

**BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION**

In the Matter of: )  
)  
MCI COMMUNICATIONS SERVICES, INC.; )  
BELLATLANTIC COMMUNICATIONS, INC.; )  
NYNEX LONG DISTANCE COMPANY; TTI )  
NATIONAL, INC.; TELECONNECT LONG )  
DISTANCE SERVICES AND & 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 )

**RECEIVED**

MAY 11 2010

**PUBLIC SERVICE  
COMMISSION**

Case No. 2007-00503

**SPRINT NEXTEL’S OPPOSITION TO WINDSTREAM’S MOTION TO HOLD  
PROCEEDING IN ABEYANCE**

Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp., and NPCR, Inc. d/b/a Nextel Partners (collectively, “Sprint Nextel”) serves and files its Response opposing the Motion of Windstream Kentucky West, LLC and Windstream Kentucky East, LLC (collectively, “Windstream”) to hold this proceeding in abeyance pending access reform action by the Federal Communications Commission (“FCC”) pursuant to the National Broadband Plan (“Plan”). Sprint Nextel urges the Public Service Commission (“KPSC” or “Commission”) to deny the Motion and continue the proceeding according to the procedural schedule.

Comprehensive intercarrier compensation reform has been pending at the FCC for at least nine years.<sup>1</sup> This is not the first time a state commission has been asked to defer action in a case involving intrastate switched access rates pending FCC action and it very likely is not the last. As discussed below, state commissions generally have declined to put off their own access reform to await comprehensive FCC action. One state, Pennsylvania, put off reform to await FCC action in August of 2005 only to decide in July of 2009 that “the pending proposals that are before the FCC...and of pending federal legislation do not alone warrant a fourth one-year stay of the investigation as FCC action does not appear to be imminent.”<sup>2</sup> The recent FCC developments Windstream has seized upon in its Petition, namely the publication of a broad-ranging set of recommendations by FCC staff to Congress, the FCC and the Executive Branch in the Form of the National Broadband Plan, does not represent any more imminent or definite FCC intercarrier compensation reform than existed when other states faced similar requests for delay. Consequently, this Commission should also rule against further delay in this case.

**I. The Broadband Plan is a Preliminary Set of Recommendations for FCC Proceedings That Have Not Yet Begun**

The National Broadband Plan recommendations have not been voted on by the FCC Commissioners and are not yet part of an open proceeding. In fact, they are not

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<sup>1</sup> See Notice of Proposed Rulemaking, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, FCC Docket 01-92, rel. April 27, 2001.

<sup>2</sup> See *Investigation Regarding Intrastate Access Charges and InterLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund*, Order, Pennsylvania Public Utility Commission, Docket No. I-00040105, entered August 5, 2009, page 19. (“*Pennsylvania Order Denying Stay*”)

slated for initiation of rulemaking until the fourth quarter of this year.<sup>3</sup> Thus, the recommendations set forth in the Plan are not proposed rules. All that is known at this point is that the FCC intends to start a rulemaking process by the end of this year by issuing a Notice of Proposed Rulemaking.

In its Motion, Windstream recites the details of the intercarrier compensation recommendations set forth in the National Broadband Plan as if they are final or advanced proposed rules about to be acted upon by the FCC. Windstream does not discuss the fact that no FCC action has occurred to date and there is likely to be substantial disagreement among affected parties as to how intercarrier compensation should be implemented. Further, little is known about the Commission's level of priority for completing the intercarrier compensation portion of the Plan, which includes many different subjects for FCC action besides changes to the intercarrier compensation regime. Once the intercarrier compensation reform rulemaking is begun, it is impossible to say at this early stage how quickly or slowly the process will play out and what form the final product of the rulemaking will take. While the FCC's efforts at comprehensive reform are to be commended, it is simply impossible to credibly argue as Windstream does that the reforms will be implemented as recommended in the Plan or that FCC action is "imminent and inevitable."<sup>4</sup>

Further, the Plan itself recognizes that there may be a need to make the FCC's jurisdiction with respect to the intrastate intercarrier compensation rates explicit. Such

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<sup>3</sup> See Broadband Plan action agenda (<http://www.broadband.gov/plan/broadband-action-agenda.html>) ("To address inefficient and outmoded intercarrier payment rules, in Q4 2010 propose rules for long-term intercarrier compensation reform, including implementation of a glide path for reducing per-minute charges, establishment of appropriate cost-recovery mechanisms, and implementation of interim solutions to address arbitrage.")

