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August 13, 2010

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AUG 13 2010

PUBLIC SERVICE
COMMISSION

VIA HAND DELIVERY

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

*RE: MCI Communications, Inc. et al v. Windstream Kentucky East, LLC et al
Case No. 2007-00503—Prefiled Rebuttal Testimony of Don Price*

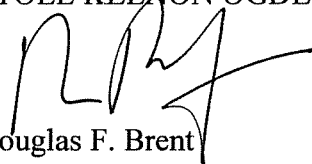
Dear Mr. DeRouen:

Enclosed please find an original and ten copies of Verizon's prefiled rebuttal testimony of Don Price. The testimony includes two references to information taken directly from or derived from information previously granted confidential protection by the Commission, including data Windstream provided to Verizon under a protective agreement. Accordingly, a CONFIDENTIAL copy of the testimony is included in the enclosed envelope and will be provided to Windstream and the intervenors pursuant to the protective agreements in place between the parties. Ten redacted copies of the testimony are also being filed.

Please indicate receipt of this filing by placing your file stamp on the extra copy and returning to me via our runner.

Very truly yours,

STOLL KEENON OGDEN PLLC


Douglas F. Brent

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the matter of:

AUG 13 2010

MCI Communications Services, Inc.,)
Bell Atlantic Communications, Inc.,)
NYNEX Long Distance Company,)
TTI National, Inc.,)
Teleconnect Long Distance Services & Systems)
and Verizon Select Services, Inc.,)

PUBLIC SERVICE
COMMISSION

Complainants,)

Case No. 2007-00503

vs.)

Windstream Kentucky West, Inc.,)
Windstream Kentucky East, Inc. – Lexington,)
and Windstream Kentucky East, Inc. – London,)

Defendants.)

PREFILED REBUTTAL TESTIMONY OF
DON PRICE
ON BEHALF OF VERIZON

*** REDACTED VERSION ***

August 13, 2010

1 **I. INTRODUCTION.**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Don Price. My business address is 701 Brazos, Suite 600, Austin,
4 Texas, 78701.

5 **Q. ARE YOU THE SAME DON PRICE WHO PREVIOUSLY SUBMITTED**
6 **DIRECT TESTIMONY IN THIS PROCEEDING ON JULY 14, 2010?**

7 A. Yes, I am.

8 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

9 A. The purpose of my Rebuttal Testimony is to respond on behalf of Verizon to the
10 Direct Testimony of Cesar Caballero (“Caballero DT”) submitted in this
11 proceeding on behalf of Defendants Windstream Kentucky East, LLC and
12 Windstream Kentucky West, LLC (collectively, “Windstream”). I also note that,
13 through the direct testimony of their witnesses, both Sprint¹ and AT&T² support
14 the Petition of Verizon to Reduce Windstream’s Switched Access Charges
15 (“Petition”).

16 **Q. IN YOUR DIRECT TESTIMONY, YOU TESTIFIED THAT**
17 **WINDSTREAM’S INTRASTATE SWITCHED ACCESS RATES ARE**
18 **NOT FAIR, JUST AND REASONABLE. IS THERE ANYTHING IN MR.**
19 **CABALLERO’S DIRECT TESTIMONY THAT HAS CAUSED YOU TO**
20 **RECONSIDER THAT OPINION?**

¹ Sprint Communications Company, L.P., Sprint Spectrum L.P., Nextel West Corp., and NPCR, Inc. d/b/a Nextel Partners are referred to herein collectively as “Sprint.”

² BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky and AT&T Communications of the South Central States, LLC are referred to herein collectively as “AT&T.”

1 A. No. In my Direct Testimony, I provided evidence in support of Verizon’s Petition
2 that Windstream’s intrastate switched access rates are not “fair, just and
3 reasonable,” as required by Kentucky law. KRS § 278.030(1). Mr. Caballero’s
4 testimony contains nothing that would make me rethink that position. Mr.
5 Caballero instead spends a significant portion of his testimony re-fighting
6 threshold procedural issues, discovery disputes and other matters that the
7 Commission already has ruled upon and that Windstream already has lost. When
8 he gets to the substance, Mr. Caballero’s testimony only confirms that:

- 9 • Switched access rates have fallen dramatically across the industry
10 since the 1990s (Caballero DT at 29), yet Windstream East’s
11 intrastate switched access rates have remained the same for nearly
12 a decade and Windstream West’s rates have been unchanged for
13 nearly twice that long (*see id.* at 12, 21³);
- 14 • Windstream now charges many times more for the same intrastate
15 switched access services than does the most comparable incumbent
16 local exchange carrier (“ILEC”) in Kentucky (AT&T) (*see*
17 Caballero DT at 8, 13⁴);
- 18 • This sizeable disparity in rates is not driven by any costs unique to
19 Windstream; to the contrary, Windstream’s intrastate switched
20 access rates are not (and never have been) cost-based and instead

³ *See also* Price DT at 28-29.

⁴ *See also* Price DT at 22-27.

1 contain subsidies for Windstream’s other operations (*see* Caballero
2 DT at 15⁵);

- 3 • The sizeable disparity in intrastate switched access rates between
4 Windstream and AT&T owes primarily to the fact that Windstream
5 continues to recover substantial amounts that AT&T does not for
6 its so-called Non-Traffic Sensitive Revenue Requirement
7 (“NTSRR”) through the Carrier Common Line Charge (“CCLC”)
8 element of its intrastate switched access rates (Caballero DT at 19),
9 even though it is established Commission policy to eliminate the
10 NTSRR and other implicit subsidies; and
- 11 • Windstream already provides the same switched access services at
12 a much lower rate and without any NTSRR recovery on an
13 interstate basis (*see* Caballero DT at 29-30⁶).

14 These facts, taken together, demonstrate that Windstream’s intrastate switched
15 access rates are not fair, just and reasonable. Mr. Caballero does not explain why,
16 in light of these facts, Windstream should be allowed to continue charging its
17 current, otherwise unreasonable level of access rates. Rather, he insists it is not
18 Windstream’s “burden” to justify or defend those rates. Caballero DT at 8, 16.
19

⁵ *See also* Price DT at 29-30; Windstream’s Responses and Objections to Verizon’s First Requests for Information, Response to Nos. 9(a)-(b) and 29(a)-(b).

⁶ *See also* Price DT at 40.

1 Indeed, Windstream’s approach seems to be that – because its rates already are in
2 place and have been for some time – the Commission should simply take its word
3 that those rates are reasonable, that Windstream needs the level of revenue
4 generated by those rates to cover its costs, and that depriving Windstream of that
5 level of revenue would have “dire” consequences. *See* Caballero DT at 21-22,
6 38-40. But Windstream does not even attempt to provide any facts that would
7 demonstrate any of those things.

8 **Q. ARE YOU AWARE OF WINDSTREAM TAKING SIMILAR POSITIONS**
9 **IN OTHER ACCESS CHARGE PROCEEDINGS?**

10 A. Yes. Windstream Pennsylvania is one of several rural local exchange carriers
11 (“RLECs”), represented by the Pennsylvania Telephone Association (“PTA”),
12 that collectively took very similar positions in response to a proceeding before the
13 Pennsylvania Public Utility Commission in which the Pennsylvania commission
14 sought to determine whether intrastate switched access charge reductions were
15 warranted for those RLECs. The administrative law judge (“ALJ”) in that
16 proceeding recently released a Recommended Decision rejecting the approach
17 taken by Windstream Pennsylvania and the other Pennsylvania RLECs and
18 recommending a reduction in their intrastate switched access rates. *See*
19 *Investigation Regarding Intrastate Access Chagres and IntraLATA Toll Rates of*
20 *Rural Carriers and the Pennsylvania Universal Service Fund*, Recommended
21 Decision on Remaining Issues, Case No. C-2009-I-00040105 (Pa. Public Utility
22 Comm’n, Aug. 3, 2010).

1 Among other things, the ALJ dispatched with the RLECs' "burden" argument and
2 found that, just because their rates previously had been approved by the
3 Pennsylvania Commission and had been in place for some time did not immunize
4 those rates from subsequent review: "[E]xisting rates which at one time were
5 reasonable may become unreasonable due to changed circumstances and are
6 subject to re-evaluation and modification." *Id.* at 74. The ALJ noted that, as is
7 the case here, Windstream Pennsylvania and the other RLECs had not presented
8 cost studies or other data that would demonstrate that their rates were not
9 excessive in comparison to their costs (or otherwise reasonable). But, without
10 that sort of information, like here, Windstream Pennsylvania and the other RLECs
11 were left to defend their access rates by alleging that the revenues generated by
12 those rates supported their ability to provide other services and fulfill other
13 obligations – including carrier of last resort ("COLR") obligations. But the ALJ
14 was unaware of any authority in which "regulated rates have been determined to
15 be just and reasonable ... because any excess amount was necessary to provide
16 affordable rates to other classes of customers." *Id.* at 75-76. Indeed, the ALJ
17 pointed to authority to the contrary.

18
19 But, in any event, as is the case here, Windstream Pennsylvania and the RLECs
20 did not submit any evidence "to substantiate their contentions that access revenue
21 support is necessary" to provide other services or fulfill other obligations. *Id.* at
22 76. So, while the ALJ was "sensitive to the RLECs' concerns about COLR and
23 universal service obligations," like here, there was insufficient record evidence to

1 conclude that local service would “become unavailable due to access reform”
2 *Id.* at 77-78. To the contrary, “[c]ompetition has been flourishing and will be
3 further promoted through the access charge reductions to be recommended
4 herein.” *Id.* at 78.

5
6 The same is true here, and the Commission should reject Windstream’s arguments
7 for the same reasons the Pennsylvania ALJ did.

8 **II. THE COMMISSION ALREADY HAS REJECTED THE “THRESHOLD**
9 **PROCEDURAL ISSUES” RAISED BY MR. CABALLERO.**

10 **Q. IN THE BEGINNING OF HIS TESTIMONY, MR. CABALLERO**
11 **IDENTIFIES A “THRESHOLD PROCEDURAL ISSUE” AND CLAIMS**
12 **THAT THIS COMPLAINT PROCEEDING IS NOT PROCEDURALLY**
13 **APPROPRIATE.⁷ DO YOU HAVE ANY RESPONSE TO THAT CLAIM?**

14 A. Unlike Mr. Caballero, I am not a lawyer⁸ and I am not offering any legal opinions
15 in my testimony. However, I am aware that Verizon opposes Windstream’s
16 contention that legislation deregulating certain competitive *retail* services
17 provided to end user customers in Kentucky also somehow removed the
18 Commission’s complaint jurisdiction over Windstream’s *wholesale* rates for
19 services provided to other carriers (including intrastate switched access services).⁹
20 It is my understanding that the Commission agrees with Verizon’s position and
21 already has rejected Windstream’s procedural argument. I also understand that

⁷ Caballero DT at 5-7.

⁸ *Id.* at 5.

⁹ See, e.g., Verizon’s Brief in Support of Defendant Kentucky Public Service Commission, filed in *Windstream Kentucky West, LLC v. Kentucky Public Serv. Comm’n*, Civ. Action No. 09-CI-00552 (Franklin Cir. Ct., Aug. 7, 2009).

1 the Franklin Circuit Court and the Kentucky Court of Appeals have rejected
2 Windstream's procedural claim in different contexts,¹⁰ with the Circuit Court
3 finding that the "the legislature intended to allow electing carriers to avoid rate
4 regulation in the competitive retail market, ... but to retain PSC jurisdiction over
5 the rates charged by all utilities in the non-competitive markets," such as the
6 intrastate switched access market.¹¹ As such, while a further appeal of this issue
7 may be pending, my understanding is that the Commission and two Kentucky
8 courts thus far have found Windstream's procedural argument to be without merit
9 and that the Commission can exercise jurisdiction in this complaint proceeding
10 over Windstream's intrastate switched access rates.

