

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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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 )

vs. )

Windstream Kentucky West, Inc. )  
Windstream Kentucky East, Inc. - Lexington )  
and Windstream Kentucky East, Inc. - London )

Defendants

Case No. 2007-00503

**DEFENDANTS' RESPONSE IN OPPOSITION TO MOTION  
TO LIFT STAY AND FOR REVISED PROCEDURAL SCHEDULE**

Come Windstream Kentucky West, LLC and Windstream Kentucky East, LLC (collectively, "Windstream"), by counsel and for their response to the Complainants' Motion to Lift Stay and for Revised Procedural Schedule, state as follows:

As the Public Service Commission ("Commission") is aware, the Complainants filed the petition initiating the above-styled action requesting the Commission to review and reduce Windstream's switched access charges. Windstream then timely filed with the Commission its Motion to Dismiss, Answer and Response to Motion for Full Intervention noting that its intrastate switched access rates were deemed just and reasonable under Kentucky law, that the Complainants had failed to set forth a prima facie case on which its requested relief could be

granted and that Windstream's due process rights had been violated. The Commission denied Windstream's Motion to Dismiss and thereafter set a procedural schedule in the case.

Windstream then filed with the Franklin Circuit Court its Petition on Appeal and/or Original Action For Declaratory Relief asserting, among other things, that as a utility electing to proceed under KRS 278.543, Windstream's rates were deemed, by statute, just and reasonable and the Commission did not have jurisdiction to hold a proceeding to determine whether its intrastate switched access rates were just and reasonable. Windstream's filing was necessary because the Commission's denial of the Motion to Dismiss raised an issue of first impression concerning the interpretation of KRS 278.543.

The Franklin Circuit Court granted Windstream's Motion for a Temporary Injunction and stayed the above-styled administrative proceeding before the Commission during the pendency of the action. Therefore, on June 12, 2009, the Commission entered its Order staying any further proceedings, including responses to data requests, in the above-styled matter, pending the final resolution of the action before the Franklin Circuit Court. On October 19, 2009, the Franklin Circuit Court issued its Opinion and Order ruling in favor of the Commission and the Complainants and against Windstream, and declined to enter a permanent injunction in favor of Windstream enjoining the Commission from proceeding in Case No. 2007-00503.

On October 21, 2009, Windstream filed its Notice of Appeal appealing the decision of the Franklin Circuit Court to the Kentucky Court of Appeals. Thereafter, on October 22, 2009, Windstream filed with the Franklin Circuit Court its Motion to Issue or Maintain Injunctive Relief Pursuant to CR 65.08. On December 1, 2009, Windstream's motion was denied by the

circuit court.

On November 9, 2009, Windstream filed with the Court of Appeals its Motion to Issue or Maintain Injunctive Relief pursuant to CR 65.08. This motion requests the Court of Appeals to enjoin any action in this administrative proceeding until a final decision has been issued in the case pending before the Court of Appeals. Thereafter, on December 2, 2009, Windstream filed its Motion for Expedited Oral Argument on its motion. The Court of Appeals Motion Panel is scheduled to hear pending motions on January 12, 2009.

Windstream opposes the Complainants' Motion to Lift Stay and requests the Commission to deny same. The Commission, in its June 12, 2009 Order, has already indicated that proceedings in this matter are to be stayed pending the final resolution of the action before the Franklin Circuit Court. The action before the Franklin Circuit Court will not be finally resolved until this appeal is resolved. Therefore, there is no reason to change this Order at this time, particularly given that the next action on the appeal is scheduled for as soon as January 12.

Furthermore, the Commission should defer taking any action in this case until the Court of Appeals has ruled on Windstream's pending motion for injunctive relief. The parties have fully briefed Windstream's motion for injunctive relief, and the Court of Appeals could rule on this motion as early as January 12, 2009. It would be impractical for the Commission to grant the Complainants' motion to lift the stay in this case and order the parties to begin discovery again, only to have the Court of Appeals reissue the stay. This is particularly true where the status quo of the circuit court matter involved a temporary injunction and where the court acknowledged the merits of Windstream's arguments. Keeping the current stay in place until the Court of Appeals

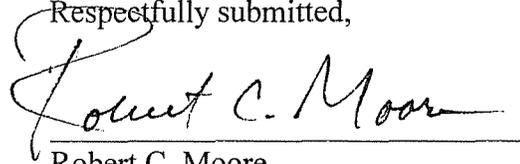
rules on Windstream's pending motion for injunctive relief would avoid any ungainly procedural possibility. As a practical matter, the stay would remain in place over the Christmas and New Years holidays when it would be difficult for any of the parties to devote adequate resources to resuming the procedural schedule.

The Complainants, in their motion to lift the stay, refer to the initial data requests that were served by Commission Staff and assert that they answered the data requests, but Windstream did not. The Complainants fail to acknowledge that Windstream notified the Commission on March 30, 2009, the date the data requests were to be served, that it would be filing its original action with the Franklin Circuit Court. Then, prior to the date the answers to the data requests were due, Windstream filed with the Commission its Motion for Extension of Time to Respond to Data Requests. Subsequently, on May 8, 2009, Windstream filed with the Commission its Motion to Temporarily Stay Procedural Schedule, and on June 12, 2009, the Commission entered its Order staying any further proceedings in the above-styled matter. Accordingly, it cannot be argued that Windstream did not act in good faith with respect to the data requests, and Windstream certainly should not be penalized in this manner for pursuing what it believes are its rights under the clear and unambiguous statutes.

In conclusion, and for the reasons set forth above, Windstream requests the Commission to deny the Complainants' motion to lift the stay at this time. Such a denial would be consistent with the Commission's June 12, 2009 Order staying further proceedings in this matter pending the final resolution of the action before the Franklin Circuit Court. In the alternative, Windstream requests the Commission to defer ruling on the Complainants' Motion to Lift Stay

until the Court of Appeals decides the motion for injunctive relief pursuant to CR 65.08 currently pending before it.

Respectfully submitted,



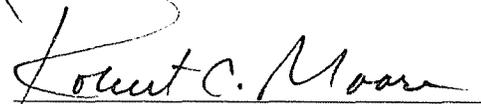
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served upon Douglas F. Brent and C. Kent Hatfield, Stoll, Keenon Ogden, PLLC, 2000 PNC Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202, Dulaney L. O’Roark III, Vice President and General Counsel - Southern Region, Verizon, 5055 North Point Parkway, Alpharetta, Georgia 30022, Kimberly Caswell, Associate General Counsel, Verizon, Post Office Box 110, MC FLTC0007, Tampa, Florida 33601-0110, John N. Hughes, 124 West Todd Street, Frankfort, Kentucky, 40601 and Mary K. Keyer, General Counsel/AT & T Kentucky, 601 West Chestnut Street, Room 407, Louisville, Kentucky, 40203, by placing same in the U.S. Mail, postage pre-paid, this the 16<sup>th</sup> day of December, 2009.



Robert C. Moore