<sup>4</sup> See Windstream Motion, p. 2.

rates are subject to the jurisdiction of the state commissions. The Plan recommends Congress make the FCC's role more explicit:

The FCC has authority to establish a new methodology for ICC, but Congress could make explicit the FCC's authority to reform intrastate intercarrier rates by amending the Communications Act in order to reduce litigation and expedite reform. (National Broadband Plan, p. 148)

Certainly, there is potential for litigation even after the FCC's rulemaking is complete, which could further delay implementation of comprehensive FCC intercarrier compensation reform. It is undisputed that state commissions have jurisdiction to address reform of intrastate switched access rates and states have led the way in this area and made substantial contributions to such reform without awaiting FCC action.

## **II. States Have Not and Should Not Delay Action on Intrastate Switched Access Reform While the FCC Continues Comprehensive Reform Efforts Almost a Decade Old**

Several states, including Kansas, New Jersey, Pennsylvania, Virginia, and Washington have recently considered whether to delay action on intrastate switched access rates pending FCC action. All have decided against delay.<sup>5</sup>

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<sup>5</sup> See *In the Matter of the Petition of Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp., d/b/a Sprint, to Conduct General Investigation into the Intrastate Access Charges of United Telephone Company of Eastern Kansas, United Telephone Company of South Central Kansas, and United Telephone Company of Southeastern Kansas, d/b/a Embarq*; Kansas Corporation Commission; Order, Docket No. 08-GIMT-1023-GIT; para. 175-179; March 10, 2010. See also *In the Matter of the Board's Investigation and Review of Local Exchange Carrier Intrastate Exchange Access Rates*; New Jersey Board of Public Utilities, Order, Docket No. TX08090830, p. 28. See also *Petition of Sprint Nextel For reductions in the intrastate carrier access rates of Central Telephone Company of Virginia and United Telephone-Southeast, Inc.*; Virginia State Corporation Commission Order, Case No. PUC-2007-00108; p. 26, footnote 56; May 29, 2009 (referencing January 28, 2009 Hearing Examiner Report) See also *Verizon Select Services, Inc.; MCI Metro Access Transmission Services, LLC; MCI Communications Services, Inc.; Teleconnect Long Distance Services and Systems Co. d/b/a Telecom USA; and TTI National, Inc., Complainants v. United Telephone Company Of The Northwest, d/b/a Embarq, Respondent*, Washington Utilities and Transportation Commission; Final Order, Docket UT-081393, pp. 8-9; November 12, 2009.

One particularly pertinent example of why a state should not delay its own proceedings pending FCC action is Pennsylvania. The Pennsylvania Public Utility Commission delayed its access reform proceeding for four years pending FCC action beginning in August of 2005:

Since the *December 2004 Order* [initiating the case], the Commission stayed the RLEC Access Charge Investigation for three consecutive years by orders entered on August 30, 2005, November 15, 2006, and April 24, 2008, respectively, with the hopes that the Federal Communications Commission (FCC) will complete its Unified Intercarrier Compensation proceeding at CC Docket No. 01-92, in which it is comprehensively considering, *inter alia*, establishing a unified intercarrier compensation rate in lieu of interstate and intrastate access charges and local reciprocal compensation rates.<sup>6</sup>

