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October 30, 2009

RECEIVED

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PUBLIC SERVICE
COMMISSION

Via Hand-Delivery

Mr. Jeff R. Derouen, Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602-0615

Re: Windstream Kentucky East, LLC's ("Windstream") Petition for Arbitration
Case No. 2009-00246

Dear Mr. Derouen:

Please find enclosed for filing Windstream Kentucky East, LLC's Surreply to AT&T Mobility's Reply Brief in Support of its Motion for Partial Dismissal in the above-referenced proceeding. I have enclosed one original of Windstream's Response and 10 copies.

Thank you for your attention to this matters

Respectfully submitted,

Robert C. Moore

Robert C. Moore

RCM

RCM/neb
Enclosures

cc: Stacy Majors

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)
)
Petition of Windstream Kentucky)
East, LLC for Arbitration of an)
Interconnection Agreement with New)
Cingular Wireless PCS, LLC, D/B/A)
AT&T Mobility) Case No. 2009-00246

WINDSTREAM KENTUCKY EAST, LLC'S
SURREPLY TO AT&T MOBILITY'S REPLY BRIEF IN SUPPORT OF ITS
MOTION FOR PARTIAL DISMISSAL

Comes Windstream Kentucky East, LLC (“Windstream East”), by counsel, and files its Surreply to AT&T Mobility’s Reply Brief in support its Motion for Partial Dismissal (“Reply Brief”):

**I. Originating Access Is Relevant When There is InterMTA Traffic
Between the Parties**

AT&T Mobility’s arguments in support of its Motion for Partial Dismissal are based on flawed assumptions. The first flawed assumption is that the balance of traffic between the parties encompasses only local traffic, which is governed by reciprocal compensation. On page 4 of its Reply Brief, AT&T Mobility states that “the parties have agreed that AT&T Mobility will not measure the traffic sent to it by Windstream over local interconnection trunks, because AT&T Mobility does not have a billing system in place that allows measurement of such traffic” and that the parties have agreed to “use “intraMTA percentages” to establish in advance the relative amounts of traffic sent by each party to the other”. These statements are not entirely correct. AT&T Mobility informed Windstream East that AT&T Mobility is not capable of recording actual traffic and billing from such actual recordings. As a result of this internal issue, AT&T

Mobility requested that it be allowed to determine the amount of traffic Windstream East originates for termination to AT&T Mobility based on an agreed upon traffic ratio. Although Windstream East prefers that billing among the parties start with the recording of actual traffic, Windstream East agreed to allow AT&T Mobility use a traffic ratio to determine the total traffic Windstream East originates that is terminated to AT&T Mobility.

The second (and largest) incorrect assumption AT&T Mobility makes is that the balance of traffic between the parties consists *only* of local, intraMTA traffic. This is not an established fact in this matter. Once a party has determined the total traffic terminated to it by the other party (Windstream East by use of actual recordings and AT&T Mobility by use of a traffic ratio), such traffic then has to be further identified as intraMTA (local) or interMTA (access) traffic. Because AT&T Mobility does not provide the cell site associated with the wireless customer's call, Windstream East cannot determine the jurisdiction (local or access) when the call is recorded at the Windstream East switch. Therefore Windstream East must utilize jurisdictional factors to determine the calls that should be rated as local versus access. This factor to determine local versus access is included in the draft interconnection agreement and is not in dispute between the parties in this matter. Likewise, because AT&T Mobility does not record any calls originating from Windstream East customers terminating to AT&T Mobility wireless customers, AT&T Mobility must also use jurisdictional factors to determine the calls that should be rated as local and billed to Windstream East. The inclusion of this factor for determining this access billing is at issue in this matter; AT&T Mobility states that it is not an appropriate issue for a 251/252 arbitration.

As an example, a Windstream East customer may place a call to a Kentucky AT&T Mobility customer. However, the AT&T Mobility customer may not actually be in Kentucky at the time the call is received; for example, the AT&T customer may be on vacation in New York. Clearly, this call would not be subject to local billing by AT&T Mobility to Windstream East since the call terminated in New York. Furthermore, this call is delivered to AT&T Mobility over the same circuit as all local dialed calls. In almost all situations when billing originating access to a carrier, Windstream East can identify those Windstream East customer calls subject to originating access charges because the Windstream East customer dials 1+. As stated above, this is not the case with AT&T Mobility, since the Windstream East customer dials the AT&T Mobility customer as a local call regardless of whether or not the AT&T Mobility customer is in the MTA or outside the MTA.

