RLECs err.

The January 8, 2009 date referenced by the RLECs is the date that certain investment data was pulled from Windstream's books in a routine database update.² Nothing was done with the January 8, 2009 data pull at that time, and no cost studies were prepared by Windstream to support its tariffed transit rates at that time. To be clear: the RLECs statement that "[a]ccording to its own date, the TELRIC cost study was updated on January 8, 2009..." is flat out wrong. A simple inquiry to Windstream in the ten days the RLECs expended preparing their motion would have resolved the RLECs' misconception regarding the January 8, 2009 date.

While the RLECs would leave the Commission with the impression that Windstream has somehow acted improperly, the simple facts are that the study was prepared by Windstream only after the RLECs filed their supplemental testimony (a date that was pushed back at the request of the RLECs.) Windstream had no duty to prepare the updated study at any earlier date. Under these facts, there is no basis for the Commission to strike the updated TELRIC cost study or the testimony from Mr. Smith referring to the study. Accordingly, Windstream respectfully requests that the Commission deny the RLECs' motion.

Respectfully submitted,

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

Mark R. Overstreet
STITES & HARBISON, PLLC
421 West Main Street
P.O. Box 634
Frankfort, KY 40602-0634
Telephone: (502) 223-3477

COUNSEL FOR DEFENDANTS,
WINDSTREAM KENTUCKY EAST, LLC

² Other financial data used in the study was not pulled until Windstream's 2008 books closed in February, 2009.

CERTIFICATE OF SERVICE

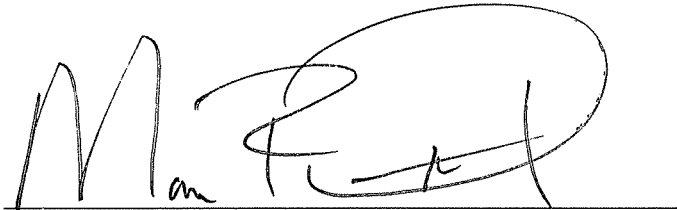
I hereby certify that a copy of the forgoing was served by electronic mail and United States First Class Mail, postage prepaid, on this 28th day of July, 2009 upon:

John E. Selent
Edward T. Depp
Holly C. Wallace
DINSMORE & SHOHL LLP
1400 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
SELENT@DINSLAW.com
tip.depp@dinslaw.com
HWALLACE@DINSLAW.com

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

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

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

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

Mark R. Overstreet