11 **Q. MR. CABALLERO ALSO TESTIFIES THAT VERIZON HAS THE**
12 **BURDEN OF PROOF IN THIS PROCEEDING AND THAT THE**
13 **ALLEGATIONS IN VERIZON'S PETITION ARE INSUFFICIENT TO**
14 **LAY THE GROUNDWORK FOR ITS CLAIMS.¹² CAN YOU RESPOND**
15 **TO THAT?**

16 A. Again, unlike Mr. Caballero, I am not a lawyer and I am not offering any legal
17 opinions in my testimony. I am sure that Verizon's attorneys will address any
18 legal matters if and when that is appropriate. However, my understanding is that
19 Windstream made a similar claim that Verizon's allegations were insufficient

¹⁰ See *Windstream Kentucky West, LLC, et al. v. Kentucky Public Serv. Comm'n*, Civ. Action No. 09-CI-00552, Opinion and Order (Franklin Cir. Ct., Oct. 19, 2009) ("*Opinion and Order*"); *Windstream Kentucky East, LLC, et al. v. Kentucky Public Serv. Comm'n*, No. 2009-CA-001973-MR, Order Denying Motion for CR 65.08 Relief (Ky. Ct. App. June 7, 2010).

¹¹ *Opinion and Order* at 7.

¹² Caballero DT at 8-9. See also *id.* at 11 ("Verizon's petition and its discovery responses in this matter present no sufficient factual allegations" that Windstream's intrastate switched access rates are unjust and unreasonable).

1 when it moved to dismiss the Petition and that the Commission rejected
2 Windstream's claim.

3
4 In denying Windstream's motion to dismiss, the Commission specifically stated
5 that, "[t]hrough its petition, Verizon has raised sustainable questions regarding the
6 reasonableness of the compensation which Windstream currently receives for its
7 access service." *Order* (Mar. 11, 2009) at 6. The Commission went on to add
8 that, through the allegations in the Petition, "Verizon has raised a compelling
9 argument that Windstream's current non-traffic sensitive revenue requirement
10 rates ... are not specifically cost-based and are adversely affecting the provision
11 of access services by carriers within the Windstream territories." *Id.* at 8-9.
12 Accordingly, the Commission found that "an investigation into Windstream's
13 switched access rates is necessary." *Id.* at 6. In these circumstances, to this lay
14 person, Windstream's arguments about "burden" and the sufficiency of the
15 allegations in Verizon's Petition seem misplaced. The General Assembly has
16 delegated to the Commission responsibility to regulate rates, including the rates at
17 issue here. My understanding is that, once a valid complaint is filed, the
18 Commission proceeds with whatever investigation it determines is necessary.

19
20 Indeed, as I understand it, once the Commission determined that Verizon's
21 Petition had stated a *prima facie* case and necessitated an investigation into
22 Windstream's intrastate switched access rates, the Commission became tasked
23 with determining whether Windstream's rates are fair, just and reasonable,

1 irrespective of what party initially may have had an obligation under the
2 Commission's procedural rules to state a claim. In other words, regardless of
3 what burden Verizon might have carried to initiate the proceeding, the
4 Commission now must consider all of the evidence produced by all parties as a
5 result of its investigation and independently decide whether the rates are
6 appropriate. And, thus far, no party has produced any evidence that
7 Windstream's rates are appropriate.

8
9 To the contrary, as noted above, the Commission already has concluded that
10 Verizon's Petition presented "sustainable questions" regarding the
11 unreasonableness of Windstream's intrastate switched access rates (*Order* (Mar.
12 11, 2009) at 6) and a "compelling argument" about the NTSRR, in particular. *Id.*
13 at 8-9. I presented further evidence regarding the unfair, unjust and unreasonable
14 nature of Windstream's intrastate switched access rates (and the NTSRR, in
15 particular) in my direct testimony. So did the Sprint and AT&T witnesses. But,
16 relying on its burden argument, Windstream has not even attempted to present
17 any evidence to the contrary.

18
19 In these circumstances, it would be appropriate for the Commission to proceed
20 with a determination that Windstream's rates must be reduced. Indeed, in many
21 ways, reducing Windstream's intrastate switched access charges here simply
22 represents the overdue implementation of the reforms the Commission has long-
23 recognized are needed to remove excessive subsidies from switched access rates

1 and price access services more closely to their costs.¹³ The Commission already
2 has noted in this docket that the need to “review ... intra-state access charges has
3 been a looming specter over this Commission for a significant period of time.”
4 *Order* (Mar. 11, 2009) at 5. And the Commission noted some ten years ago that it
5 “has an established policy of working to eliminate the NTSRR,” in particular.¹⁴
6 In fact, the Commission previously had established that “[e]limination of NTS is a
7 priority and will be considered along with the elimination of other implicit
8 subsidies.”¹⁵ Implementing those long-needed reforms here would be entirely
9 proper.

10 **III. WINDSTREAM’S INTRASTATE SWITCHED ACCESS RATES ARE**
11 **UNFAIR, UNJUST AND UNREASONABLE BY ANY NUMBER OF**
12 **OBJECTIVE MEASURES.**

13 **Q. MR. CABALLERO SUGGESTS THAT VERIZON’S CLAIM THAT**
14 **WINDSTREAM’S INTRASTATE SWITCHED ACCESS RATES ARE**
15 **UNFAIR, UNJUST AND UNREASONABLE IS BASED ONLY ON THE**
16 **FACT THAT THOSE RATES DO NOT MIRROR AT&T’S.¹⁶ IS MR.**
17 **CABALLERO CORRECT?**

¹³ *Inquiry into Universal Service and Funding Issues*, Adm. Case No. 360, Order (June 18, 1997); see also Certification of the Carriers Receiving Federal Universal Service High-Cost Support, Adm. Case No. 381 (March 24, 2000) (“*2000 Certification Order*”); *Review of BellSouth Telecomm, Inc.’s Price Regulation Plan*, Order, Case No. 99-434, at 9 (Aug. 3, 2000) (“*BellSouth Price Plan Review*”) (noting that AT&T restructured its rates to move them “more closely to their costs and to continue the process of removing cross-subsidies,”); see also *Tariff Filing of BellSouth Telecommunications, Inc. to Mirror Interstate Rates*, Order, Case No. 98-065 (Mar. 31, 1999) (“*BellSouth Mirroring Order*”).

¹⁴ *2000 Certification Order* at 2.

¹⁵ See also *Inquiry into Universal Service and Funding Issues*, Adm. Case No. 360, Order, at 35 (May 22, 1998)

¹⁶ See Caballero DT at 8 (asserting that “the crux of Verizon’s allegations is that the intrastate switched access rates of Windstream East and Windstream West are unjust and unreasonable for the reason that they do not mirror the intrastate switched access rates of AT&T Kentucky”); *id.* at 11 (“... [T]he crux of Verizon’s allegations is a simple rate comparison between the intrastate

1 A. No. As I explained in my Direct Testimony (at 38-40) and again below, AT&T's
2 intrastate switched access rates best reflect what a fair, just and reasonable rate
3 would be for a comparable incumbent local exchange carrier like Windstream.
4 And Mr. Caballero certainly is correct that Windstream's rates "do not mirror"
5 those of AT&T.¹⁷ To the contrary, despite the similarities between the two
6 carriers, Windstream charges more than █% to nearly █% more than AT&T
7 for the very same intrastate switched access services. But, while the fact that
8 Windstream's intrastate switched access rates are so significantly higher than
9 AT&T's comparable rates is one indication that those Windstream rates are
10 unfair, unjust and unreasonable, it is not the only one.

11

12 As I explained in my Direct Testimony, this is not just a case of Windstream
13 charging intrastate switched access rates that happen to be a little higher than
14 AT&T's. This is a case of market failure where Windstream's intrastate rates
15 have not been subject to any market discipline or any Commission review and
16 have remained frozen – at unreasonably high levels – for at least a decade or, in
17 the case of Windstream West, two decades.

18

19 Windstream concedes that interstate switched access rates throughout the industry
20 have declined dramatically since the 1990s (Caballero DT at 29), and the most

switched access rates of Windstream East and Windstream West and the switched access rates charged by AT&T Kentucky.”).

¹⁷ *Id.* at 8.

1 comparable Kentucky local exchange carrier – AT&T – has followed those
2 reductions with reductions to its intrastate switched access rates. Windstream,
3 however, has made no reductions at all. Windstream West continues to charge
4 Verizon and other long distance carriers the same intrastate switched access rates
5 that have been in place since the 1990s.¹⁸ Windstream East continues to charge
6 the same intrastate switched access rates that have been in place since
7 approximately 2000, the last time its predecessor – not Windstream East –
8 adjusted its rates. And while the most comparable Kentucky ILEC, consistent
9 with the Commission’s “established policy of working to eliminate the NTSRR”
10 and other subsidies,¹⁹ does not include NTSRR recovery in its intrastate switched
11 access rates today, Windstream does. In fact, because of the way the Windstream
12 calculates and bills the CCL charge through which it recovers its NTSRR,
13 Windstream’s per-minute rate actually has been *increasing* over time (and can be
14 expected to continue to do so).²⁰

15
16 Individual rate increases in the face of declining rates throughout the industry
17 indicate that Windstream’s rates are not subject to market forces. Indeed, the
18 Commission has recognized that, because the long distance carriers that purchase

¹⁸ In discovery responses to Sprint, Windstream indicated that the current intrastate switched access rates for Windstream West had been established in 1999. *See Windstream’s Responses to Sprint’s First Set of Data Requests, Response to No. 13.* However, Windstream did not provide any citation or support for that statement, and Verizon is unaware of any change to Windstream West’s rates since the early 1990s. Mr. Caballero likewise does not refer to any more recent changes to Windstream West’s rates in his testimony.

¹⁹ *2000 Certification Order* at 2.

²⁰ *See Price DT* at 5, n.2.

1 switched access service from LECs like Windstream are not able to switch
2 suppliers, the switched access service those LECs provide is a “monopoly
3 service” in Kentucky.²¹ It is widely recognized that prices in competitive markets
4 tend to move toward cost. But Windstream has conceded that its intrastate
5 switched access rates are not (and never have been) based on its costs of
6 providing intrastate switched access service. *See, e.g.*, Caballero DT at 15, 17.
7 To the contrary, Windstream admits that its intrastate switched access rates
8 exceed its costs and claims that access revenues are used to subsidize other
9 aspects of its business, including the cost of the local loop²² – a cost that is caused
10 not by the provision of switched access service but rather by the end user’s
11 decision to obtain local service from Windstream. Windstream has not come
12 forward with any explanation for why it reasonably needs this level of intrastate
13 switched access revenue or these kinds of subsidies. In fact, Windstream already
14 charges much less for the same switched access services on an interstate basis – in
15 some cases significantly less than what AT&T charges for interstate switched
16 access.

²¹ *Inquiry into IntraLATA Toll Competition*, Order, Adm. Case No. 323, Phase 1 at 45 (May 6, 1991) (“LECs must continue to be subject to full rate of return regulation due to their provisioning of [switched] access, a monopoly service.”)

²² *See* Windstream’s Responses and Objections to Verizon’s First Requests for Information, Response to No. 29(a)-(b). While Windstream initially claimed it lacked the information and/or has not undertaken the calculations necessary to “unequivocally state that ... its intrastate switched access rates exceed its costs,” it nevertheless “agrees ... that switched access rates in general have included implicit subsidies.” *Id.* Windstream admits that its intrastate switched access charges, in particular, are used to recover costs for other services it provides, including for basic local service. *Id.*, Response to No. 9(a)-(b). Windstream therefore objects to the removal of “implicit subsidies” from its intrastate switched access rates. *Id.*, Response to No. 29(a)-(b).

