

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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.)	
)	
COMPLAINANTS)	CASE NO.
V.)	2007-00503
)	
WINDSTREAM KENTUCKY WEST, INC.,)	
WINDSTREAM KENTUCKY EAST, INC. –)	
LEXINGTON AND WINDSTREAM KENTUCKY)	
EAST, INC. – LONDON)	
)	
DEFENDANTS)	

O R D E R

On May 29, 2009, an Order was issued in the matter of *Windstream Kentucky West, LLC, et al. v. Kentucky Public Service Commission*, Franklin Circuit Court Case No. 09-CI-00552, wherein the Franklin Circuit Court held that the Commission is enjoined from enforcing its March 11, 2009 Order in this proceeding. As the March 11, 2009 Order included a procedural schedule to be followed by the parties, pursuant to the decision of the Franklin Circuit Court, the Commission finds that this administrative matter is stayed pending the final resolution of the circuit court proceeding.¹ A copy of

¹ See KRS 278.390.

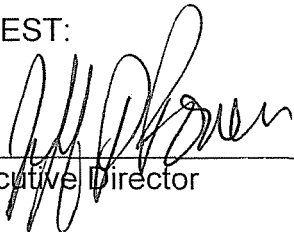
the Franklin Circuit Court's May 29, 2009 decision is provided in the Appendix to this Order.

The Commission, being sufficiently advised, HEREBY ORDERS that this matter is stayed pending the final resolution of the action before the Franklin Circuit Court, as provided herein.

By the Commission

ENTERED
JUN 12 2009
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2007-00503 DATED JUN 12 2009

HECL. 0. 0. 0.
JUN - 2 2009
GENERAL COUNSEL

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 09-CI-00552

ENTERED
MAY 29 2009
FRANKLIN CIRCUIT COURT
SALLY JUMP, CLERK

WINDSTREAM KENTUCKY WEST, LLC, ET AL

PLAINTIFF

V.

ORDER GRANTING STAY

KENTUCKY PUBLIC SERVICE COMMISSION

DEFENDANT

*** **

This matter is before the Court on Plaintiff's Motion to File Designation of Record and Motion to Hold Administrative Hearing in Abeyance, and Defendant's Motion to Dismiss. A hearing on the parties' respective motions was held on April 28, 2009. The Court having considered the arguments of counsel and being otherwise sufficiently advised, hereby GRANTS Plaintiff's Motion to Hold Administrative Hearing in Abeyance, DENIES Defendant PSC's Motion to Dismiss, and DENIES AS MOOT Plaintiff's Motion to File Designation of Record.

The order of the Public Service Commission from which Windstream seeks relief is the PSC's denial of Windstream's Motion to Dismiss an administrative complaint filed by Verizon in which Verizon has alleged that Windstream's rates for intra-state access charges are unjust and unreasonable. While styled as an appeal, the PSC's order is interlocutory in nature and the relief sought is declaratory and injunctive relief. No hearing has been held on Verizon's administrative complaint, no final order regarding the reasonableness of Windstream's rates for intra-state access charges has been issued, and the underlying issue before this Court is whether the PSC has any authority, as an initial matter, to conduct an administrative hearing in this case.

Accordingly, Plaintiff Windstream has filed a Motion to Hold Administrative Proceeding in Abeyance, asking the Court to stay any administrative proceedings until the Court decides whether KRS 278.543(6) gives the PSC authority to review the rates charged by Windstream for intra-state access for purposes of deciding whether they are “just and reasonable.” Windstream argues that, as an “electing utility” that has agreed to cap its rates in return for certain allowances, Windstream is exempt from the Commission’s ratemaking jurisdiction.

Pursuant to the Kentucky Supreme Court’s holding in *Maupin v. Stansberry*, 575 S.W.2d 695, 699 (Ky. App. 1978), injunctive relief is appropriate when: (1) the movant would suffer an irreparable harm; (2) the complaint presents a substantial legal issue on the merits of the claim; and (3) the equities weigh in favor of the issuance of an injunction.

In the opinion of the Court, all three prongs of the *Maupin* test are satisfied here and Windstream is entitled to injunctive relief pending a final ruling from this Court on the merits of its claim. Windstream will suffer irreparable harm if forced to participate in a ratemaking proceeding before the PSC, for which it will have no adequate remedy at law. A substantial issue has been presented on the issue of whether Windstream, as an electing utility, is statutorily exempt from the PSC’s ratemaking authority. And the equities clearly weigh in favor of staying the administrative proceeding pending a final ruling on the agency’s subject matter jurisdiction. The public interest would not be harmed by maintaining the status quo until the issue of the jurisdiction of the Commission can be briefed, argued and decided.

This matter is in the nature of a declaratory judgment action and all documents necessary to the Court's review have been attached as exhibits. Accordingly, Plaintiff Windstream's Motion to File Designation of Record is denied as moot.

Accordingly, for the foregoing reasons, enforcement of the PSC's Order of March 11, 2009, is hereby STAYED pending further orders of this Court. The parties are directed to confer regarding a briefing schedule on all remaining substantive issues, and to submit an Agreed Scheduling Order for the briefing and submission of the case for final decision within 10 days of the entry of this Order.

SO ORDERED this 29th day of May, 2009.


PHILLIP J. SHEPHERD, JUDGE
Franklin Circuit Court, Division I

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