AT&T Mobility cannot deny that its customers “roam” out of the local territory (MTA). This “roaming” results in interMTA (access) traffic. When an AT&T Mobility customer roams outside of the MTA, AT&T Mobility becomes the long distance carrier that must pay access charges. Typically, long distance traffic carried by IXCs is identified as access billable by the customer dialing the call as 1+. However, this long distance traffic carried by AT&T Mobility cannot be identified as a 1+ call because the call is dialed as a local call but terminates outside the local MTA. Thus, this issue must be addressed in the interconnection agreement between the parties so that appropriate compensation can occur.

A review of the customer calling plans on AT&T Mobility’s website shows that AT&T Mobility actually does not have any local calling plans, only national calling

plans. Clearly, AT&T Mobility acknowledges the fact that interMTA traffic is originated by other carriers (including Windstream East) and terminated to its customers, contrary to its apparent position in this proceeding. The proper identification of calls and compensation to Windstream East for Windstream East-originated interMTA traffic carried by AT&T Mobility to its customers is an issue between the parties that should be resolved in this proceeding.

II. Discussions Are Part of “Negotiation”

Again, AT&T Mobility misses mark when it argues in its Reply Brief that it did not form an agreement with Windstream East to negotiate the issue of originating access. Consider the following definitions of “negotiation”:

Negotiation *n* **1.** a discussion set up or intended to produce a settlement or agreement .

(Collins English Dictionary – Complete and Unabridged 6th Edition 2003. © William Collins Sons & Co. Ltd 1979, 1986 © HarperCollins Publishers 1991, 1994, 1998, 2000, 2003)

negotiation

noun

1. bargaining, debate, discussion, transaction, dialogue, mediation, arbitration, wheeling and dealing (*informal*) We have had meaningful negotiations and I believe we are close to a deal. (Collins Thesaurus of the English Language – Complete and Unabridged 2nd Edition. 2002 © HarperCollins Publishers 1995, 2002)

Clearly, “negotiation” includes discussion between parties, even if no resolution is reached between the parties. In this matter, AT&T discussed originating access with Windstream East. Indeed, AT&T Mobility admits that this issue was discussed, but then insinuates, without directly so stating, that this discussion was an “attempt to understand the proposal”. (See Reply Brief at p. 8) Accordingly, this is an issue that the parties discussed which was not resolved between them and which should be heard by the

Kentucky Public Service Commission in this arbitration. AT&T Mobility should not be allowed to unilaterally discuss an issue and then claim that it will not negotiate that issue *after* it has already opened the door to negotiation by discussing the issue. Likewise, AT&T should not be allowed to unilaterally refuse to negotiate an issue and then claim such refusal to negotiate prevents the issue from being arbitrated.

III. Originating Access Is Within the Scope of a Telecommunications Act Negotiation/Arbitration, As Evidenced By AT&T Mobility's Interconnection Agreement In Kentucky With Its Own ILEC Containing Originating Access Compensation Provisions

AT&T Mobility has claimed since the beginning of this matter that originating access is outside the scope of a Telecommunications Act negotiation/arbitration. Yet New Cingular Wireless PCS, LLC, a party in this matter, entered into an interconnection agreement dated June 10, 2005 with AT&T Kentucky, its ILEC affiliate, which contains provisions providing for originating access charges for AT&T Kentucky-originated traffic to New Cingular Wireless PCS, LLC. This agreement is on file with the Kentucky Public Service Commission. The existence of this agreement establishes that AT&T Mobility's argument that the Commission does not have jurisdiction to arbitrate the originating access issue is without merit.

The facts in this matter show that originating access is a relevant issue in this arbitration proceeding, was negotiated by the parties, and is properly a subject before the Commission in this matter.

WHEREFORE, Windstream East respectfully requests that the Commission deny AT&T Mobility's Motion for Partial Dismissal.

Respectfully Submitted,

By:


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Stacy Majors
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was sent via hand delivery on this the 30th day of October, 2009 on Jeff R. Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602-0615 and by first class mail, postage pre-paid on Mary K. Keyer, General Counsel/AT&T Kentucky, 601 West Chestnut Street, Room 407, Louisville, Kentucky 40203, on Paul Walters, Jr., 15 East 1st Street, Edmond, Oklahoma 73034, and on Tiffany Bowman, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602-0615.


Robert C. Moore