

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MCI COMMUNICATIONS SERVICES, INC.,)	
BELL ATLANTIC COMMUNICATIONS, INC.,)	CASE NO.
NYNEX LONG DISTANCE COMPANY, TTI)	2007-00503
NATIONAL, INC., TELECONNECT LONG)	
DISTANCE SERVICES & SYSTEMS COMPANY)	
AND VERIZON SELECT SERVICES, INC.)	
)	
COMPLAINANTS)	
V.)	
)	
WINDSTREAM KENTUCKY WEST, INC.,)	
WINDSTREAM KENTUCKY EAST, INC. –)	
LEXINGTON AND WINDSTREAM KENTUCKY,)	
EAST, INC. – LONDON)	
)	
DEFENDANTS)	

O R D E R

On December 5, 2007, MCI Communications Services, Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company, TTI National, Inc., Teleconnect Long Distance Services & Systems Company, and Verizon Select Services, Inc. (collectively, "Verizon" or "Verizon IXCs") filed a petition asking the Commission to reduce the switched access charges of Windstream Kentucky West, LLC and Windstream Kentucky East, LLC (collectively, "Windstream," or individually, "Windstream West" or "Windstream East").¹ Verizon states in its complaint that

¹ In Kentucky, Verizon serves as an interexchange or long-distance carrier, while Windstream serves as an incumbent local exchange carrier ("ILEC").

Windstream's intra-state switched access charges must be investigated in light of the dramatic changes in the telecommunications market that have occurred over the past several years and in furtherance of the Commission's previously articulated policy that intra-state access rates should move closer toward rates for inter-state access services.²

Verizon alleges in the petition that Windstream's intra-state switched access rates are "unreasonably high," equaling about eight to 21 times higher than AT&T Kentucky's intra-state access rates, and are not "fair, just and reasonable," as Kentucky law requires. Verizon has calculated the average access revenues per minute ("ARPM") that it pays to AT&T Kentucky and Windstream. Verizon has determined that the Windstream ARPM is 700 percent to 2,000 percent higher than AT&T Kentucky's ARPM.³

On January 17, 2008, Windstream filed an answer, a motion to dismiss the complaint, and a response to a motion to intervene (collectively, "Answer"). In its Answer, Windstream asserts that Verizon's complaint is factually and legally unsubstantiated, as Verizon has failed to prove that forcing Windstream to mirror the rates of another carrier is legally appropriate or that a comparison of Windstream's rates to those of another carrier is a test of reasonableness.⁴ Windstream also argues that Verizon has not presented facts sufficient to justify a reduction of Windstream's rates. Specifically, Windstream states that Verizon fails to acknowledge that Windstream's

² Petition at 1.

³ Id. at 3, 5.

⁴ Answer at 2, 5.

rates may be higher than AT&T Kentucky's but are lower than those of most of the other ILECs in Kentucky. Windstream also states that, in using AT&T Kentucky as a comparison, Verizon fails to acknowledge that in lowering its access rates, AT&T Kentucky correspondingly increased its residential local rates. Further, Windstream contends that Verizon has failed to demonstrate how its ability to effectively compete in the Kentucky long-distance market is harmed by Windstream's current rates or how Verizon's end-users would see any financial or service benefits if the access service rates that Verizon is obligated to pay are significantly reduced. Windstream suggests that state-specific access charge reform is not prudent during this particular time and any action should be stayed pending the resolution of federal comprehensive inter-carrier compensation reform.⁵

As part of its motion to dismiss, Windstream contends that Verizon's petition is not in the public interest, as it advocates for a method of "piecemeal" access charge reform without providing for comprehensive changes and illustrating any potential pass-through savings in rates for Verizon's customers. Windstream categorizes Verizon's request as "one-sided" and states that existing inter-carrier compensation mechanisms are outdated, unsustainable, and in need of a broad-based review and restructuring, comparable to the "Missoula Plan,"⁶ which was supported by a diverse base of carriers,

⁵ Id. at 3-5.

