



Mary K. Keyer
General Attorney
Kentucky Legal Department

AT&T Kentucky
601 W. Chestnut Street
Room 407
Louisville, KY 40203

T 502-582-8219
F 502-582-1573
mary.keyer@att.com

May 11, 2010

VIA OVERNIGHT MAIL

RECEIVED

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

MAY 12 2010

**PUBLIC SERVICE
COMMISSION**

Re: 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
PSC 2007-00503

Dear Mr. Derouen:

Enclosed for filing in the above-captioned case are the original and five (5)
copies of AT&T's Response to Windstream's Motion to Hold Proceeding in Abeyance
Pending Access Reform Action by the Federal Communications Commission.

Should you have any questions, please let me know.

Sincerely,


Mary K. Keyer

Enclosures

cc: Parties of Record

811474

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)

CASE NO.
2007-00503

v.

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

AT&T'S RESPONSE TO WINDSTREAM'S MOTION TO HOLD
PROCEEDING IN ABEYANCE PENDING ACCESS REFORM
ACTION BY THE FEDERAL COMMUNICATIONS COMMISSION

AT&T Communications of the South Central States, TCG of Ohio, BellSouth Long Distance Inc. d/b/a AT&T Long Distance Service, and BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky (collectively, "AT&T") respectfully submit this response in opposition to the motion of Windstream Kentucky West, LLC and Windstream Kentucky East, LLC (collectively, "Windstream") to hold this proceeding in abeyance.

The Commission should not countenance any further delay in urgently needed reform of intrastate switched access rates. Excessive switched access charges are a holdover of the monopoly era, when access rates were set well above cost in order to

provide “implicit subsidies” for local service rates that were artificially held below cost. Over a decade has already passed since the Commission correctly recognized the need to reduce intrastate switched access rates. In 1998, this Commission concurred with the Federal Communications Commission’s statement that “as competition develops, states may be compelled by market place forces to convert implicit support to explicit, sustainable mechanisms consistent with section 254(f).”¹ The Commission further stated, with regard to non-traffic sensitive (“NTS”) rate elements, that “[e]limination of NTS is a priority and will be considered along with the elimination of other implicit subsidies.”² AT&T Kentucky (then BellSouth) reduced its intrastate switched access rates to interstate levels as part of its plan for alternative regulation, which the Commission adopted in 1999.³ The access rates for Windstream and other Kentucky local exchange carriers, however, have not been similarly reformed. As a result, Windstream has been reaping massive windfalls.

Seeking to put off yet again the long-overdue day of reform, Windstream’s motion is based on two premises. Neither one of them withstands any serious analysis. First, Windstream claims (p. 1) that the case should be stayed “pending imminent action by the Federal Communications Commission (‘FCC’) on the issue of intrastate switched access reform.” There is no “imminent” FCC action. The National Broadband Plan (“NBP”)–

¹ *In re Inquiry into Universal Service and Funding Issues*, Adm. Case No. 360, Order (May 22, 1998) at 2-3, citing *In re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order (May 8, 1997) at paragraph 17.

² *Id.* at 35.

³ *BellSouth Telecomm., Inc.’s Application to Restructure Rates*, Case No. 97-074, Order, at 1 (Oct. 24, 1997), citing *Application of BellSouth Telecomm., Inc. d/b/a South Central Bell Tel. Co. to Modify Its Method of Regulation*, Case No. 94-121. *Tariff Filing of BellSouth Telecommunications, Inc. to Mirror Interstate Rates*, Order, Case No. 98-065 (“*BellSouth Mirroring Order*”) (March 31, 1999); *Review of BellSouth Telecomm., Inc.’s Price Regulation Plan*, Order, Case No. 99-434 (“*BellSouth Price Plan Review*”)(Aug. 3, 2000).

a series of "RECOMMENDATIONS" developed by the FCC *staff* – suggests that the FCC should conduct a comprehensive reform of intercarrier compensation. But not one of these "RECOMMENDATIONS" has been adopted or even formally considered by the FCC. The FCC has been saying it should review intercarrier compensation for a decade, and the long-promised reform has not yet materialized. Parties provided a decade's worth of comments to the FCC in another reform proceeding, and the FCC has not acted on any of them.

