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RECEIVED

October 16, 2009

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PUBLIC SERVICE
COMMISSION

VIA COURIER

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

Re: Petition of Windstream Kentucky East, LLC, for Arbitration of an
Interconnection Agreement With New Cingular Wireless PCS, d/b/a AT&T
Mobility
KPSC 2009-00246

Dear Mr. Derouen:

Enclosed for filing in the above-referenced case are the original and five (5)
copies of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility's Motion to Strike.

Should you have any questions, please let me know.

Sincerely,


Mary K. Keyer

Enclosures

cc: Party of Record

745044

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF WINDSTREAM KENTUCKY)	
EAST, LLC, FOR ARBITRATION OF AN)	CASE NO.
INTERCONNECTION AGREEMENT WITH)	2009-00246
NEW CINGULAR WIRELESS PCS,)	
D/B/A AT&T MOBILITY)	

**NEW CINGULAR WIRELESS PCS, LLC
D/B/A AT&T MOBILITY'S MOTION TO STRIKE**

New Cingular Wireless, PCS, LLC d/b/a AT&T Mobility, on behalf of itself and its wireless operating affiliates (collectively "AT&T Mobility"), moves the Kentucky Public Service Commission to strike and delete from the record and from the file in this case Exhibit 1 to Windstream Kentucky East, LLC's ("Windstream East") Response to AT&T Mobility's Motion for Partial Dismissal and Brief in support of Motion for Partial Dismissal ("Response"), which contains several email exchanges from June 1 to June 10, 2009, between the negotiators for AT&T Mobility and Windstream East, including an offer of settlement.

AT&T Mobility and Windstream East entered into an Information Exchange Agreement ("IEA") dated and effective as of January 6, 2009, in which each party agreed to keep confidential any terms, conditions or other facts with regard to negotiating interconnection agreements. The email exchanges contained in Exhibit 1, as evidenced by the subject line of the emails "Negotiation Involving Windstream

Kentucky East,” are clearly subject to the IEA because they contain information regarding the negotiations between the parties.

In addition, and more importantly, the email exchanges contain an offer of settlement and settlement negotiations that should not have been disclosed to the Commission. Settlement negotiations and discussions between the parties are to be kept confidential and should not be placed in the Commission file or in the public record. Were the Commission to allow such filings, it would set a precedent for other parties to begin filing settlement offers in cases before the Commission. Such a result does not comport with existing law and public policy.

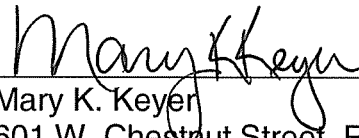
While Windstream East may not have filed Exhibit 1 for the purpose of communicating the substance of negotiations discussions and of a settlement offer made during the negotiations, it did in fact do so. The “law has long fostered voluntary dispute resolution by protecting against the possibility that a compromise or offer of compromise might be used to the disadvantage of a party in subsequent litigation.” *Green River Elec. Corp. v. Nantz*, 894 S.W.2d 643, 646 (Ky. App. 1995) (citations omitted). The Kentucky Rules of Evidence clearly state in part that evidence of compromise or an offer of compromise is not admissible to prove liability for or invalidity of the claim or its amount. KRE 408. In addition, KRE 408 specifically states that “[e]vidence of conduct or statements made in compromise negotiations is likewise not admissible.” The information contained in the emails attached as Exhibit 1 to Windstream East’s Response contains such evidence and, as such, is inadmissible and should be stricken from the case.

In accordance with KRE 408, such evidence would be admissible if it were to prove “bias or prejudice of a witness, negating [sic] a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.” None of these reasons is present in this case. There is compelling public policy behind the rule of not admitting evidence of settlement negotiations that encourages and favors settlements between adverse parties. Without some expectation of confidentiality and non-admissibility of settlement negotiations to a trier of fact, parties would be discouraged from engaging in meaningful negotiations. Windstream East, without consulting with or informing AT&T Kentucky, submitted for filing in this case with the Commission the negotiations emails including a settlement offer sent from Windstream East to AT&T Mobility. Based on Kentucky law and compelling public policy, Exhibit 1 containing such emails should not be placed in the Commission file or in the public record.

In addition to the fact that evidence of settlement negotiations is not admissible under the Kentucky Rules of Evidence unless there is some legitimate purpose such as those specified in KRE 408, none of which is present in this case, and the public policy behind that rule, there is a further compelling public policy reason for not allowing settlement offers to be filed by a party in cases before the Commission. If the Commission allows the emails containing such an offer and negotiations to remain in the record, it would set a precedent that would open the floodgates for all parties to begin filing a barrage of settlement offers back and forth between the parties in an effort to get their positions in front of the Commission. This would place the Commission, the trier of fact, in the middle of negotiations, which is inconsistent with both the law and public policy.

Based on the foregoing, the Commission should grant AT&T Mobility's motion to strike from the record and remove and destroy Exhibit 1 to Windstream East's Response, and all copies of it, from the Commission's files. The striking of Exhibit 1 will not preclude Windstream East from making the arguments it makes in its Response and in Mr. Scott Terry's affidavit, attached as Exhibit 2 to Windstream's Response.

Respectfully submitted,



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COUNSEL FOR NEW CINGULAR
WIRELESS PCS, D/B/A AT&T MOBILITY

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing was served on the following individual by mailing a copy thereof, this 16th day of October 2009.

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


Mary K. Keyer