1 This combination of multiple, undisputed facts, taken together, confirms that
2 Windstream's intrastate switched access rates are unjust and unreasonable, and
3 should be reduced to the more reasonable levels charged by AT&T.

4 **Q. MR. CABALLERO INDICATES THAT "VERIZON DOES NOT EXPLAIN**
5 **WHY AT&T KENTUCKY'S RATES ARE THE JUST AND**
6 **REASONABLE RATES FOR WINDSTREAM EAST AND WINDSTREAM**
7 **WEST"²³ AND THAT THIS IS AN "INCOMPLETE COMPARISON."²⁴ IS**
8 **MR. CABALLERO CORRECT?**

9 A. No. Through both the Petition and my Direct Testimony, Verizon has explained
10 in detail why AT&T's intrastate switched access rates provide the best
11 comparison or benchmark for Windstream's rates. There are several reasons why
12 that is the case.

13
14 As I explained in my Direct Testimony, AT&T is the most comparable local
15 exchange carrier to Windstream in Kentucky. *See* Price DT at 38-40. AT&T and
16 Windstream are the two largest ILECs in Kentucky. AT&T serves the largest city
17 in the Commonwealth; Windstream serves the second largest. Both Windstream
18 and AT&T serve several hundred thousand access lines in Kentucky. *See*
19 Caballero DT at 33. Both have entered the long distance market and introduced
20 broadband services. Both offer bundles, including high definition video service.
21 And both are part of large, successful national telecommunications companies
22 that provide a host of services in multiple states and generate substantial revenue.

²³ Caballero DT at 8.

²⁴ *Id.* at 11-12.

1 Indeed, as I previously noted, Windstream has compared itself to Regional Bell
2 Operating Companies (“RBOCs”) like AT&T in seeking similar price-cap
3 treatment by the Federal Communications Commission (“FCC”). Price DT at 35-
4 36.²⁵

5
6 Moreover, as the RBOC – and, therefore, the dominant provider – in Kentucky,
7 AT&T’s rates for intrastate switched access service best approximate the rates
8 that would prevail if the market for that service were competitive. This is
9 particularly true because the AT&T intrastate rates reflect the federal CALLS
10 rates, which were based on negotiations among carriers. In addition, as the
11 RBOC, AT&T has received the most regulatory scrutiny, both in general and with
12 respect to its intrastate switched access rates, in particular.

13
14 Accordingly, AT&T not only is the most comparable carrier to Windstream in
15 Kentucky, but its intrastate switched access rates reflect the best estimate of what
16 the prevailing market rate would be and already have been approved as just and
17 reasonable by the Commission.

18 **Q. WHY DON’T THE INTRASTATE SWITCHED ACCESS RATES**
19 **CHARGED BY KENTUCKY RLECs PROVIDE A GOOD COMPARISON**
20 **FOR WINDSTREAM’S RATES?**

21 A. As I addressed in my Direct Testimony and above, AT&T’s intrastate switched
22 access rates provide the most appropriate comparison for Windstream’s intrastate

²⁵ Citing Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 07-171 (Aug. 6, 2007).

1 switched access rates. Mr. Caballero insists that this is an incomplete
2 comparison, and that “a complete comparison (to the extent such a comparison is
3 even relevant)” would stack Windstream’s access rates against those of various
4 rural local exchange carriers (“RLECs”) and competitive local exchange carriers
5 (“CLECs”) in Kentucky. Caballero DT at 13. Mr. Caballero states that “the
6 complete comparison” shows that Windstream’s intrastate switched access rates
7 are lower than those charged by “the other RLECs in the Commonwealth” (*id.*),
8 but does not actually provide that comparison, or any of the data on which it was
9 based, or even identify those other rural LECs. As with so many of Windstream’s
10 claims in this case, the Commission is asked to just take Windstream’s word for
11 what the comparison allegedly shows.

12
13 It is hardly surprising that some rural carriers might have higher intrastate
14 switched access rates. But that does not necessarily mean that those RLECs’
15 intrastate switched access rates are fair, just and reasonable. And it certainly does
16 not mean that Windstream’s rates, by virtue of being relatively lower (if that, in
17 fact, is the case), are somehow then fair, just and reasonable.

18
19 The fact that a different carrier has even higher (and potentially even more
20 unreasonable) rates does not render Windstream’s rates any more reasonable.
21 And Windstream’s intrastate switched access rates are unreasonable by any
22 appropriate measure – whether it be by comparison to the intrastate rates of a
23 similarly situated carrier like AT&T, by comparison to Windstream’s own

1 interstate rates, or by the fact that Windstream's intrastate rates are not supported
2 by any cost data or other evidence, just to name three.

3 **Q. ARE YOU SUGGESTING THAT WINDSTREAM'S INTRASTATE**
4 **SWITCHED ACCESS RATES SHOULD BE COST-BASED?**

5 A. No. Although companies typically do submit cost evidence to justify rates under
6 investigation, Verizon has not contended that Windstream's intrastate switched
7 access rates must be set on the basis of their underlying costs. Verizon's position
8 is that Windstream's Kentucky intrastate switched access rates instead should be
9 benchmarked to AT&T's intrastate switched access rates.

10

11 Regulators, including the Commission, have indicated that switched access rates
12 should move toward the cost of providing switched access services,²⁶ because that
13 generally is what would happen in a competitive switched access market.
14 Benchmark rates likely still remain above cost. But the benchmark rates tend to
15 be much closer to cost than rates charged by other carriers. That certainly is the
16 case here with respect to Windstream's rates. And using a benchmark rate is
17 much more straightforward and easy to administer than conducting a full-blown
18 rate case or some other type of cost proceeding.

19

20 Mr. Caballero points out that, although Verizon has taken the position that
21 Windstream's intrastate switched access rates should be benchmarked to AT&T's

²⁶ See *BellSouth Price Plan Review*, at 9-10; *BellSouth Mirroring Order*, at 4-5; *Cincinnati Bell Telephone*, Case No. 98-292, Order at 13-14 (Jan. 25, 1999).

1 intrastate rates, Verizon has made reference to the fact that Windstream's
2 intrastate rates are not cost-based. *See* Caballero DT at 15. To be clear,
3 Verizon's references to Windstream's costs were not intended to suggest anything
4 other than a benchmarking approach in this proceeding. Verizon included those
5 references simply because, in some instances, LECs have opposed efforts to
6 benchmark their rates by submitting cost studies to demonstrate that – while their
7 rates might exceed the benchmark – they nevertheless should be considered
8 reasonable because they are necessary to recover their unique costs. Verizon
9 anticipated that Windstream would take a similar position here and, to rebut any
10 such argument, pointed out that Windstream's intrastate switched access rates are
11 not and never have been based on its costs of providing intrastate switched access
12 service. *See* Price DT at 29-30, 32-33. But, despite hinting at something along
13 those lines at times,²⁷ Windstream ultimately has not taken that approach here and
14 has not submitted a cost study to suggest that its otherwise unreasonably high
15 rates should be considered reasonable because it faces uniquely high costs in
16 providing intrastate switched access service. In fact, Windstream seems quite
17 opposed to any idea that it should attempt to support its intrastate switched access
18 rates through a cost study. *See* Caballero DT at 15-16.

19
20 Instead, Windstream readily admits that its intrastate switched access rates are not
21 and never were cost-based and, indeed, exceed its costs. *See, e.g.,* Caballero DT

²⁷ *See, e.g.,* Caballero DT at 39 (indicating that Windstream serves customers located in rural areas “where the costs of providing service are arguably higher”).

1 at 15 (“none of the rates for Windstream East were ever established according to
2 its costs ...”); *id.* at 17 (“[t]hose rates had no relationship to the actual costs of
3 Windstream East ...”); Windstream’s Responses and Objections to Verizon’s
4 First Requests for Information, Response to No. 29(a)-(b) (stating that, while
5 Windstream cannot “unequivocally state that ... its intrastate switched access
6 rates exceed its costs,” Windstream nevertheless “agrees ... that switched access
7 rates in general have included implicit subsidies.”); Response to No. 9(a)-(b)
8 (Windstream conceding that “its intrastate switched access charges in part may be
9 considered to recover some costs related to maintaining affordable rates for basic
10 local service”). Yet, Windstream insists it needs all of the revenue resulting from
11 its current level of switched access charges with no explanation or demonstration
12 as to why.

13 **Q. MR. CABALLERO QUESTIONS WHETHER THERE IS ANY**
14 **PRECEDENT SUPPORTING VERIZON’S POSITION THAT SWITCHED**
15 **ACCESS RATES SHOULD BE BENCHMARKED TO AT&T’S RATES,**
16 **SUCH THAT RATES IN EXCESS OF THOSE RATES SHOULD BE**
17 **CONSIDERED UNJUST AND UNREASONABLE.²⁸ ARE YOU AWARE**
18 **OF ANY SUCH PRECEDENT?**

19 A. Yes. As I indicated in my Direct Testimony, the Kentucky Commission, the FCC
20 and various other states all have adopted benchmarking as a means of ensuring
21 fair, just and reasonable access rates without having to conduct complex,
22 contentious cost proceedings. *See* Price DT at 15-22.²⁹ In fact, the original

²⁸ *See* Caballero DT at 13-14.

²⁹ Mr. Caballero notes that the FCC has not specifically ordered an ILEC to mirror the switched access rates of another ILEC. *See* Caballero DT at 14. However, the FCC more broadly has made use of benchmarking in switched access reform and explained the policy in a way that

1 Kentucky access tariffs were permitted to mirror the then-current traffic sensitive
2 elements of interstate access tariffs.³⁰ The Commission also relied on
3 benchmarking to federal rates in another context when, in March 2006, it decided
4 to allow Kentucky ILECs to revise their intrastate primary interexchange carrier
5 (“PIC”) change charges to mirror federally tariffed rates that fall within the “safe
6 harbor” rates adopted by the FCC in CC Docket No. 02-53. The Commission said
7 that “in light of the FCC actions and adoption of new safe harbor rates, it is
8 appropriate for the Commission to adjust its cap to mirror the FCC’s interstate
9 rates.”³¹ This approach is entirely consistent with what other jurisdictions have
10 done in taking the very same kind of approach Verizon recommends here and
11 capping ILEC intrastate switched access rates at the level charged by the largest
12 ILEC in the state.³²

13

would apply in the ILEC-to-ILEC context as well: “a benchmark provides a bright line rule that permits a simple determination of whether a [carrier’s] access rates are just and reasonable.” *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, FCC 01-146, CC Docket No. 96-262, 16 FCC Rcd 9923 (April 27, 2001) (“*CLEC Rate Cap Order*”) at ¶ 41. Moreover, Mr. Caballero’s statement that the FCC has never “deemed any carrier’s switched access rates unjust or unreasonable simply because they differ from another carrier’s rates” (Caballero DT at 14) is just wrong. That is the very essence of the *CLEC Rate Cap Order*, for example.

³⁰ *Investigation of Toll and Access Charge Pricing and Toll Settlement Agreements*, Order, Case No. 8838, at 40-41 (November 20, 1984).

³¹ *Petition of Duo County Telephone Coop. Corp.*, Order, Case No. 2006-00076 (March 20, 2006).

