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May 7, 2010

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MAY 11 2010

PUBLIC SERVICE
COMMISSION

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 Hold Proceeding in Abeyance.

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

Very truly yours,

STOLL KEENON OGDEN PLLC

Douglas F. Brent

DFB:

Enclosures

cc: Service List

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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 Service & Systems)
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

**VERIZON'S OPPOSITION TO
WINDSTREAM'S MOTION TO HOLD PROCEEDING IN ABEYANCE**

Verizon¹ hereby opposes the latest in Defendants' long line of efforts to delay this proceeding. Verizon filed the Petition initiating this docket on December 5, 2007, nearly two-and-a-half years ago. The Petition noted that, even then, the intrastate switched access rates charged by Defendants Windstream Kentucky East, Inc. and Windstream Kentucky West, Inc. (collectively, "Windstream") had not been reviewed for some time, and asked that the Commission determine whether those rates were just and reasonable in the current telecommunications environment. But the Commission has not yet been able to conduct any

¹ 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. are referred to herein collectively as "Verizon."

meaningful review of Windstream's rates, owing primarily to Windstream's strategic effort to waylay this proceeding at every possible turn.

Beginning with its motion to dismiss the Petition, Windstream has responded not on the substance of Verizon's claims, but by filing motion after motion with both the Commission and various state courts – all designed to avoid Commission review of its intrastate switched access rates. Indeed, Windstream has filed so many motions to dismiss or delay this proceeding that it now is recycling arguments from prior motions that the Commission already has rejected.

In particular, Windstream's Motion to Hold Proceeding in Abeyance Pending Access Reform Action by the Federal Communications Commission ("Motion") asserts that this proceeding should be halted indefinitely because of the possibility that the Federal Communications Commission ("FCC") might address intrastate switched access reform on a comprehensive basis as part of the "National Broadband Plan." That assertion echoes the claim made by Windstream in January 2008, when it argued – in the context of its answer and motion to dismiss – that the Commission should forego review of Windstream's intrastate switched access rates unless and until the FCC addressed federal intercarrier compensation reform on a comprehensive basis as part of an existing docket that has been open since 2001. The Commission rejected that argument then, holding that "the mere existence of th[e] possibility" that the FCC could issue an order pre-empting any state action on access charges should not deter "the Commission from the need to address intercarrier compensation." Order (Mar. 11, 2009) ("*Order*") at 6. For the same reasons, the Commission should reject that argument again now.

Windstream's current Motion does not acknowledge its prior attempt to delay this proceeding on the grounds of potential FCC action that still has yet to come. Windstream

instead steadfastly insists that there will be “*imminent* action by the Federal Communications Commission (‘FCC’) on the issue of intrastate switched access reform” that (potentially) would address the claims asserted here. Motion at 1 (emphasis added). But there is nothing “imminent.” At this point, the “National Broadband Plan” cited by Windstream is simply a document in which FCC staff “makes recommendations to the FCC, the Executive Branch, Congress, and State and local governments.” *Id.* at 2. It does not reflect a formal set of proposed rules. To the contrary, the FCC has not initiated a rulemaking proceeding yet. As Windstream later admits, “[t]he FCC recently released a Public Notice outlining the timeline of various administrative proceedings to implement the recommendations set out in the [National Broadband] Plan” and the FCC is not even expected “to launch the proceeding on intercarrier compensation reform [until] the fourth quarter of 2010.” *Id.* at 3. Even if such a proceeding is launched when expected, it could not be completed until some time in 2011 at the earliest. Moreover, if and when an FCC intercarrier compensation proceeding is launched and/or completed in connection with the National Broadband Plan, it is unclear what rules the FCC will propose or adopt regarding intrastate switched access rates.

In short, there is no way of knowing when the FCC will act on intercarrier compensation (but it will not be anytime soon) or whether that action would directly affect Windstream’s intrastate switched access rates in any way. Therefore, there is no basis on which to holding this proceeding in abeyance. Unlike any potential future FCC proceeding on intercarrier compensation, this case already involves a concrete set of issues with a defined scope. And – despite Windstream’s best efforts – this case already has a schedule set, with testimony due in a matter of weeks and a hearing expected well before Windstream anticipates the FCC will even launch the proceeding on intercarrier compensation reform. *Id.*

As the Commission recognized the first time Windstream attempted to indefinitely delay this docket by asking the Commission to wait for FCC action, “[a] formal proceeding on the issue of intercarrier compensation reform has been pending before the FCC since 2001.” *Order* at 5-6. But, at both the time of that *Order* and continuing through today, “the FCC has not issued a substantive ruling establishing a methodology for reforming the way that carriers establish access charges.” *Id.* at 6. While the FCC ultimately could issue such a substantive ruling in the existing formal proceeding, “the mere existence of that possibility” previously did “not dissuade the Commission from the need to address intercarrier compensation” in this docket. *Id.* And the fact that the FCC possibly also might reach that issue in another, yet-to-be-initiated proceeding likewise should not “dissuade the Commission from the need to address intercarrier compensation” here, where a case is already open to do so. *Id.* Rather than wait indefinitely for the FCC, “[a]s it stands today, the Commission has the authority to review the equitable and reasonable nature of [Windstream’s intrastate switched access] charges and, therefore, [should] act accordingly.” *Id.*

The Commission has long acknowledged the need to reform intrastate switched access charges, and has found that removing subsidies from switched access rates and pricing services more closely to their costs is in the public interest. *Order* at 5.² Proceeding now would further those goals and avoid further delay in a case that already has been pending for nearly two-and-a-half years.

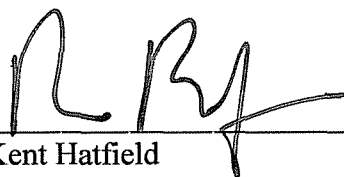
² See also *Review of BellSouth Telecomm., Inc.’s Price Regulation Plan*, Order, Case No. 99-434 (“*BellSouth Price Plan Review*”) at 9-10 (Aug. 3, 2000); *Tariff Filing of BellSouth Telecomm., Inc. to Mirror Interstate Rates*, Order, Case No. 98-065 (“*BellSouth Mirroring Order*”), at 4-5 (March 31, 1999); *Cincinnati Bell Telephone*, Case No. 98-292, Order (“*Cincinnati Bell Order*.”) at 13-14 (Jan. 25, 1999).

Moreover, despite Windstream’s claims to the contrary, proceeding now is not a waste of resources and is not likely to result in a decision that would be inconsistent with any eventual FCC action. *See* Motion at 5. As Windstream acknowledges, any FCC action would be to “reform” the switched access charge regime – *i.e.*, to “reduce and eventually eliminate pre-minute switched access charges.” *Id.* at 3. Indeed, Windstream even goes so far as to call FCC action to reform and reduce switched access rates “inevitable.” *Id.* at 2. In that sense, the relief sought by Verizon in this proceeding is entirely consistent with what Windstream says the FCC inevitably will do. Verizon asks the Commission to reform and reduce Windstream’s intrastate switched access rates, with particular focus on eliminating the so-called non-traffic-sensitive revenue requirement (“NTSRR”). If the Commission were to grant that relief, its actions would be in precise harmony with the steps Windstream expects the FCC to take. Accordingly, if anything, proceeding now would place the Commission on better footing to implement any similar such reform that may be coming from the FCC in the future.

* * *

For all these reasons, Verizon asks the Commission to deny Windstream’s Motion to Hold in Abeyance.

Respectfully submitted on May 7, 2010.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Opposition to Motion to Hold in Abeyance has been served by First Class Mail on those persons whose names appear below this 7th day of May, 2010.

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