⁶ See Answer at 8. A proposal submitted by the National Association of Regulatory Utility Commissioners ("NARUC") in July 2006 for the FCC's Common Carrier Docket No. 01-92, *Developing a Unified Intercarrier Compensation Regime*. In the Missoula Plan, NARUC sought to reform intercarrier compensation schemes on federal and state levels. Among other items, the Missoula Plan provided proposals to unify reciprocal compensation and access charges across different carriers, technologies, and types of traffic.

outlining potential reform to unify access charges and moving all inter-carrier rates closer while simultaneously dividing jurisdictional power to review these new rate methodologies to both the Federal Communications Commission ("FCC") and state commissions.⁷ Windstream asks that the Commission dismiss Verizon's petition for failure to state a *prima facie* case, but if the Commission determines that the proceeding may go forward, that it do so in a generic proceeding aimed at meaningful, comprehensive access reform for all carriers in the Commonwealth.⁸

On January 14, 2008, Sprint Communications, L.P., Sprint Spectrum L.P., Nextel West Corp., and NPCR d/b/a Nextel Partners (collectively, "Sprint Nextel") moved to intervene in this matter, arguing that its interests would not be adequately represented by any other entity. Sprint Nextel provides wireless and long-distance services in Kentucky and purchases switched access services from Windstream. Sprint Nextel argues that it would be directly affected by this matter, as it concerns the appropriate levels of Windstream's access rates.

On January 17, 2008, BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky") and AT&T Communications of the South Central States, LLC ("AT&T Communications") (collectively, "AT&T") also moved for intervention, alleging that its interests would also not be adequately represented by any other party. AT&T Kentucky provides local and intra-LATA services and argues that, as Verizon has referenced its

⁷ On November 5, 2008, the FCC issued a Further Notice of Proposed Rulemaking that sought comment on a proposed order of the FCC which, among other things, proposed a reform of inter-carrier compensation which includes access charges. The FCC proposal would require states to reform access rates, starting with reducing intrastate access rates to interstate levels.

⁸ Answer at 14-15.

switched access rates in its petition for comparison against Windstream's current rates, AT&T Kentucky has an interest in making sure that the facts of its rates are correctly cited and referenced. AT&T also argues that, as AT&T Kentucky and AT&T Communications provide intra-LATA and long-distance services, AT&T is subject to paying Windstream's switched access rates and that it would be directly affected by any change to those rates. By Order dated February 1, 2008, the Commission granted intervention to both Sprint Nextel and AT&T.

On February 20, 2008, Verizon filed its opposition to Windstream's motion to dismiss, stating that its complaint cannot be dismissed, as Verizon has raised a question of fact regarding whether Windstream's switched access rates are unjust and unreasonable, and that question should be resolved through a process of discovery and a hearing on the petition. On December 1, 2008 and February 17, 2009, Verizon filed letters in the record wherein it discussed recent decisions by various other state commissions on the issue of revising switched access rates charged by certain local exchange carriers across the United States.

DISCUSSION

The need for a comprehensive review of intra-state access charges has been a looming specter over this Commission for a significant period of time. Intra-state access charges are a significant source of revenue for many carriers, especially for incumbent carriers in portions of the Commonwealth that lack a diversity of telephone company options for the consumer base. A formal proceeding on the issue of intercarrier

compensation reform has been pending before the FCC since 2001.⁹ However, as of the date of this Order, the FCC has not issued a substantive ruling establishing a methodology for reforming the way that carriers establish access charges – either on an inter-state or intra-state basis. The Commission is very well aware that the FCC could issue an order that would preempt all state authority in making determinations on access charges – even for in-state telephone traffic. However, the mere existence of that possibility does not dissuade this Commission from the need to address intercarrier compensation. As it stands today, the Commission has the authority to review the equitable and reasonable nature of these charges and, therefore, will act accordingly. The Commission has authority, pursuant to state law, to order electing telephone companies, such as Windstream, to adjust any portion of their intra-state access charges.¹⁰

Windstream's motion to dismiss the complaint is denied. The Commission finds that an investigation into Windstream's switched access rates is necessary. Through its petition, Verizon has raised sustainable questions regarding the reasonableness of the compensation which Windstream currently receives for its access service. The Commission has contemplated potentially establishing a larger administrative

⁹ FCC Common Carrier Docket No. 01-92, *Developing a Unified Intercarrier Compensation Regime*.

¹⁰ See KRS 278.543(3) and (4).

proceeding involving all 18 Kentucky ILECs¹¹ who currently charge intra-state switched access charges. The Commission believes that, if one access carrier argues that the rates it is being charged are inflated or excessive, it is likely that other carriers have the same concern against other incumbents. However, the complexity and size of such an administrative proceeding would potentially be more cumbersome and less fruitful in extracting substantive information on how each access provider is competitively disadvantaged, if at all, by a specific incumbent's prices. The arguments on competitive disadvantage are subjective to each individual carrier and vary greatly based on the number of access lines, geographic service area, carrier size and financial resources, and, most notably, the incumbent charging the particular access rates. Given the potential diversity of carriers who could be involved in a large administrative proceeding to investigate the access rates of the Windstream companies, let alone all of the Kentucky incumbents, the Commission is not convinced that all of those carriers, or their respective residential and commercial subscribers, would be adequately served if their arguments are lost among a variety of voices and risk receiving inadequate recognition or attention.