³² *See, e.g., DPUC Investigation of Intrastate Carrier Access Charges*, Decision, Connecticut D.P.U. Docket No. 02-05-17, 2004 Conn. PUC LEXIS 15 (2004) (ordering all ILECs to benchmark their rates to the SBC/AT&T rate cap); Delaware Code, Title 26, § 707(e) (capping all service providers’ switched access rates at the level of the largest ILEC in the state); Code of Maryland Regulations § 20.45.09.03(b) (capping all LECs’ switched access rates at the level of the largest LEC in the state).

1 Mr. Caballero does not refer to any of this precedent regarding access charges, but
2 instead suggests that a prior Kentucky case regarding payphone rates commands
3 “the opposite” result. Caballero DT at 13-14. However, the payphone proceeding
4 to which Mr. Caballero refers (but does not cite) appears to involve a decision
5 involving payphone access line rates that involved very different circumstances
6 and is not directly applicable here. In that case, a court overturned a Commission
7 decision requiring retroactive rate reductions. But none of the carriers challenged
8 (and the court did not recognize any limitation on) the Commission’s authority to
9 require a reduction of rates on a prospective basis,³³ which is what Verizon seeks
10 here. Accordingly, the more appropriate precedent is that involving access
11 charges that was cited in my Direct Testimony. *See* Price DT at 15-22.

12 **Q. DOES THE FACT THAT, UNDER FEDERAL RULES, DIFFERENT**
13 **CARRIERS SOMETIMES CHARGE DIFFERENT INTERSTATE**
14 **SWITCHED ACCESS RATES FROM EACH OTHER UNDERCUT**
15 **VERIZON’S BENCHMARKING POSITION?**

16 A. No – it only confirms the point that it is appropriate to compare similarly situated
17 carriers to one another. Mr. Caballero notes, among other things, that the FCC
18 has established that price-cap regulated carriers can charge one of three different
19 interstate switched access rates, depending on their size. *See* Caballero DT at 14.
20 Mr. Caballero suggests this means “there is no support” for the notion that one
21 carrier’s rates should be benchmarked to (and considered unreasonable if they
22 exceed that of) another carrier’s. *Id.* But the opposite is true. The FCC’s price-

³³ *Cincinnati Bell Telephone Co. v. Kentucky Public Service Comm’n*, 223 S.W. 2d, 829, 833 (Ky. Ct. App. 2007).

1 cap rules are a form of benchmarking. The FCC established three different
2 categories and rates simply to ensure mean that each price-cap carrier is being
3 benchmarked to the right rate. In other words, the FCC wanted to make sure that
4 similarly sized price-cap carriers are being benchmarked to each another and not
5 to a differently situated set of carriers for which a different rate might be
6 appropriate. Here, the reasonable benchmark for Windstream is AT&T rates,
7 because – as explained above – AT&T is the Kentucky ILEC most similar to
8 Windstream (and its rates have been subject to the most Commission scrutiny and
9 approved as just and reasonable).³⁴

10 **Q. DOES WINDSTREAM CHARGE DIFFERENT RATES FOR ITS OWN**
11 **INTER- AND INTRASTATE SWITCHED ACCESS SERVICES?**

12 A. Yes. As I indicated in my Direct Testimony, Windstream charges significantly
13 more for its intrastate switched access services that it does for providing the same
14 service on an interstate basis. *See* Price DT at 40. Indeed, Windstream's
15 interstate switched access rates are not only much less than its own intrastate
16 rates, Windstream East's composite interstate rates are much less than even
17 AT&T's composite inter- and intrastate switched access rates. *Id.*

³⁴ Mr. Caballero also refers to the fact that rate-of-return regulated carriers can either charge their own individual interstate switched access rates or charge the NECA pool rates. Caballero DT at 14. However, the NECA pool rates vary based on the size of the carrier – again to ensure that comparable carriers are charging similar rates. This approach is entirely consistent with what Verizon recommends here – *i.e.*, that the two largest ILECs in the Commonwealth charge similar rates for the same service.

1 Mr. Caballero suggests that Windstream is only able to operate while charging the
2 lower interstate access rates because it also receives explicit federal subsidies in
3 connection with those rates (thereby making the interstate rates effectively
4 higher). *See* Caballero DT at 32-33. But Mr. Caballero does not support this
5 suggestion. He speaks only in generalities and in terms of the total subsidy
6 amounts Windstream receives, without providing the numbers or actual data to
7 back up the suggestion that Windstream could not operate at the interstate rates
8 without those subsidies. In particular, even though there was a cost basis for
9 Windstream's interstate rates, Mr. Caballero never states that Windstream's
10 interstate switched access costs exceed its interstate switched access rates. And,
11 with respect to Windstream's intrastate rates, we know the opposite is true: as
12 noted above, Windstream's current intrastate switched access rates are not cost-
13 based and, in fact, exceed its costs. Windstream certainly has not provided any
14 study or other analysis or information otherwise demonstrating any need for that
15 level of intrastate revenue.

16
17 Of course, even if Windstream's interstate rates are supplemented with federal
18 subsidies, that does not mean that Windstream is unable to lower its intrastate
19 rates without explicit subsidies. As discussed below, the FCC has provided
20 explicit subsidies for federal interstate rates because that is the only revenue
21 recovery mechanism it has available to it; the FCC has never had responsibility
22 for the end-user retail rates to which the FCC says carriers should look to recoup

1 any legitimate unrecovered costs.³⁵ Rather, retail rates for local service are a
2 matter of state law. Moreover, those federal subsidies actually are intended, in
3 part, to provide recovery for intrastate costs.³⁶ Accordingly, the Commission has
4 seen fit in the past to reduce the intrastate rates of comparable carriers (like
5 AT&T) without the need for any further explicit subsidy mechanism. Those
6 intrastate rate levels are also appropriate for a similarly situated carrier like
7 Windstream, which – as discussed below – has the ability to recoup any legitimate
8 unrecovered costs from its end user customers.

9 **Q. MR. CABALLERO ALLEGES THAT VERIZON'S REFUSAL TO**
10 **PROVIDE RESPONSES TO CERTAIN WINDSTREAM DISCOVERY**
11 **REQUESTS REGARDING VERIZON'S DEALINGS WITH OTHER**
12 **KENTUCKY LOCAL EXCHANGE CARRIERS INDICATES THAT**
13 **VERIZON'S PETITION IS NOT REALLY ABOUT THE**
14 **UNREASONABLENESS OF WINDSTREAM'S SWITCHED ACCESS**
15 **RATES.³⁷ HAS THE COMMISSION ADDRESSED THAT ISSUE?**

16 A. Yes. In fact, my understanding is that the Commission found that Windstream's
17 discovery requests were improper because *Windstream* (not Verizon) was focused

³⁵ See, e.g., *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, ¶ 68 (1997) (“*Access Charge Reform Order*”), *aff'd sub. nom.*, *Southwestern Bell v. FCC*, 153 F.3d 523 (8th Cir. 1998) (indicating carriers should look to recover costs from their own end users, rather than from other carriers); *CLEC Rate Cap Order* at ¶ 39.

³⁶ In particular, Windstream derives substantial amounts of money each year from federal “high cost funding” programs. While the FCC’s high cost program is intended to reduce interstate access rates, certain elements of the federal program are also intended to provide a contribution to costs that are jurisdictionally *intrastate*. See “Universal Service Monitoring Report,” CC Docket No. 98-202 (2009), prepared by Federal and State Staff for the Federal-State Joint Board on Universal Service, in CC Docket No. 96-45 (“Joint Board Monitoring Report”) at 3-8 (“Like ICLS [Interstate Common Line Support], the purpose of this mechanism [Interstate Access Support, or ‘IAS’] is to provide explicit support to ensure reasonably affordable interstate rates. This is in contrast to the Commission’s other high-cost support mechanisms, which provide support to enable states to ensure reasonably affordable and comparable intrastate rates.”) (emphasis added).

³⁷ Caballero DT at 10.

1 on information that was not really about the reasonableness of Windstream's
2 intrastate switched access rates.

3
4 During the course of discovery in this proceeding, Windstream made several
5 requests to Verizon, the majority of which Verizon answered without objection or
6 dispute. However, when Windstream asked that Verizon provide certain
7 information about its dealings with local exchange carriers in Kentucky *other*
8 *than Windstream*, including information regarding how many access minutes
9 Verizon terminated to other Kentucky LECs, Verizon objected to those particular
10 discovery requests as seeking information irrelevant to the question at issue in this
11 case – *i.e.*, whether Windstream's intrastate switched access rates are fair, just and
12 reasonable. Windstream moved to compel responses to those particular requests.
13 The Commission denied Windstream's motion, agreeing with Verizon that the
14 information sought by Windstream simply was not relevant to this proceeding.
15 *See Order* (May 14, 2010) at 5-6 (“The Commission finds that [the] Data
16 Request[s] ... are not relevant to the question of the reasonableness of
17 Windstream's rates”).

18 **Q. MR. CABALLERO CLAIMS THAT INFORMATION IS RELEVANT**
19 **BECAUSE, “IF VERIZON IS TERMINATING MORE ACCESS MINUTES**
20 **IN THE TERRITORIES OF OTHER KENTUCKY ILECS THAT HAVE**
21 **HIGHER RATES THAN THOSE OF THE WINDSTREAM COMPANIES,**
22 **THEN VERIZON’S SUGGESTION THAT THE WINDSTREAM RATES**
23 **ARE UNJUST AND UNREASONABLE IS WHOLLY WITHOUT**
24 **MERIT.”³⁸ DO YOU AGREE?**

³⁸ Caballero DT at 10.

1 A. No. Mr. Caballero is really claiming two things, neither of which is right.

2

3 First, Mr. Caballero is suggesting that, if Verizon is terminating more minutes to
4 other Kentucky LECs to which it is paying even higher intrastate switched access
5 rates than it does to Windstream, then Verizon really must not mind paying those
6 rates. In other words, Mr. Caballero is claiming that, by paying more to someone
7 else (if that is in fact true), Verizon at least tacitly must consider Windstream's
8 lower rates to be reasonable. But that assumes that Verizon is *willingly* paying
9 higher rates (on greater volumes of traffic) to other carriers. It is not. Even if
10 Verizon actually were paying more to other LECs, it is not doing so willingly. As
11 I explained in my Direct Testimony, Verizon has no choice in the matter. *See*
12 Price DT at 12. Due to regulatory requirements, a long distance carrier cannot
13 choose whom its customers call or what LEC serves the called party. Instead, the
14 long distance company must carry and complete any call a customer places and
15 must pay whatever switched access fees the LEC assesses for terminating that
16 call. So, the fact that Verizon may pay even higher switched access rates to other
17 Kentucky LECs cannot be read as any kind of endorsement or approval of those
18 (or even lower) rates. Regardless of the level of access rates that an IXC must
19 pay, the IXC must complete its customers' calls that trigger those access charges.

20

21 Second, Mr. Caballero is suggesting that, aside from whatever Verizon might
22 think or tacitly approve, if other Kentucky LECs charge higher rates for intrastate
23 switched access services, then Windstream's comparatively lower rates

1 objectively should be considered reasonable. But this is equally misguided. It is
2 certainly possible (and, indeed, likely) that some other Kentucky LECs charge
3 higher rates for intrastate switched access services than does Windstream. And it
4 is certainly possible (and, indeed, likely) that some or all of those higher rates are
5 unjust and unreasonable. But just because another LEC charges an even higher
6 and even more unjust and unreasonable rate than Windstream does not mean that
7 Windstream's rate is just and reasonable. For all the reasons spelled out in my
8 Direct Testimony, there is no question that Windstream's intrastate switched
9 access rates are unjust and unreasonable. The fact that there may be even worse
10 offenders in Kentucky does not somehow put Windstream in a favorable light.

