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April 23, 2010

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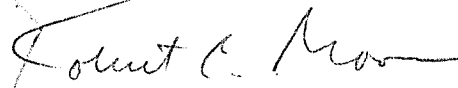
Mr. Jeff R. Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602-0615

Re: In the matter of MCI Communications Services, Inc., et al., v. Windstream
Kentucky West, Inc., et al ("Windstream"), Case #2007-00503

Dear Mr. Derouen:

Please find enclosed for filing in the above referenced case the original five copies of Windstream's Motion to Hold Proceeding in Abeyance Pending Access Reform Action by the Federal Communications Commission. Please call me if you have any questions concerning this filing, and thank you for your attention to this matter.

Respectfully submitted,



Robert C. Moore

RCM/db

Enclosure

cc: Kimberly Bennett

**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

v.

**WINDSTREAM KENTUCKY WEST, INC.,)
WINDSTREAM KENTUCKY EAST, INC. – LEXINGTON)
AND WINDSTREAM KENTUCKY EAST, INC. – LONDON)
Defendants)**

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**CASE NO.
2007-00503**

**WINDSTREAM'S MOTION TO HOLD PROCEEDING IN ABEYANCE PENDING
ACCESS REFORM ACTION BY THE FEDERAL COMMUNICATIONS COMMISSION**

Windstream Kentucky West, LLC (“Windstream West”) and Windstream Kentucky East, LLC (“Windstream East”) state as follows in support of their motion to hold this proceeding in abeyance pending imminent action by the Federal Communications Commission (“FCC”) on the issue of intrastate switched access reform:

As the Commission is aware, Windstream East and Windstream West oppose this proceeding being allowed to proceed given that they are alternatively regulated local exchange carriers statutorily exempt from this rate investigation proceeding. Their participation in this proceeding has been and continues to be without waiver of and with express reservation of all of their rights as alternatively regulated carriers.

In addition to the harm this proceeding has caused by virtue of the violation of Windstream West and Windstream East's rights as alternatively regulated carriers, this

proceeding is not in the public interest as it attempts to narrowly address intrastate switched access rates for only two carriers in Kentucky without regard to the expansive reform action recently initiated by the FCC. Specifically, the FCC announced recently its commitment to pursue intrastate switched access reform on a national basis as part of the "National Broadband Plan." As a result, any decision in this Kentucky proceeding targeted only at two of the Commonwealth's alternatively regulated carriers now also stands to place Windstream West and Windstream East in a particular place of jeopardy and risks a decision inconsistent with the imminent and inevitable (and potentially preemptive) FCC action. For the reasons set forth herein, Windstream East and Windstream West request that the Commission hold this proceeding in abeyance pending resolution of the FCC's reform proceedings.

I. WHAT IS THE FCC'S NATIONAL BROADBAND PLAN?

In early 2009, Congress directed the FCC to develop a National Broadband Plan to ensure every American has "access to broadband capability." Congress also required that this plan include a detailed strategy for achieving affordability and maximizing use of broadband to advance, among other things, consumer welfare, job creation and economic growth.¹ The Plan was issued on March 16, 2010, and makes recommendations to the FCC, the Executive Branch, Congress, and State and local governments.² The Plan containing over 300 pages with 17 chapters, includes sweeping and wide-reaching recommendations. The proposals in the Plan call for comprehensive regulatory reform initiatives to be implemented.

II. HOW DOES THE PLAN ADDRESS INTERCARRIER COMPENSATION?

¹ *Connecting America: The National Broadband Plan*, released March 16, 2010 (<http://download.broadband.gov/plan/national-broadband-plan.pdf>) ("the Plan").

² *FCC Sends National Broadband Plan to Congress*, News Release, issued March 16, 2010.

The Plan describes ways in which the government “can influence the broadband ecosystem.”³ To promote universal broadband deployment, the Plan recommends, among other things, reforming intercarrier compensation.⁴ Specifically, the Plan recommends that the FCC adopt a framework for long-term intercarrier compensation reform that creates, for example, a glide path to reduce and eventually eliminate per-minute switched access charges while providing carriers an opportunity for adequate cost recovery.⁵ The first step of reform would be to move carriers’ intrastate terminating switched access rates to interstate levels in equal increments beginning in approximately 2012 and continuing through approximately 2016.⁶ The long-term reform recommendations also set forth that “[f]ollowing the intrastate rate reductions, the framework should set forth a glide path to phase-out per minute charges by 2020.”⁷

The Plan recognizes the importance of intrastate access revenue to rural carriers. To offset intrastate switched access rate reductions, the Plan proposes numerous rebalancing methods including increasing subscriber line charges (“SLCs”), rebalancing local rates, and allowing some carriers to draw from a reformed universal service fund.⁸ As part of such comprehensive reform, the Plan recommends that the FCC clarify the treatment of Voice over Internet Protocol (“VoIP”) traffic for purposes of intercarrier compensation.⁹

The FCC recently released a Public Notice outlining the timeline of various administrative proceedings to implement the recommendations set out in the Plan. The FCC

³ Plan, at p.xi.

