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April 16, 2010

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, KY 40601

*RE: MCI Communications, Inc. et al v. Windstream Kentucky East, LLC et al
Case No. 2007-00503*

Dear Mr. DeRouen:

Enclosed please find an original and ten copies of Verizon's Opposition to Windstream's Motion to Compel Responses to First Data Requests.

Please indicate receipt of this filing by placing your file stamp on the extra copy and returning to me via the enclosed self-addressed postage paid envelope.

Very truly yours,

STOLL KEENON OGDEN PLLC

Douglas F. Brent

DFB:

Enclosures

cc: Service List

105138.116493/571328.1

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 Service & Systems)	
and Verizon Select Services, Inc.)	
)	Case No. 2007-00503
Complainants)	
)	
vs.)	
)	
Windstream Kentucky West, Inc.,)	
Windstream Kentucky East, Inc. – Lexington,)	
and Windstream Kentucky East, Inc. – London)	
)	
Defendants)	

**VERIZON’S OPPOSITION TO WINDSTREAM’S
MOTION TO COMPEL RESPONSES TO FIRST DATA REQUESTS**

Complainants MCI Communications Services, Inc. d/b/a Verizon Business Services, Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions, TTI National, Inc., Teleconnect Long Distance Services & Systems Company d/b/a Telecom*USA, and Verizon Select Services, Inc. (collectively, “Verizon”) hereby respond to the motion to compel filed by Defendants Windstream Kentucky East, Inc. and Windstream Kentucky West, Inc. (collectively, “Windstream”). For the reasons set forth herein, the Commission should deny Windstream’s request to compel Verizon to respond to Windstream’s first data requests.

INTRODUCTION

On February 12, 2010, Windstream served its First Data Requests to Verizon, containing 11 different requests for information. On March 5, 2010, Verizon timely filed its responses to Windstream's data requests, objecting to certain requests on the grounds that they sought information and materials that are irrelevant to the claims and issues in this proceeding. Nearly four weeks later, on March 31, 2010, counsel for Windstream wrote to Verizon and asked that Verizon respond to certain of those objectionable requests anyway (specifically for Request Nos. 1, 2, 6, 10 and 11). *See* Attachment A to Windstream's Motion to Compel. Counsel for Verizon responded by letter on April 2, 2010, explaining in detail why the data requests at issue were objectionable and why Verizon had no obligation to provide the requested material as part of this proceeding. *See* Attachment B to Windstream's Motion to Compel. Windstream nevertheless proceeded to file a motion to compel, asking the Commission to order Verizon to answer these data requests. Although Windstream's motion essentially just repeats the contentions contained in its March 31, 2010 letter to Verizon, it does not address any of the responses Verizon provided in its April 2, 2010 letter, which pointed out the objectionable nature of each of the at-issue requests.

Indeed, while Windstream's motion offers several explanations as to why Windstream might *want* to obtain the requested information from its competitor, it does not explain why it is *entitled* to that information as part of discovery for this particular proceeding. To the contrary, Windstream's attempted justifications for all of the requests at issue seem to spring from a fundamental misperception about the nature of this proceeding. This docket concerns *Windstream's* intrastate switched access rates and, in particular, whether those Windstream rates are just and reasonable. But all of the requests at issue focus on *Verizon*, its affiliates or – in some cases – entirely unrelated third parties. Information about the various business activities of

Verizon (and other entities) is irrelevant to determining what Windstream's intrastate switched access rates should be.

REQUEST NOS. 1 AND 2

Windstream's Data Request Nos. 1 and 2 seek information and documents, respectively, regarding "claims made by *any carrier other than Windstream West or Windstream East* that [Verizon] or [its] affiliate caused intrastate switched access traffic from [their] end user customers to appear to be interstate in nature."¹ Verizon properly objected to these requests as seeking information irrelevant to the claims and issues in this proceeding. As Verizon explained in its objection to Request No. 1:

This proceeding focuses exclusively on the question of whether Windstream's current intrastate switched access rates are unjust and unreasonable. But the information sought by this request will not assist the Commission in resolving that question. To the contrary, this request is explicitly limited to seeking information pertaining to other carriers – not Windstream. Moreover, the request does not even address intrastate switched access rates, but rather seeks information regarding the designation of traffic as intrastate or interstate. Any information regarding any claims that might have been asserted by unrelated third parties outside this proceeding regarding Verizon's designation of traffic is simply irrelevant to the question of what Windstream's intrastate switched access rates properly should be.

Windstream nevertheless attempts to justify these requests as somehow necessary to ascertain the level of harm suffered by Verizon as a result of the unreasonably high switched access rates charged by Windstream. *See* Motion to Compel at 2 ("Verizon alleged ... that it is suffering damage due to Windstream's intrastate switched access rates. The requested information seeks to determine whether Verizon may be engaging in its own version of 'self-help' access reductions and/or not paying the very types of intrastate switched access charges

¹ Unless otherwise indicated, all emphasis has been added.

that [it] complains about in this proceeding.”) But Verizon is not seeking damages in this proceeding – only a prospective reduction in Windstream’s rates. Since there is no claim for monetary relief on behalf of Verizon, the Commission need not determine whether and the extent to which Verizon has engaged in “self-help” or otherwise mitigated its injuries.