On March 25, 2009, the Pennsylvania Telephone Association, the Office of Consumer Advocate and the United Telephone Company of Pennsylvania d/b/a Embarq Pennsylvania filed a motion for an fourth twelve-month stay of the case. The movants argued that developments in FCC Docket 01-92 and pending federal legislation rendered it “unreasonable, unproductive, impractical and inefficient for [the Pennsylvania Commission] to act further on rural access reform in advance of the FCC.”<sup>7</sup> Movants’ arguments in support of further delay included: 1) a further stay would “allow all parties to avoid expending unnecessary time and expense in connection with this investigation when various actions at the federal and state levels continue to hold significant potential of outcome affecting impact”; 2) “state action may cause Pennsylvania rural carriers to lose interstate support funds depending on the reforms ultimately chosen by the FCC”; 3)

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<sup>6</sup> See *Investigation Regarding Intrastate Access Charges and InterLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund*, Opinion and Order, Pennsylvania Public Utility Commission, Docket No. I-00040105, entered December 10, 2009, p. 5.

<sup>7</sup> See *Joint Motion of the Pennsylvania Telephone Association, Office of Consumer Advocate, and Embarq Pennsylvania for the Commission to Further Stay This Investigation Pending Resolution of the FCC Intercarrier Compensation Proceeding at CC Docket No. 01-92*; Pennsylvania Public Utility Commission, Docket No. I-00040105, filed March 25, 2009.

“the FCC’s authority to preempt the state’s regulation of intrastate access and local interconnection and the establishment of alternative cost recovery mechanisms within the state jurisdiction remains a viable issue at the federal level”; 4) “[e]ven if the FCC does not fully preempt this area, it is highly likely that it will provide guidelines to the states for access reform or encourage other reforms through incentive mechanisms or otherwise in a manner that could seriously impact Pennsylvania carriers and consumers”; and 5) “[if] Pennsylvania regulators continue to act on the forefront of intrastate access reform, a laudable goal in isolation, Pennsylvania carriers and consumers will be at risk of receiving no credit for such early reform and may face additional rate increases and little benefit from federal funding.”<sup>8</sup> On August 5, 2009, the Pennsylvania Commission denied the RLECs’ request for a fourth stay:

During the intervening timeframe, we have not seen any substantial resolution of intercarrier compensation issues by the FCC on the national level. The latest FCC proposals on national intercarrier compensation and federal universal service fund (USF) reform were put forward in November of 2008.<sup>[1]</sup> [footnote omitted] However, the FCC still must take substantive action, and it is unclear whether the FCC will appropriately prioritize the area of intercarrier compensation and federal USF reform for ultimate resolution any time soon.<sup>9</sup>

Sprint Nextel submits that FCC action on comprehensive intercarrier compensation reform is no more “imminent” and/or “inevitable” now than it was in 2005 or 2009 (or any time in between) when the Pennsylvania Commission made its determination at first to stay proceedings, then to lift the stay when comprehensive reform was not forthcoming. This Commission can avoid such delay by continuing the

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<sup>8</sup> *Id.*

<sup>9</sup> *Pennsylvania Order Denying Stay*, p. 19.

present proceeding and allowing parties to address the impact of FCC action in the event it occurs during the time the case in Kentucky is pending.<sup>10</sup>

Those state commissions which have not awaited FCC action have made substantial and long term improvements for consumers in their states and also made a significant contribution to the critical aspect of intercarrier compensation reform over which they have primary jurisdiction: intrastate switched access rates. Had those commissions waited, consumers in their states would still be waiting today. Windstream is wrong when it argues that it is not in the public interest to continue with this proceeding. To the contrary and as demonstrated by the other states' experience, it is in the public interest to keep this proceeding on track to ensure real, near-term progress on access charge reform for Kentucky consumers. Further, the National Broadband Plan itself does not recommend that state regulatory commissions wait to act.