⁴ Plan, at p.xiii. The Plan contains other significant changes in telecommunications policy, such as reforming the existing federal universal service fund.

⁵ Plan, at p. 148.

⁶ See, e.g., Plan, at p. 144, Exhibit 8-F; Plan, at pp. 148-49.

⁷ Plan, at p. 148.

⁸ *Id.*

⁹ *Id.*

expects to launch the proceeding on intercarrier compensation reform in the fourth quarter of 2010.¹⁰

III. HOW SHOULD THE KENTUCKY COMMISSION PROCEED?

Even without regard to the alternative regulation status of Windstream West and Windstream East, it makes little sense for the Kentucky Commission and the parties hereto to continue expending valuable resources to investigate the level of intrastate switched access rates for two carriers given the considerations set forth above which will apply to all carriers. Doing so serves no purpose but to further prejudice Windstream West and Windstream East and to virtually ensure a decision that risks inconsistency with any federal decision which ultimately may include federal preemption of any Kentucky state decision. While the risk of inconsistent decisions already exists as a result of the pending Court of Appeals action, the new developments of the FCC's initiatives magnifies that risk exponentially.

The issue of comprehensive access reform involves complex issues that are best suited for coordinated resolution, to the greatest extent practicable, and the Plan provides such guidance. However, pursuing this state proceeding in a piecemeal fashion targeted only at two of the Commonwealth's alternatively regulated carriers, does not. For example, the Plan supports that rational, comprehensive access reform requires that a funding replacement mechanism be established to help enable carriers to recoup intrastate access revenue lost through intrastate switched access rate reductions while maintaining affordable rates for customers in rural areas. A funding replacement mechanism, although not recognized by Verizon in its Complaint, is consistent with the Plan, as well as with prior federal access reform efforts.

¹⁰ <http://www.broadband.gov/sbm/short-of-law-broadband-action-needed.html.pdf> (visited April 14, 2010).

The FCC's history of orders in this area, notably regarding proposals made by the Coalition for Affordable Local and Long Distance Services ("CALLS")¹¹ in 2000 and the Multi Association Group ("MAG")¹² in 2001, includes necessary offsetting revenue recovery mechanisms, recognizing the importance of these access revenues to rural Americans. The FCC provided additional federal universal service funding and increased retail revenue recovery through increases in federal subscriber line charge ("SLC") and the creation of interstate common line support fund ("ICLS") and interstate access support ("IAS"). Thus, interstate switched access rates were not simply reduced which is the direct focus of Verizon's complaint in this instance with respect to the intrastate switched access rates of only Windstream West and Windstream East. Instead, the FCC proceeded with replacing reductions to interstate revenues with other explicit funding mechanisms as part of comprehensive federal reform.¹³ The same approach is outlined in the Plan for intrastate reform, and any state investigation of intrastate rates should not proceed arguably at all but certainly not in a manner inconsistent with the FCC's comprehensive investigation of the very same intrastate rates.

In summary, allowing this targeted proceeding to continue against Windstream West and Windstream East and further entertaining Verizon's request for a unilateral reduction of intrastate switched access rates, without comprehensive reform addressing all resulting issues is not in the public interest and is directly contrary to the FCC's initiatives. Allowing the proceeding to continue in such a manner is an unnecessary use of resources and risks inconsistency with the FCC's decisions.

¹¹ See Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, *Access Charge Reform*, 15 FCC Rcd 12962 (2000) ("CALLS Order").

¹² See Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, *Multi-Association Group*

WHEREFORE, Windstream West and Windstream East request that the Commission issue an order: (i) holding this matter in abeyance pending the earlier of the resolution of the FCC's proceedings on intrastate switched access reform as described above or a definitive, nonappealable ruling by the courts with respect to Windstream West and Windstream East's rights as alternatively regulated carriers; and (ii) granting all other appropriate relief to which Windstream West and Windstream East are entitled.

Respectfully submitted,

Robert C. Moore
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415 West Main Street, 1st Floor
P. O. Box 676
Frankfort, Kentucky 40602-0676
(502) 227-2271

And

Kimberly K. Bennett
Windstream Communications
4001 Rodney Parham Road
Little Rock AR 72212-2442

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, 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 23rd day of April, 2010.

Robert C. Moore

(MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, 16 FCC Rcd 11244 (2001) (“MAG Order”).

¹³ See, e.g., RLEC Coalition Comments at pp. 6-7.