11 **Q. IF IT IS POSSIBLE THAT OTHER KENTUCKY LECS MAY CHARGE**
12 **HIGHER RATES THAN WINDSTREAM, IS IT APPROPRIATE TO**
13 **FOCUS ON JUST WINDSTREAM'S INTRASTATE SWITCHED ACCESS**
14 **RATES IN THIS PROCEEDING?**

15 A. Yes. Indeed, the Commission already explicitly has determined that this is the
16 appropriate way to proceed here:

17 The Commission has contemplated potentially establishing a larger
18 administrative proceeding involving all 18 Kentucky ILECs who
19 currently charge intra-state switched access charges. The
20 Commission believes that, if one access carrier argues that the
21 rates it is being charged are inflated or excessive, it is likely that
22 other carriers have the same concern about other incumbents.
23 However, the complexity and size of such an administrative
24 proceeding would potentially be more cumbersome and less
25 fruitful ... [T]he Commission is not convinced that all of those
26 carriers ... would be adequately served if their arguments are lost
27 among a variety of voices and risk receiving inadequate
28 recognition or attention.

29 ... The Commission affirmatively states that an investigation into
30 the issue of intercarrier compensation reform is necessary, but

1 believes the most responsible decision would be to allow Verizon's
2 complaint [against Windstream] to go forward on its own merits
3 and allow the Commission to reach a properly framed legal
4 conclusion which could potentially be applied to individual, future
5 carrier-to-carrier access charge complaints.

6 The Commission finds that the best method by which to conduct
7 an evaluation of Windstream's switched access rates is to allow
8 this [individual] complaint to move forward with the current roster
9 of parties, while being mindful that the decisions rendered in this
10 proceeding will likely be applied to future complaints by switched
11 access customers who are similarly situated to Verizon ...

12 Order (Mar. 11, 2009) at 6-8.

13
14 This is entirely consistent with how the Commission has proceeded in the past,
15 when it first focused on the individual intrastate switched access rates and
16 NTSRR recovery of the Commonwealth's largest ILEC – AT&T. After taking
17 that first step with AT&T years ago, the Commission now should take the next
18 step with the next largest Kentucky ILEC – Windstream – and address its
19 intrastate switched access rates as part of the access reform that has been
20 “looming ... over this Commission for a significant period of time.” *Order* (Mar.
21 11, 2009) at 5. Doing so not only allows for the most fair, efficient and orderly
22 proceeding, but – given Windstream's size, market share and current rates – still
23 will generate significant results and set the framework for consideration of other,
24 smaller carriers' rates in the future.

25 **Q. MR. CABALLERO CLAIMS THAT “VERIZON IS IN ERROR” WHEN IT**
26 **PREVIOUSLY STATED THAT WINDSTREAM HAS FAILED TO MAKE**
27 **ANY SIGNIFICANT INTRASTATE ACCESS REDUCTIONS AND THAT**

1 **SUCH “ERRONEOUS” ALLEGATIONS ARE “FATAL TO ITS**
2 **PETITION.”³⁹ DO YOU AGREE?**

3 A. No. Mr. Caballero notes that, “Verizon states on page 6 of its Petition that to its
4 knowledge ‘Windstream has made no significant access reductions.’” Caballero
5 DT at 12. Mr. Caballero claims “Verizon is in error.” *Id.* But Mr. Caballero
6 claims this is “error” because, in fact, “Windstream East’s Verizon ILEC
7 *predecessor* made switched access rate reductions between 2000 and 2001 ...
8 [and t]hese substantial reductions resulted in reduced switched access tariffed
9 rates for Windstream East’s *predecessor*” *Id.* (emphasis added). I addressed
10 all of this in my Direct Testimony. *See* Price DT at 28-29. But, as even Mr.
11 Caballero admits, Windstream did not make any reductions at all. Any reductions
12 were made by Windstream East’s predecessor – namely, Verizon – before
13 Windstream East began operating. And Mr. Caballero does not suggest that
14 Windstream West’s rates have ever been reduced at all. They haven’t – not by its
15 predecessors and certainly not by Windstream itself. Accordingly, far from
16 highlighting any meaningful “error” in Verizon’s Petition, Mr. Caballero’s
17 testimony only underscores that Windstream has done nothing to reduce its
18 intrastate switched access rates on its own.

19
20 But, regardless of whether or when prior access charge reductions were made, that
21 fact has no bearing on the ultimate question in this case – *i.e.*, whether the
22 intrastate switched access rates that Windstream East and Windstream West

³⁹ Caballero DT at 12-13.

1 *charge today* are fair, just and reasonable. For the multitude of reasons set forth
2 in the Petition, my Direct Testimony, and here, they are not. And whether or not
3 the Petition mentioned a particular access charge reduction that Windstream
4 East's predecessor (*i.e.*, Verizon) made in 2000-2001 does not change that fact.

5 **Q. BY PREVIOUSLY APPROVING THE TARIFFS CONTAINING**
6 **WINDSTREAM'S CURRENT INTRASTATE SWITCHED ACCESS**
7 **RATES, DID THE COMMISSION IMMUNIZE THOSE RATES FROM**
8 **ANY SUBSEQUENT REVIEW?**

9 A. No. The Commission may have approved the tariffs containing Windstream's
10 intrastate switched access rates at a certain point in time, but Windstream cannot
11 seriously argue that those rates are perpetually reasonable and that the
12 Commission can never re-visit them to ascertain whether they remain fair, just
13 and reasonable. Even Windstream has supported a contemporary evaluation of
14 another carrier's access rates, when it was Windstream's burden to pay those
15 rates.⁴⁰

16
17 As Windstream admits, no one challenged its intrastate switched access rates at
18 the time they initially were established (Caballero DT at 21-22), so the
19 Commission did not have the benefit of a complaint proceeding to test the
20 appropriateness of those rates. Moreover, whatever conditions existed at the time
21 those rates were approved may not exist today. As I explained in my Direct
22 Testimony, the marketplace today is very different than it was when those rates

⁴⁰ See Windstream Kentucky East's Reply to Mountain Rural Telephone's Response to Motion to Compel, filed Oct. 19, 2006, in Case No. 2006-00198, at 3.

1 initially were established. Changes in competition, technology and regulation
2 warrant a fresh look at rates that have not been reviewed for nearly a decade (in
3 the case of Windstream East) or considerably longer (for Windstream West). It
4 would be bad policy to permanently lock in access rates from a different
5 telecommunications era, forever shielding them from Commission review.
6 Accordingly, the Commission has recognized that – regardless of when and how
7 Windstream’s intrastate switched access rates previously were approved – “an
8 investigation into Windstream’s switched access rates is necessary” now
9 regarding “the reasonableness of the compensation which Windstream *currently*
10 receives for its access service.” *Order* (Mar. 11, 2009) at 6 (emphasis added).⁴¹

11 **IV. WINDSTREAM’S INTRASTATE SWITCHED ACCESS RATES ARE**
12 **DRIVEN TO UNREASONABLY HIGH LEVELS IN LARGE PART BY**
13 **ITS NTSRR RECOVERY, WHICH IS BOTH INAPPROPRIATE AND**
14 **UNNECESSARY.**

15 **Q. DOES MR. CABALLERO EXPRESS ANY OPINION AS TO WHY**
16 **WINDSTREAM’S INTRASTATE SWITCHED ACCESS RATES ARE SO**
17 **MUCH HIGHER THAN AT&T’S?**

18 A. Yes. Mr. Caballero testifies that, “[w]ith respect to the Windstream ILECs and
19 AT&T Kentucky, the primary difference in these companies’ intrastate switched
20 access rates is the application of the NTSRR rate.” Caballero DT at 19.

21 **Q. DO YOU AGREE THAT THE PRIMARY DIFFERENCE BETWEEN**
22 **WINDSTREAM’S AND AT&T’S RATES IS CAUSED BY THE NTSRR?**

⁴¹ See also *Order* (Mar. 11, 2009) at 8 (noting that review of Windstream’s current rates is necessary, in part, because “Verizon has raised a compelling argument that Windstream’s current non-traffic sensitive revenue requirement rates have not been modified by Windstream to actively reflect its most recent revenue results ...”).

1 A. Yes. As I indicated in my Direct Testimony, there are a number of differences
2 between Windstream's intrastate switched access rates and those of AT&T. *See*
3 Price DT at 23-27. The Windstream companies continue to include rate elements
4 (such as the residual interconnection charge and switched access information
5 surcharges) that AT&T no longer charges. And Windstream also charges more
6 than AT&T for some rate elements, including, for example, tandem switched
7 transport termination and local end office switching. However, Windstream's
8 NTSRR (which it recovers primarily through the CCLC component of its
9 intrastate switched access charges) is the main reason why Windstream's
10 intrastate switched access rates are so much higher than AT&T's.

11

12 Consistent with the Commission's "established policy of working to eliminate the
13 NTSRR"⁴² and the FCC's phasing out the non-traffic-sensitive CCLC as part of
14 its "long range goal... to have incumbent LECs recover a large share of the NTS
15 common line costs from end users instead of carriers,"⁴³ AT&T eliminated any
16 NTSRR recovery from its rates approximately ten years ago. Indeed, AT&T does
17 not assess any CCLC at all as part of its Kentucky intrastate rates. However,
18 Windstream has not taken similar steps. Windstream West still has a \$2.51 per
19 access-line, per-month NTSRR which it recovers through its CCLC,⁴⁴ and the
20 Windstream East companies have analogous rates of \$2.1075 per access line, per

⁴² *2000 Certification Order* at 2.

⁴³ *Access Charge Reform Order* at ¶ 68.

⁴⁴ *Windstream Kentucky West Tariff* PSC No. 5, Original Page 17-2.

1 month.⁴⁵ While these charges are not the only difference between Windstream’s
2 and AT&T’s respective intrastate switched access rates, they do account for a
3 substantial portion of the Windstream companies’ access rates: Windstream
4 East’s CCLC charges make up *over half* of its total, per-minute switched access
5 rate, and these charges make up almost *three-quarters* of Windstream West’s
6 total rate.

7 **Q. DOES MR. CABALLERO INDICATE WHAT THE NTSRR IS INTENDED**
8 **TO RECOVER?**

9 A. Only in the vaguest terms. He indicates that the NTSRR is intended, in part, to
10 recover for functions associated with implementing equal access, but also that
11 “the NTSRR recovers for a much broader set of functions.” Caballero DT at 19.
12 In particular, Mr. Caballero emphasizes that “assessment of the NTSRR charge is
13 intended in part to recover for functions associated with the loop” – also referred
14 to as common line functions – with the loop itself being used, in part, “to provide
15 intrastate switched access service” *Id.* at 18. Mr. Caballero never specifies
16 what “functions” the NTSRR supposedly recovers, much less tries to quantify the
17 costs associated with these functions. Even more fundamentally, Mr. Caballero
18 does not mention that loop costs are not caused by Windstream’s provision of
19 switched access service. To the contrary, loop costs are caused by the end user’s
20 decision to obtain retail local service from Windstream. So, even though the
21 NTSRR is assessed as part of intrastate switched access charges, it includes

⁴⁵ Windstream Kentucky East Tariff PSC No. 8, Original Page 4; Windstream Kentucky East Tariff PSC No. 9, Original Page 12. Windstream converts the tariffed, per-access-line NTSRR to a per-minute charge for billing purposes.

1 recovery for the costs of other services (or at least that's what Windstream asserts,
2 without identifying just how it's using the revenue from the NTSRR). *See*
3 Windstream's Responses and Objections to Verizon's First Requests for
4 Information, Response to No. 9(a)-(b) ("intrastate switched access charges in part
5 may be considered to recover some costs related to maintaining affordable rates
6 for basic local service"). In other words, the NTSRR is used to subsidize other
7 Windstream operations, although Windstream submitted no proof that that the
8 NTSRR revenues are actually used to cover the costs of basic local service or any
9 other regulated services.