### **III. KPSC Action Is Not Inconsistent with FCC Intercarrier Compensation Reform**

As discussed above, any FCC action relative to future dockets stemming from the National Broadband Plan is not imminent. However, FCC action will be consistent with the actions being contemplated by this Commission in this case. The direction of FCC deliberations to date on intercarrier compensation, reiterated in the National Broadband Plan, is to reduce implicit subsidies for local carriers that are inherent in intercarrier compensation rates and mitigate the inefficient incentives of rates that are above incremental cost.<sup>11</sup> The recent recommendations in the National Broadband Plan call for

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<sup>10</sup> *Id.*

<sup>11</sup> National Broadband Plan, p. 142.

reduction and finally elimination of per-minute switched access rates.<sup>12</sup> The proposals in this proceeding are to reform and reduce Windstream's switched access rates to levels closer to cost. Such steps are ultimately consistent with the objectives set forth in the National Broadband Plan recommendations and the principles of FCC intercarrier compensation reform. Therefore, the Plan certainly does not provide the Commission with any reason to delay intrastate access reform in Kentucky on the basis of consistency.

Throughout its efforts at intercarrier compensation reform, the FCC has acknowledged that the states have an essential role in reforming intercarrier compensation. The FCC has relied on cooperation from state commissions to accomplish its access charge reform initiative, encouraged reform efforts by state commissions in advance of final FCC action, and provided clear guidance on the need for access reform,

[T]his Commission and the state public utility commissions have long shared the responsibility for regulating intercarrier compensation. Furthermore, this Commission has always strived to cooperate with the states to carry out this dual responsibility. In considering ways to reform intercarrier compensation, we are cognizant of the need to cooperate with the states, and the importance of not interfering unnecessarily with legitimate state policies.<sup>13</sup>

The FCC has not altered its stance whatsoever in the National Broadband Plan.

Possible yet speculative FCC comprehensive intercarrier and universal service reform should not deter the Commission from implementing needed intrastate switched access reform to benefit Kentucky consumers now. This Commission has all the authority and tools it needs to act on reform of Windstream switched access rates right now.

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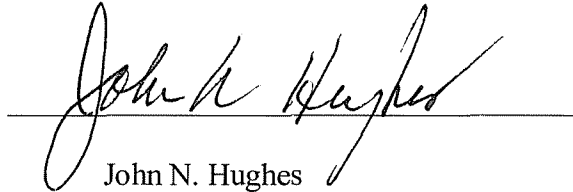
<sup>12</sup> *Id.*, p. 148.

<sup>13</sup> *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132 (rel. Apr. 27, 2001).



For all the reasons stated above, Sprint Nextel requests the Commission deny  
Windstream's Motion to Hold in Abeyance.

This 11<sup>th</sup> day of May, 2010.



John N. Hughes  
Attorney at Law  
124 West Todd Street  
Frankfort, Kentucky 40601  
(502) 227-7270 (o)  
(502) 875-7059 (fax)  
Attorney for Sprint

**CERTIFICATE OF SERVICE**

I certify that this pleading has been served by first class mail to the following parties:

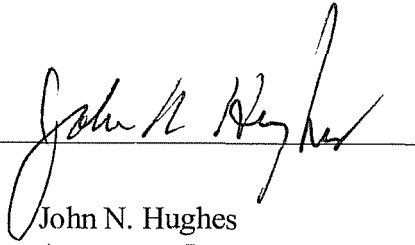
Douglas F. Brent  
Stoll Keenon Ogden, PLLC  
2000 PNC Plaza  
500 W Jefferson Street  
Louisville, KY 40202-2828

Robert C. Moore  
Hazelrigg & Cox, LL.P  
41 5 West Main Street  
P.O. Box 676  
Frankfort, KY 40602

Kimberly K. Bennet  
Windstream Communications  
4001 Rodney Parham Rd.  
Little Rock, AR 72212-2442

Mary K Keyer  
General Counsel/Kentucky  
BellSouth Telecommunications, Inc. dba AT&T  
601 West Chestnut Street, Room 408  
Louisville, KY 40203

This 11<sup>th</sup> day of May, 2010.

A handwritten signature in black ink, appearing to read "John N. Hughes", is written over a horizontal line.

John N. Hughes  
Attorney at Law  
124 West Todd Street  
Frankfort, Kentucky 40601  
(502) 227-7270 (o)  
(502) 875-7059 (fax)

Attorney for Sprint