¹¹ In addition to Windstream East and Windstream West, Kentucky's incumbent carriers are: Ballard Rural Telephone, Inc.; Brandenburg Telephone Company, Inc.; Coalfields Telephone Company; Duo County Telephone Cooperative; Foothills Rural Telephone; Highland Telephone Cooperative; Leslie County Telephone Company, Inc.; Lewisport Telephone Company, Inc.; Logan Telephone Cooperative, Inc.; Mountain Telephone Cooperative, Inc.; North Central Telephone; Peoples Rural Telephone; Salem Telephone Company; South Central Rural Telephone; Thacker-Grigsby Telephone; and West Kentucky Rural Telephone. BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky and Cincinnati Bell Telephone Company are also incumbents but do not charge non-traffic sensitive access rates.

Essentially, the Commission is concerned that, while the argument that Windstream's rates are imbalanced and competitively harmful is valid and deserving of investigation, a large, en masse proceeding against all of the incumbents would not allow the Commission to facilitate an in-depth review of a particular carrier's concerns and would likely result in cursory results, particularly if, by a final Order, each incumbent is required to alter the way it prices the provision of services from a revenue source that is particularly beneficial to each company's intra-state finances. The Commission affirmatively states that an investigation into the issue of intercarrier compensation reform is necessary, but believes the most responsible decision would be to allow Verizon's complaint to go forward on its own merits and allow the Commission to reach a properly framed legal conclusion which could potentially be applied to individual, future carrier-to-carrier access charge complaints.¹²

The Commission finds that the best method by which to conduct an evaluation of Windstream's switched access rates is to allow this complaint to move forward with the current roster of parties, while being mindful that the decisions rendered in this proceeding will likely be applied to future complaints by switched access customers who are similarly situated to Verizon in their allegations and pricing concerns. Verizon has raised a compelling argument that Windstream's current non-traffic sensitive revenue requirement rates have not been modified by Windstream to actively reflect its most recent revenue results and, therefore, are not specifically cost-based and are adversely

¹² The Commission expressly reserves its right to proceed with a large administrative case on the issue of access rates should it determine in the future that cost circumstances and/or significant changes to Kentucky's competitive telephone environment warrant such a review.

affecting the provision of access services by carriers within the Windstream territories. Verizon's petition and subsequent responses have raised genuine questions of fact, and the Commission finds that this complaint proceeding should move forward and that dismissal is not warranted.

Attached to this Order is a procedural schedule designed to allow the parties to move forward with discovery in preparation for a formal hearing, all of which, in the end, will enable the Commission to render a fair, just, and reasonable decision on whether Windstream must modify any portion of the access rates charged to Verizon.


The Commission, being sufficiently advised, HEREBY ORDERS that:

1. Windstream's motion to dismiss is denied.
2. The parties shall abide by the procedural schedule set forth in the Appendix attached hereto and incorporated herein, unless otherwise ordered by the Commission.

Done at Frankfort, Kentucky, this 11th day of March, 2009.

By the Commission

ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2007-00503 DATED MARCH 11, 2009

Initial requests for information shall be exchanged
between the parties and filed with the Commission
no later than.....03/30/09

Responses to initial requests for information
shall be exchanged between the parties
and filed with the Commission
no later than.....04/24/09

Second requests for information shall be exchanged
between the parties and filed with the Commission
no later than.....05/08/09

Responses to second requests for information
shall be exchanged between the parties
and filed with the Commission
no later than.....05/22/09

Prefiled Direct Testimony, if any, in verified prepared
form, shall be filed no later than.....06/19/09

Prefiled Rebuttal Testimony, if any,
in verified prepared form,
shall be filed no later than.....07/10/09

Public Hearing is to begin at 10:00 a.m.
in Hearing Room 1 of the Commission's offices at 211 Sower
Boulevard, Frankfort, Kentucky, for the purpose of cross-examination
of witnessesTo be determined

Briefs, if any, shall be filed by.....To be determined

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