10 **Q. DOES MR. CABALLERO EXPLAIN WHY WINDSTREAM SHOULD BE**
11 **PERMITTED TO SUBSIDIZE OTHER OPERATIONS THROUGH ITS**
12 **NTSRR WHEN CARRIERS LIKE AT&T HAVE ELIMINATED ANY**
13 **NTSRR RECOVERY FROM THEIR INTRASTATE SWITCHED ACCESS**
14 **RATES?**

15 A. No. Despite the significance of the NTSRR to both Windstream's rates and
16 Verizon's claims, Mr. Caballero devotes a very small portion of his testimony to
17 the NTSRR. In the course of that relatively brief discussion, Mr. Caballero does
18 not explain why Windstream should be permitted to continue recovering such
19 substantial NTSRR amounts through its CCL charges in light of clear directives
20 from both the Commission and the FCC that NTSRR charges should be
21 eliminated. *See, e.g., Inquiry into Universal Service and Funding Issues*, Adm.
22 Case No. 360, Order, at 35 (May 22, 1998) (Commission stating that
23 "[e]limination of NTS is a priority and will be considered along with the
24 elimination of other implicit subsidies"); *Access Charge Reform Order* at ¶ 68

1 (FCC recognizing phase-out the non-traffic-sensitive CCLC as part of its “long
2 range goal... to have incumbent LECs recover a large share of the NTS common
3 line costs from end users instead of carriers”). Indeed, Mr. Caballero does not
4 even mention the Commission’s “established policy of working to eliminate the
5 NTSRR.”⁴⁶

6
7 Instead, Mr. Caballero suggests that AT&T – which has complied with the
8 Commission’s established policy of working to eliminate the NTSRR – somehow
9 “is the outlier” (Caballero DT at 19) and “an exception” (*id.* at 20) that should not
10 serve as an example. He insists that the more appropriate model for Windstream
11 to follow is that of the rural local exchange carriers that have ignored the
12 Commission’s directive to eliminate NTSRR recovery. *Id.* at 20 (“assessment of
13 the NTSRR is actually more in line with all other RLECs in the
14 Commonwealth”).

15
16 Of course, Mr. Caballero does not provide any support for his claim that “all”
17 Kentucky RLECs continue to assess NTSRR charges. (In fact, he later says it is
18 only “the majority of RLECs in the Commonwealth.”⁴⁷) Nor does he provide any
19 information regarding those carriers’ operations that would allow the Commission
20 to evaluate whether they are in any way comparable to Windstream. But any
21 suggestion that Windstream should be treated like rural Kentucky LECs because

⁴⁶ 2000 Certification Order at 2.

⁴⁷ Caballero DT at 26.

1 it is similarly situated to or otherwise more comparable to them than it is to
2 AT&T is meritless.

3
4 As discussed above, Windstream and AT&T are the two largest ILECs in the
5 state. They serve hundreds of thousands of access lines and are managed by
6 sophisticated corporate parents that maximize operational efficiencies across
7 nationwide platforms. Their similar profiles justify similar treatment, particularly
8 because Windstream has submitted nothing to show that, without the NTSRR
9 revenues, it cannot cover the costs of the retail services for which the Commission
10 has authority over rates.

11
12 Moreover, the fact that other carriers may not have complied with the
13 Commission's directive to eliminate NTSRR recovery does not change that
14 directive or excuse Windstream's failure to comply with it. The potential
15 existence of other wrongdoers does not alter Windstream's wrongdoing. Indeed,
16 even Mr. Caballero appears finally to concede that eliminating the NTSRR
17 recovery from Windstream's intrastate switched access rates may be appropriate,
18 depending on how the elimination is implemented. *See Caballero DT at 21.*

19 **Q. WHY DO YOU SAY THAT MR. CABALLERO APPEARS TO CONCEDE**
20 **THAT ELIMINATING THE NTSRR RECOVERY MAY BE**
21 **APPROPRIATE?**

22 A. At the very end of his discussion of the NTSRR, Mr. Caballero notes that, when
23 the FCC eliminated CCL charges from interstate switched access rates, it "did ...

1 not simply eliminate the charge but rather ... replace[d] implicit subsidies with
2 explicit revenue replacement mechanisms.” Caballero DT at 20. Accordingly,
3 Mr. Caballero states that “[t]he issue is not that the NTSRR should be eliminated
4 ... but more accurately that the rate may contain implicit subsidies that, if
5 removed and made explicit, must be done in a meaningful and rational manner.”
6 *Id.* at 21. I understood that testimony to mean that Mr. Caballero did not object to
7 elimination of Windstream’s NTSRR recovery from its intrastate switched access
8 rates *per se*. Indeed, such action would be consistent with FCC decisions
9 eliminating similar charges from interstate rates and with the Commission’s
10 “priorit[ies]”⁴⁸ and “established policy.”⁴⁹ However, Mr. Caballero insists that
11 eliminating Windstream’s NTSRR should be accompanied by the creation of
12 some sort of explicit funding mechanism that would completely replace all of the
13 revenue lost by eliminating the NTSRR and that would continue to subsidize
14 Windstream’s other operations. *See* Caballero DT at 21.⁵⁰

15 **Q. DOES VERIZON OBJECT TO WINDSTREAM SEEKING TO REPLACE**
16 **NTSRR REVENUE OR OTHER INTRASTATE SWITCHED ACCESS**
17 **RATE REDUCTIONS THROUGH OTHER MEANS?**

18 A. Generally, no. Even if the Commission were to eliminate Windstream’s NTSRR
19 recovery from its intrastate switched access rates or otherwise reduce
20 Windstream’s rates (and it should), Windstream has submitted nothing to show

⁴⁸ *Inquiry into Universal Service and Funding Issues*, Adm. Case No. 360, Order, at 35.

⁴⁹ *2000 Certification Order* at 2.

⁵⁰ Mr. Caballero makes the same point with respect to Windstream’s intrastate switched access rates more broadly. *See* Caballero DT at 29-35.

1 that it would be unable to recover its costs of providing service. Windstream
2 concedes that its current intrastate switched access rates allow it to recover
3 amounts above and beyond its cost of providing intrastate switched access
4 service,⁵¹ but there is no evidence that Windstream needs any subsidies to cover
5 the costs of its other regulated services.

6
7 But if, after the necessary intrastate switched access rate reductions, Windstream
8 still has legitimate unrecovered costs, then it should recover those costs through
9 rate increases from its own retail customers. The FCC specifically has recognized
10 that the proper, economically efficient way to proceed is through recovery of
11 costs primarily from a carrier's own end users. *See, e.g., Access Charge Reform*
12 *Order* at ¶ 68. Even Windstream has recognized this is the best approach in
13 filings it has made with the FCC.⁵² And Verizon has no objection to Windstream
14 seeking to make up any foregone access revenues through adjustments to its retail
15 rates.

16 **Q. DOES WINDSTREAM HAVE THE ABILITY TO MAKE UP**
17 **UNRECOVERED COSTS (IF ANY) THROUGH RETAIL RATE**
18 **INCREASES DESPITE COMPETITION IN THOSE RETAIL MARKETS?**

19 A. Yes. Windstream offers a number of different telecommunications services
20 through which it could seek to recover any remaining legitimate, unrecovered

⁵¹ Windstream's Responses and Objections to Verizon's First Requests for Information, Responses to Nos. 9(a)-(b) and 29(a)-(b).

⁵² *See* Windstream's Comments in WC Docket No. 08-152 (Aug. 21, 2008) ("Windstream supports the premise that carriers should first recover a reasonable amount of the costs to provide service from their customers before seeking universal service funding.").

1 costs (if any) from its end users. Under KRS 278.544(3), Windstream has the
2 discretion to determine how to adjust its various nonbasic retail rates to maximize
3 its ability to fully recover its costs for providing regulated services. While
4 Windstream's rates for basic local exchange services are capped as a result of a
5 statutory election it made in 2006, that cap expires next year – allowing
6 Windstream even greater flexibility. And, as I noted in my Direct Testimony,
7 Windstream's rates for residential services are relatively low and should afford
8 Windstream room to recoup any unrecovered costs following the necessary rate
9 reductions. *See* Price DT at 42-44.

10
11 For this reason, I have trouble understanding Mr. Caballero's suggestion that the
12 market for these services is "so competitive that it is unlikely that any carrier,
13 including Windstream East or Windstream West, would be able to increase [their
14 rates] to levels sufficient to make up for any displaced intrastate switched access
15 rate revenues." Caballero DT at 30. That is inconsistent with the actual rates I
16 have seen in the market and that I addressed in my Direct Testimony, where I
17 demonstrated, by way of example, that Windstream's rates for basic residential
18 services are lower than AT&T's in many cases. *See* Price DT at 43-44. Mr.
19 Caballero does not provide any examples to the contrary, and does not include
20 any actual rates or related data for comparison or evaluation. He simply asserts
21 that Windstream cannot possibly raise its retail rates, without providing any
22 support at all for that claim. *See* Caballero DT at 30. I therefore cannot accept
23 that claim, and neither should the Commission.

1 **Q. WOULD IT BE MORE APPROPRIATE FOR WINDSTREAM TO SEEK**
2 **TO RECOVER ITS COSTS PRIMARILY FROM ITS OWN END USERS,**
3 **RATHER THAN THROUGH AN EXPLICIT FUNDING MECHANISM OF**
4 **THE TYPE MR. CABALLERO REFERENCES⁵³?**

5 A. Yes. The FCC specifically has recognized that the most economically efficient
6 outcome is for carriers to recover costs from their own end users. *See, e.g.,*
7 *Access Charge Reform Order* at ¶ 68; *CLEC Rate Cap Order* at ¶ 39 (FCC
8 recognizing, in adopting cap on interstate access rates, that carriers should look to
9 recover their costs from their own end user customers). “When a [carrier]
10 attempts to recover additional amounts from its own end user ... that customer
11 receives correct price signals and can decide whether he should find an alternative
12 provider for access (and likely local exchange) service.” *CLEC Rate Cap Order*
13 at ¶ 39. Recovery through other mechanisms can distort the market and lead to
14 economically inefficient behavior. But requiring local exchange carriers like
15 Windstream to recover additional amounts from their own end user customers
16 “brings market discipline and accurate price signals to bear on the end user’s
17 choice of access providers.” *Id.*

18
19 Nevertheless, as Mr. Caballero notes, the FCC has not always simply eliminated
20 implicit subsidies, ordered switched access rate reductions, and stopped there.
21 *See Caballero DT* at 29-35. In certain circumstances, the FCC has allowed
22 carriers to recoup at least some of their access charge reductions through explicit
23 recovery mechanisms (such as federal subscriber line charges or universal service

⁵³ *See Caballero DT* at 29-35.

1 funding), rather than have those carriers make up the difference and recoup any
2 legitimate unrecovered costs through changes to retail rates. *Id.* However, this
3 clearly is not the FCC’s preference, as it repeatedly has made plain that the most
4 economically efficient outcome is for carriers to recover costs from their own end
5 users. *See, e.g., Access Charge Reform Order* at ¶ 68; *CLEC Rate Cap Order* at ¶
6 39. The FCC instead has resorted to explicit funding mechanisms only because –
7 unlike the Commission here – it did not have the option of permitting those
8 carriers to seek recovery from their end user customers. Because the FCC does
9 not have the jurisdiction over retail rates (such as those for basic local service) to
10 be able to look to those rates to craft a solution to replace lost access revenue, it
11 has had limited flexibility compared to state regulators. So, the FCC utilized
12 other recovery mechanisms (such as universal service mechanisms) that were
13 available to it within its jurisdiction.