As for the NBP, the FCC has not even received comments on the staff recommendations, and it is as yet unclear when it will do so. In a recently proposed schedule, the FCC's Chairman announced that the NBP process will consist of some 60 separate rulemakings, and that the earliest the FCC will even issue a notice of *proposed* rulemaking on intercarrier compensation reform is in the fourth quarter of 2010.⁴

Rather than waiting endlessly for the FCC to act on intrastate matters that unquestionably fall within state authority, over 20 states have confronted the problem of implicit subsidies by requiring carriers to mirror, at the intrastate level, the significant reforms the FCC has already adopted for interstate rates.⁵ Earlier this year, the New Jersey Board of Public Utilities rejected the same "wait on the FCC" arguments that Windstream advances now, and ordered LECs to reduce their intrastate switched access rates to "parity" with the corresponding interstate rates:

The Board also HEREBY FINDS that the Board need not to wait for federal action from the FCC or from Congress on Intrastate Access Rate issues. As the Board stated in its December 2008 Order, the Board regulates Intrastate Access

⁴ *Broadband Action Agenda*, available at <http://www.broadband.gov/plan/broadband-action-agenda.html>.

⁵ The following states have implemented parity between intrastate and interstate rates for some or all LECs, either through legislation, commission rule or commission order: Alabama, Georgia, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, Tennessee, Texas, West Virginia, and Wisconsin.

Rates and it is within the Board's authority to review the complete record in this proceeding and render its decision.⁶

This Commission approved the same approach for AT&T Kentucky in 1999. Nothing in the NBP precludes this state from doing the same thing for other LECs, including Windstream, now. To the contrary, the NBP (p. 148), *invites* state action, when it recommends that “[t]he FCC should also encourage states to complete rebalancing of local rates to offset the impact of lost access revenues.” The NBP also recognizes the *need* for access reform. The NBP frankly acknowledges (p. 142) that “[t]he current ICC [InterCarrier Compensation] system is not sustainable.”

At the informal conference, Windstream asserted that the Pennsylvania commission stayed its access charge proceeding pending an FCC decision on intercarrier compensation. Windstream's assertion is out of date. The Pennsylvania commission lifted its stay by order entered August 5, 2009⁷; since then, parties to that proceeding have submitted multiple rounds of pre-filed testimony, the Administrative Law Judge conducted three days of evidentiary hearings, and the parties are now preparing their post-hearing briefs.

Windstream's second premise is equally baseless. According to Windstream, “this proceeding is not in the public interest as it attempts to narrowly address intrastate switched access rates for only two carriers in Kentucky.” That objection is moot. AT&T has filed a comprehensive complaint challenging the access rates of all LECs (other than AT&T Kentucky, whose rates have already been reduced) so the Commission can consider and implement access reforms on a more global basis. Windstream indicated

⁶ *In re Board's Investigation and Review of Local Exchange Carrier Intrastate Exchange Access Rates*, NJ BPU Docket No. TX08090830, Order, Feb. 1, 2010, p. 27.


⁷ *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, 2009 WL 2488556 (Pa. Pub. Util. Comm'n, Aug. 5, 2009).

in the informal conference that it supports comprehensive general reform. AT&T urges the Commission to not only deny Windstream's motion to hold this case in abeyance, but to also move forward with a generic docket to comprehensively address much-needed access reform in Kentucky.

CONCLUSION

For the reasons set forth above, AT&T respectfully requests that the Commission deny Windstream's motion.

Respectfully submitted,



Mary K. Keyer
601 West Chestnut Street, Room 407
Louisville, Kentucky 40203
(502) 582-8219
mary.keyer@att.com

Demetrios G. (Jim) Metropoulos
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606
(312) 701-8479
demetro@mayerbrown.com

COUNSEL FOR AT&T COMMUNICATIONS
OF THE SOUTH CENTRAL STATES, TCG OF
OHIO, BELL SOUTH LONG DISTANCE INC.
d/b/a AT&T LONG DISTANCE SERVICE, AND
BELL SOUTH TELECOMMUNICATIONS, INC.
d/b/a AT&T KENTUCKY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof, this 11th day of May 2010.

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

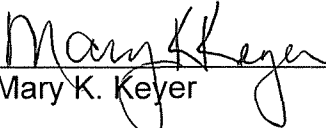
Kimberly Caswell
Associate General Counsel
Verizon
P.O. Box 110, MC FLTC0007
Tampa, FL 33601-0110

Honorable John N. Hughes
Attorney at Law
124 West Todd Street
Frankfort, KY 40601

Honorable Robert C. Moore
Hazelrigg & Cox, LLP
415 West Main Street
P.O. Box 676
Frankfort, KY 40602

Dulaney L O'Roark III
VP & General Counsel - SE Region
Verizon
5055 North Point Parkway
Alpharetta, GA 30022

Jeanne Shearer
Windstream Kentucky East, LLC
Windstream Kentucky West, LLC
124 E. Main Street
P. O. Box 458
Ephrata, PA 17522-0458



Mary K. Keyer