It is undisputed that Verizon (like many other interexchange carriers) is a payor of access charges assessed by Windstream and therefore has a sufficient standing and interest to initiate and participate in this proceeding. But that is effectively the sum total of information about Verizon that is relevant here. The only question the Commission needs to resolve in this proceeding is whether Windstream’s intrastate switched access charges are unjust and unreasonable. Knowing whether and to what extent Verizon (or any other payor of Windstream’s access charges) has “self-helped” will not aid the Commission in answering that question. The Commission does not need to know precisely how much Verizon or any other payor of access charges has been harmed by Windstream’s rates in order to determine whether those rates are unjust and unreasonable. Therefore, requests like these that are targeted at precisely determining an access payor’s damages – and any alleged “self-help” or other mitigation of those damages – are simply irrelevant.

DATA REQUEST NO. 6

Like Request Nos. 1 and 2, Data Request No. 6 focuses on the impact that Windstream’s intrastate switched access rates have had on Verizon, rather than on the sole issue before the Commission – *i.e.*, whether those Windstream rates are just and reasonable to begin with. In particular, Request No. 6 seeks information regarding the “local services, offerings, calling plans, products, bundles, or promotions made available” by Verizon’s affiliates to Verizon’s long distance customers from 2006 to the present. Verizon objected to that request as irrelevant

because, rather than seeking information regarding the reasonableness of Windstream's intrastate switched access rates, this request seeks information about Verizon and Verizon's affiliates. Moreover, it does not even address switched access rates, but instead focuses on the various offerings that Verizon's affiliates may have offered to its long distance customers.

Windstream nevertheless suggests that this information is material because "Verizon is alleging in this proceeding that Windstream's intrastate switched access rates render Verizon unable to compete in the long distance market in Kentucky" and that information regarding offerings to Verizon's long distance customers would test that assertion and help "show whether the applicable [long distance] markets in Kentucky are competitive." Motion to Compel at 3. But, again, determining the precise effects that Windstream's intrastate switched access rates have had on Verizon will not help the Commission answer the lone question before it in this proceeding: are those rates reasonable?

To be sure, as Verizon indicated in its response to Request No. 3 in Windstream's First Data Requests, "Windstream's current switched access charges have had and continue to have an adverse impact on Verizon's ability to compete in the Kentucky long distance market, on Verizon's long distance Kentucky retail customers, and on competition in general." In particular, "Windstream's access rates represent an increased and inflated cost to Verizon and other long distance carriers" that ultimately must be passed along in a variety of ways with a variety of adverse effects. *Id.* But, not only is it "difficult to precisely quantify the adverse impact that Windstream's access rates have upon Verizon's ability to compete in the long distance market in Kentucky" (*id.*), it is entirely unnecessary.

The question of whether Windstream's rates are unjust and unreasonable does not depend on whether Verizon's (or any other access payor's) ability to compete in the long distance

market has been impaired a little or a lot. Even if Verizon were able to compete effectively in the long distance market despite having to pay Windstream's intrastate switched access rates, that does not mean those rates are just or reasonable. Because determining precisely how Verizon's ability to compete in the long distance market has been affected will not help the Commission judge whether Windstream's rates are unjust and unreasonable, that information is not relevant for purposes of discovery.

REQUEST NOS. 10 AND 11

Request Nos. 10 and 11 suffer from much the same defect as the other Windstream data requests at issue. Request Nos. 10 and 11 seek information regarding the originating and terminating access minutes of use ("MOUs") that every Kentucky local exchange carrier *other than Windstream* has billed Verizon for each year from 2006 to the present. As with Request No. 6, Windstream suggests this information is necessary to test whether Windstream's current intrastate switched access rates have "render[ed Verizon] unable to compete in the long distance market in Kentucky." Motion to Compel at 4. But, as noted above, the Commission need not determine the extent to which Verizon (or any other payor of Windstream's access charges) has been competitively injured in order to determine whether Windstream's rates are unjust and unreasonable. Information regarding the amount of access MOUs other carriers have billed Verizon will not assist the Commission in determining whether Windstream's current intrastate switched access rates are too high. Accordingly, this Request seeks information irrelevant to this proceeding.

Windstream nevertheless asserts that it should be entitled to responses to Request Nos. 10 and 11 because Sprint and AT&T answered similar requests over their objections. *Id.* at 4. However, as Windstream itself acknowledges, Sprint and AT&T did object to those requests.


The fact that they went ahead and responded to them anyway does not mean that the requests are somehow washed clean and no longer objectionable. Sprint and AT&T presumably had their reasons for responding, despite their valid objections, including perhaps a desire to avoid having to respond to a motion to compel like the present. But Verizon properly objected to those requests and is within its rights to avoid the burden and expense of responding to requests that seek information irrelevant to this proceeding. No action by Sprint or AT&T can operate to waive Verizon's rights or objections.

CONCLUSION

For the foregoing reasons, the Commission should deny Windstream's motion to compel.

April 16, 2010

Respectfully submitted,

By:  _____

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served by First Class Mail on those persons whose names appear below this 16th day of April, 2010.

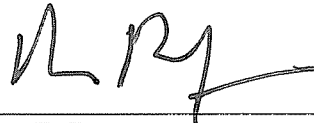
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