14
15 But the Commission is not faced with the same limitations. Perhaps that is why,
16 when the Commission has spoken of the need to “eliminate the NTSRR”⁵⁴ and
17 “other implicit subsidies,”⁵⁵ it has referred only to eliminating those charges and
18 *not* to replacing them with explicit funding mechanisms. Indeed, the Commission
19 has never established the same kinds of explicit funding mechanisms, such as a
20 universal service fund. And it should not start now. In Kentucky, Windstream
21 can and should look to recoup any unrecovered costs from its end user customers.

⁵⁴ *2000 Certification Order* at 2.

⁵⁵ *Inquiry into Universal Service and Funding Issues*, Adm. Case No. 360, Order, at 35.

1 As the FCC has recognized, this approach better promotes market discipline and
2 economic efficiency. *See CLEC Rate Cap Order* at ¶ 39.

3
4 Indeed, this is precisely how FCC staff proposes that state commissions handle
5 access charge reductions on a going-forward basis. As part of the proposed
6 National Broadband Plan (“NBP”) that Mr. Caballero cites approvingly in his
7 testimony, FCC staff proposes certain intercarrier compensation reforms,
8 including reducing carriers’ intrastate switched access rates to their corresponding
9 interstate rate levels. *See Caballero DT* at 36-37. But, with respect to providing
10 carriers the opportunity to recoup any unrecovered legitimate costs, the proposal
11 explicitly provides that “[t]he FCC should also encourage states to complete rate
12 rebalancing of local rates to offset the impact of lost access revenues.” *Id.* at 37
13 (quoting NBP). That is comparable to what Verizon proposes here. The only
14 difference is the simplicity that results from the 2006 amendments to the
15 Commission’s statute: Windstream can re-balance most local rates on its own,
16 using its own business judgment, and without Commission intervention.

17 **Q. EVEN UNDER THE TYPES OF FEDERAL FUNDING MECHANISMS**
18 **YOU SAY SHOULD NOT APPLY HERE, ARE CARRIERS ENTITLED**
19 **TO BE MADE WHOLE FOR ALL ACCESS CHARGE REDUCTIONS?**

20 A. No. Even under the explicit funding mechanisms the FCC has adopted for the
21 interstate jurisdiction, a carrier is not entitled to make-whole subsidies just
22 because it wants them. Carriers must demonstrate a need for funding in a
23 particular amount. Windstream has not made any such showing here. Indeed, it

1 has not even tried, claiming that it does not have the “burden” to demonstrate
2 anything in order to preserve its current level of access revenue. Caballero DT at
3 8, 15-16. But under no regime would Windstream be entitled to unconditionally
4 be made whole, dollar-for-dollar, for any necessary access charge reductions, by
5 means of an explicit fund to be collected from other carriers.

6 **V. WINDSTREAM’S INTRASTATE SWITCHED ACCESS RATES HARM**
7 **THE PUBLIC INTEREST.**

8 **Q. WOULD ELIMINATING WINDSTREAM’S NTSRR RECOVERY AND**
9 **OTHERWISE REDUCING ITS INTRASTATE SWITCHED ACCESS**
10 **RATES ADVANCE THE PUBLIC INTEREST?**

11 A. Yes. While Mr. Caballero claims that “Verizon’s petition amounts to nothing
12 more than targeted expense reductions and sets forth bad policy for the
13 Commonwealth,”⁵⁶ the Commission has long recognized that the opposite is true.
14 This Commission has identified a need for access reform and has found that
15 removing excessive subsidies from switched access rates and pricing access
16 services more closely to their costs is in the public interest.⁵⁷ The Commission
17 has recognized, in particular, that the NTSRR element is not in the public interest
18 and should be eliminated.⁵⁸

19
20 The Commission’s determination that eliminating the NTSRR and reducing
21 switched access rates is in the public interest is entirely consistent with the FCC’s

⁵⁶ Caballero DT at 28.

⁵⁷ See 2000 Certification Order, *supra*.

⁵⁸ *Id.* at 2.

1 findings. The FCC has recognized time and again that full, economically efficient
2 long distance competition and the consumer benefits it yields cannot be fully
3 achieved as long as local exchange carriers seek to recover a disproportionate
4 share of their costs through access charges levied on other carriers (*i.e.*, long
5 distance providers), rather than from their own end users.⁵⁹ Such irrational access
6 rate structures lead to what the FCC has termed “inefficient and undesirable
7 economic behavior”⁶⁰ and, ultimately, to higher prices for consumers.

8
9 As the FCC has observed, even in an otherwise competitive long distance market,
10 higher access charges suppress demand for the services of those long distance
11 carriers that must pay the excessive access charges and reduces incentives for
12 local entry by firms that might be able to provide service more efficiently than the
13 LEC.⁶¹ By contrast, rationalizing switched access rates – particularly for LECs in
14 rural areas – enhances incentives for long distance carriers to originate service in
15 more areas and fosters greater facilities-based competition for residential
16 subscribers.⁶²

⁵⁹ See generally *CLEC Rate Cap Order, supra; Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service*, 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, 15 FCC Rcd 12962 (May 31, 2000) (“*CALLS Order*”); *Multi-Association (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report & Order and Further Notice of Proposed Rulemaking, CC Docket No. 00-256, Fifteenth Report & Order in CC Docket No. 96-45, and Report & Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (Rel. Nov. 8, 2001) (“*MAG Order*”).

⁶⁰ *CALLS Order* at ¶ 129.

⁶¹ *Id.* at ¶ 114.

⁶² *MAG Order* at ¶ 11.

1

2 So, while Mr. Caballero is correct that the necessary reduction of Windstream's
3 intrastate switched access rates will reduce Verizon's expenses (Caballero DT at
4 28), that is far from the only benefit those reductions will bring. Other payors of
5 Windstream's access rates will benefit and, in turn, so will their customers and
6 competition as a whole.

7 **Q. WILL REDUCTIONS TO WINDSTREAM'S INTRASTATE SWITCHED**
8 **ACCESS RATES FLOW THROUGH TO BENEFIT CONSUMERS?**

9 A. Yes. Mr. Caballero suggests that Verizon has not "provide[d] any firm
10 commitment or factual explanation of how expense reductions will be flowed
11 through ... to end users." Caballero DT at 28. But no "commitment" or formal
12 flow-through requirement is necessary. (Indeed, any formal pass-through
13 mechanism would be not only unnecessary, as Dr. Aron explains at pages 46-47
14 of her Direct Testimony on behalf of AT&T, but inconsistent with statutory rate
15 deregulation for nonbasic services, including long distance services.) Instead,
16 competition will ensure that the benefits of access charge reductions will flow
17 through to end users.

18

19 In particular, competition in the long distance market will ensure that retail long
20 distance rates include the effects of access cost savings, although no one can
21 predict exactly how that will happen. Cost savings may be reflected in reduced
22 rates, or in rates that stay the same because the savings have offset other cost
23 increases, or in a smaller rate increase than otherwise would have been

1 implemented. Alternatively, competitors in the long distance market may invest
2 the savings in improved technology or service quality, bringing tangible benefits
3 to consumers in other ways.⁶³

4 **Q. MR. CABALLERO ASSERTS THAT THERE IS SOMETHING**
5 **“DUBIOUS,” “CONTRADICT[ORY]” OR THAT “MAKES NO SENSE”**
6 **ABOUT VERIZON’S POSITIONS THAT (1) WINDSTREAM’S**
7 **UNREASONABLY HIGH INTRASTATE SWITCHED ACCESS RATES**
8 **HARM THE KENTUCKY LONG DISTANCE MARKET AND (2) THE**
9 **SAME LONG DISTANCE MARKET IS COMPETITIVE.⁶⁴ IS THERE**
10 **ANYTHING “DUBIOUS,” “CONTRADICT[ORY]” OR NON-SENSICAL**
11 **ABOUT THOSE TWO POSITIONS?**

12 A. No. The idea that the long distance market generally is competitive is not
13 mutually exclusive with or somehow contradictory to the notion that unreasonably
14 high access rates competitively harm those long distance carriers that are forced to
15 pay those rates. Indeed, the Commission already has rejected a similar claim in
16 the context of denying Windstream’s motion to compel certain discovery,
17 indicating that Verizon’s continuing ability to compete in the long distance
18 market does not resolve whether Windstream’s intrastate access rates are just and
19 reasonable. *See Order* (May 14, 2010) at 4 (“From the Commission’s
20 perspective, the central issue in this proceeding is not whether Verizon is
21 competing in Kentucky’s long distance market, as clearly Verizon still exists and

⁶³ Even if a formal pass-through requirement were lawful and otherwise made sense in a competitive market – which it does not – it also is anachronistic because it is now impractical. Almost all end users now have a plan, a package, a card or other savings device for long distance calls. Given the differing rate plans and the various ways in which consumers pay for retail interexchange service (*e.g.*, as one component of a bundled service package, flat-rate, per-minute, or a combination thereof), it would be impractical to impose or try to police any sort of pass-through requirement.

⁶⁴ Caballero DT at 8-9.

1 still has end-users, but whether ... Windstream's switched access rates in
2 Kentucky are artificially high.”).

3
4 As an initial matter, there is no dispute that the long distance (or interexchange)
5 market has remained competitive, though traditional “1+” services are no longer
6 the only way for customers to meet their calling needs. In addition to a multitude
7 of competing traditional landline long distance providers and resellers, long
8 distance consumers now can also take service from various intermodal providers,
9 including wireless, cable and Voice over Internet Protocol (“VoIP”) providers.
10 As such, competition for long distance services has reached the point that the
11 General Assembly has deregulated retail long distance services in Kentucky,
12 determining that the fully-developed and robust competition in the long distance
13 market will ensure reasonable retail rates. That legislative determination followed
14 a series of Commission orders that gradually eliminated most rate regulation for
15 interexchange services.⁶⁵ Indeed, even Windstream ultimately agrees that the
16 long distance market is highly competitive. *See* Caballero DT at 23. But just
17 because the long distance market generally is competitive does not mean that
18 Windstream's rates are harmless (or otherwise just and reasonable).

19
20 Mr. Caballero claims that “[t]he Windstream rates simply cannot be unjust and
21 unreasonable if the long distance carriers paying those rates, including Verizon,

⁶⁵ The Commission eliminated numerous regulatory requirements for long distance carriers in Adm. Case 359.

1 Sprint, and AT&T, are successfully competing in the marketplace.” *Id.* at 9. But
2 Mr. Caballero mistakenly views competition in the long distance market as an “all
3 or nothing” proposition. By his rationale, a local exchange carrier’s switched
4 access rates would only be unreasonable if they were so high as to render IXC’s
5 that pay those rates completely unable to compete in the long distance market.
6 But that, as the Commission already has found, goes too far. *See Order* (May 14,
7 2010) at 5 (“While Windstream’s ... allegation that ... Verizon is likely
8 performing at a fairly healthy competitive level [in the long distance market] is
9 interesting, it is not vital to [resolving] the central questions of the complaint.”).
10 Verizon, Sprint and AT&T may be able to compete in the long distance market
11 even while each is overburdened with Windstream’s intrastate switched access
12 rates, but they cannot compete as effectively (particularly against Windstream) as
13 they could if Windstream’s rates were set at fair, just and reasonable levels.

14
15 Because Verizon, Sprint and AT&T (and other payors of Windstream’s switched
16 access rates) have to pay more for a necessary input for their long distance
17 services (*i.e.*, for Windstream’s access services), the cost – and, therefore, the
18 price – of their long distance services are elevated. This clearly harms those long
19 distance carriers and their customers. Because the long distance market is so
20 competitive, prices are driven toward costs. When long distance carriers’ costs
21 are inflated by unreasonably high access rates, those carriers are forced to charge
22 their customers more for long distance service. And because they are forced to
23 charge higher rates (or otherwise cover the higher costs), those carriers are at a

1 competitive disadvantage as compared to both (1) the position they would be in
2 absent unreasonably high switched access costs and (2) those carriers that do not
3 have to pay as much (or any) to Windstream for intrastate switched access
4 services.

5
6 In short, as the Commission already has found, the fact that the long distance
7 market is competitive does not mean that Windstream's intrastate switched access
8 rates are reasonable. The market for Windstream's switched access services is a
9 different market and its rates are not subject to the same kind of competitive
10 pressures that are present in the retail long distance market. But Windstream's
11 unreasonably high access rates unquestionably affect the long distance market.
12 Even if those unreasonably high rates do not completely preclude rate payors
13 from competing for long distance customers, they render them unable to compete
14 as effectively.

15 **Q. IS MR. CABELLERO'S CLAIM THAT THE PRESENCE OF A**
16 **COMPETITIVE LONG DISTANCE MARKET "CONTRADICT(S)" ANY**
17 **CLAIM OF UNREASONABLY HIGH ACCESS RATES⁶⁶ SUPPORTED**
18 **BY OTHER COMMISSION RULINGS?**

19 A. No. As noted above, the Commission already has found in this case that
20 determining Verizon's ability to compete in the long distance market does not
21 answer the question of whether Windstream's intrastate switched access rates are
22 fair, just and reasonable. *Order* (May 14, 2010) at 4-5. "From the Commission's
23 perspective, the central issue in this proceeding is not whether Verizon is

⁶⁶ Caballero DT at 9.

1 competing in Kentucky's long distance market” *Id.* at 4. For “[w]hile
2 Windstream’s tacit allegation that ... Verizon is likely performing at a fairly
3 healthy competitive level is interesting, it is not vital to the central questions of
4 the complaint.” *Id.* at 5. Rather, “[t]he scope of this proceeding is the
5 reasonableness of the rates and compensation that Windstream receives for intra-
6 state wholesale switched access services provided to interexchange carriers” (*id.*),
7 and Verizon’s ability to compete in the Kentucky long distance market does not
8 resolve that issue.

9
10 The Commission’s conclusion is entirely consistent with the actions of the FCC
11 and various state commissions that repeatedly have reduced switched access
12 charges even in the presence of an otherwise competitive long distance market.
13 *See* Price DT at 15-22. Indeed, I am not aware of any commission that has ever
14 concluded that the presence of competition in the long distance market somehow
15 renders access rates *de facto* reasonable.

16 **Q. WHAT EFFECT WILL ELIMINATING WINDSTREAM’S NTSRR**
17 **RECOVERY AND REDUCING ITS INTRASTATE SWITCHED ACCESS**
18 **RATES HAVE ON WINDSTREAM?**

19 **A.** It is unclear whether eliminating the NTSRR and making the necessary intrastate
20 switched access rate reductions will have any effect on Windstream’s operations
21 in Kentucky.

22

1 Mr. Caballero insists that “[t]he consequences of Verizon’s proposal would be
2 dire” (Caballero DT at 38), but he offers nothing to support that statement.
3 Indeed, the thrust of his testimony is that, all other things equal and “without a
4 meaningful opportunity for [alternative] recovery” (*id.* at 41), a reduction in
5 Windstream’s intrastate switched access revenues would reduce Windstream’s
6 revenues. *Id.* at 40. That, of course, is true enough. But it also means little.

7
8 Just because Windstream faces a decrease in revenue does not mean that
9 Windstream will be unable operate successfully. Windstream does not dispute
10 that its current switched access rates contain implicit subsidies and exceed its
11 switched access costs.⁶⁷ So, Windstream should be able to cover its costs of
12 providing access service even with a reduction in access revenue. And it has not
13 proven that its access revenues are necessary to cover the costs of other regulated
14 services. Moreover, Windstream may be able to reduce its costs by operating
15 more efficiently. Indeed, the FCC has long recognized that as one of the very
16 purposes of using benchmark rates: “[L]imiting the amount carriers can charge
17 for their services and continually exerting downward pressure on those price
18 ceilings” creates a “system that can ... drive LECs to become more efficient and
19 productive.” *In the Matter of Policy and Rules Concerning Rates for Dominant*
20 *Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786,

⁶⁷ See Windstream’s Responses and Objections to Verizon’s First Requests for Information, Response to Nos. 9(a)-(b) and 29(a)-(b).

1 6791 (1990) (“*LEC Price Cap Order*”).⁶⁸ Windstream certainly has not provided
2 any information or data that would allow the Commission to reach any contrary
3 conclusions. (For that reason, Mr. Caballero’s suggestion that Windstream would
4 not be able to perform any carrier of last resort obligations that may exist (*id.*)
5 should be rejected out of hand. He has provided no support whatsoever to
6 substantiate that claim.)

7
8 Moreover, of course, Mr. Caballero’s premise is mistaken. The proposed
9 intrastate switched access rate reductions should not be viewed in a vacuum,
10 standing alone. All other things are not equal and, under Verizon’s proposal,
11 Windstream would have an alternative “meaningful opportunity for recovery” of
12 its foregone access revenues through increased retail rates.

13 **Q. WHAT OPPORTUNITY WILL WINDSTREAM HAVE TO RECOUP ITS**
14 **LEGITIMATE UNRECOVERED COSTS OF PROVIDING SERVICE?**

15 A. As noted above, following the necessary intrastate switched access rate
16 reductions, Windstream can and should seek to recoup any unrecovered costs
17 through rebalancing of its retail rates – including any regulated rates for local
18 basic service. Indeed, this is how costs would be recovered under the proposed
19 National Broadband Plan cited by Mr. Caballero. *See* Caballero DT at 37 (“The
20 NBP ... states that “[t]he FCC should also encourage states to complete rate

⁶⁸ This, in turn, benefits consumers through more efficient pricing. The “downward pressure” on rates “requires LECs to share the benefits of increased productivity with rate-payers in the form of lower rates. Both carriers and consumers will be better off.” *Id.* at 6790.

1 rebalancing of local rates to offset the impact of lost access revenues.”) (quoting
2 NBP).

3 **Q. IS THE RELIEF VERIZON SEEKS HERE CONSISTENT WITH THE**
4 **PROPOSED FCC REFORMS THAT ARE PART OF THE NATIONAL**
5 **BROADBAND PLAN?**

6 A. Yes. As Windstream acknowledges, the National Broadband Plan “recognize[s]
7 that the current intercarrier compensation mechanism includes implicit subsidies
8 and recognizes that the rate differentials create significant arbitrage
9 opportunities.” Caballero DT at 36. Accordingly, FCC staff proposes, among
10 other things, to eliminate those implicit subsidies and “reduce intrastate switched
11 access rates ...” (*id.*), which is precisely what Verizon seeks to do here. In that
12 sense, the relief sought by Verizon in this proceeding is entirely consistent with
13 what even Windstream says is proposed in the National Broadband Plan. If the
14 Commission were to grant that relief, its actions would be in precise harmony
15 with the steps Windstream expects the FCC to take. Accordingly, if anything,
16 reducing Windstream’s intrastate rates would place the Commission on better
17 footing to more broadly implement any similar reform that may be coming from
18 the FCC in the future.

19
20 While Mr. Caballero suggests that Verizon’s proposal that Windstream seek to
21 recoup any legitimate unrecovered costs through rebalancing of its retail rates is
22 inconsistent with the NBP proposal (Caballero DT at 36-37), as noted above, that
23 is not the case. Whatever explicit federal recovery mechanisms the NBP proposes

1 with respect to interstate rates, Mr. Caballero expressly acknowledges that the
2 NBP encourages state commissions “to complete rate rebalancing of local rates to
3 offset the impact of lost [intrastate] access revenue.” *Id.* at 37.

4
5 Mr. Caballero’s complaint that Verizon’s proposal does not include a transition
6 period is also misguided. *Id.* at 37. Unlike interstate switched access rates, which
7 have been subject to recent and repeated review and reductions, Windstream’s
8 intrastate switched access rates have remained unchanged and unreasonably high
9 for years. Given how long and how much Verizon, other payors of Windstream’s
10 intrastate rates and their customers have been harmed, there is no reason to allow
11 Windstream to continue to reap the benefits of those rates any longer.

12 **Q. SHOULD THE COMMISSION AWAIT FURTHER ACTION FROM THE**
13 **FCC WITH REGARD TO THE NATIONAL BROADBAND PLAN**
14 **BEFORE PROCEEDING HERE?**

15 A. No. Windstream has made that claim on at least two prior occasions – including
16 in its pending Motion to Hold Proceeding in Abeyance Pending Access Reform
17 Action by the Federal Communications Commission (“*Motion*”), where it asserts
18 that this proceeding should be halted indefinitely because of the possibility that
19 the FCC might address intrastate switched access reform on a comprehensive
20 basis as part of the National Broadband Plan. That assertion echoes the claim
21 made by Windstream in January 2008, when it argued – in the context of its
22 answer and motion to dismiss – that the Commission should forego review of
23 Windstream’s intrastate switched access rates unless and until the FCC addressed

1 intercarrier compensation reform on a comprehensive basis as part of an existing
2 FCC docket that has been pending since 2001. The Commission rejected that
3 argument then, holding that “the mere existence of th[e] possibility” that the FCC
4 could issue an order pre-empting any state action on access charges should not
5 deter “the Commission from the need to address intercarrier compensation.”
6 *Order* (Mar. 11, 2009) at 6. For the same reasons, the argument is without merit
7 now. Other state commissions have reached the same conclusion and, as in the
8 recent Pennsylvania Public Utilities Commission case referenced above, are
9 proceeding apace with their own access charge cases, rather than waiting on FCC
10 action. *See Investigation Regarding Intrastate Access Charges and IntraLATA*
11 *Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund,*
12 *Recommended Decision on Remaining Issues, Case No. C-2009-I-00040105 (Pa.*
13 *Public Utility Comm’n, July 27, 2010)*

14 **VI. OTHER ISSUES.**

15 **Q. ARE THERE ANY OTHER ISSUES YOU WOULD LIKE TO ADDRESS**
16 **AT THIS TIME?**

17 A. Yes. In my Direct Testimony (at 31-32), I provided percentage figures of
18 Windstream’s access revenues as a portion of total revenues, stating that these
19 were intrastate revenues. The discovery responses on which those figures were
20 based were specific to Kentucky, but included both intrastate and interstate
21 revenues. Looking solely at intrastate revenues, the figure of ■% provided in
22 Mr. Caballero’s testimony is the appropriate number for 2009. Nonetheless, I
23 stand by my original testimony that, due to the NTSRR, Windstream’s per-minute

1 access rates are increasing over time and that such a result is inconsistent with this
2 Commission's prior policy determination that such implicit subsidies should be
3 eliminated.

4 **VII. CONCLUSION.**

5 **Q. IN LIGHT OF YOUR TESTIMONY, WHAT SHOULD THE**
6 **COMMISSION DO IN THIS CASE?**

7 A. The Commission should order Windstream to (1) remove the NTSRR recovery
8 from its intrastate switched access rates and (2) otherwise reduce its intrastate
9 switched access rates to a level not exceeding those charged by the AT&T for the
10 same service.

11 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

12 A. Yes.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Testimony was served via U.S. mail, first-class, postage prepaid, this 13th day of August, 2010, upon the following persons:


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