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March 12, 2010

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MAR 12 2010

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**Via Federal Express**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
400 North Street, Filing Room  
Harrisburg, PA 17101

In re: Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund, Docket No. I-00040105; AT&T Communications of Pennsylvania, LLC v. Armstrong Telephone Company - Pennsylvania, *et al.*, Docket No. C-2009-2098380, *et al.*

Dear Secretary McNulty:

In the Panel Rebuttal Testimony (Nurse and Oyefusi) filed by AT&T Communications of Pennsylvania, LLC, *et al.* in the above docket on Wednesday, March 10, 2010, the witnesses set forth several inaccurate and defamatory assertions. AT&T Statement 1.2 Panel Rebuttal Testimony of E. Christopher Nurse and Dr. Ola A. Oyefusi, *see* testimony generally, pp. 53-58.

Windstream has contacted AT&T to state its objection and requested a retraction by AT&T. We expect that AT&T will correct the record as early as next week.

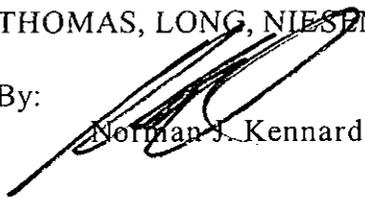
In order to address the untruthful and harmful claims that AT&T has made against them and their affiliates in this proceeding, Windstream Conestoga and Windstream D&E are submitting this filing to correct the record and provide notice of the attached document which includes a Demand Letter from Windstream counsel and the Acknowledgement of Stephen Weeks.

If you, any member of the Commission, or part of this case, have any questions regarding this filing, please do not hesitate to contact the undersigned.

Sincerely,

THOMAS, LONG, NIESEN & KENNARD

By:

  
Norman J. Kennard

NJK:tlt

cc: Honorable Kandace F. Melillo,  
Administrative Law Judge (Electronic and 1<sup>st</sup> Class Mail)  
Per Certificate of Service

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**ATTACHMENT 1**

Windstream Communications, Inc.  
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Little Rock, AR 72212

Kimberly K. Bennett  
Director - Regulatory Counsel  
(501) 748-6374



March 12, 2010

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Re: **DEMAND FOR AT&T TO CEASE AND DESIST DEFAMATORY ACTIONS  
AND TO TAKE IMMEDIATE CORRECTIVE ACTION**

Dear Counsel:

We have become aware of testimony that you filed on behalf of your clients, AT&T Communications of Pennsylvania, LLC, TCG Pittsburgh, and TCG New Jersey, Inc. (collectively, "AT&T") as well as information that AT&T (including its lobbyist(s)) appears to have disseminated to various parties outside of the Commission's proceeding in Docket Nos. I-00040105 and C-2009-2098380, *et. al.* (collectively, "defamatory materials"). The defamatory materials distributed by AT&T contain false statements regarding various Windstream subsidiaries and are irresponsibly erroneous. We are currently evaluating legal remedies available against AT&T and its witnesses (E. Christopher Nurse and Dr. Ola A. Oyefusi) but are also requesting immediate and full retraction and corrective action by AT&T. A Windstream representative contacted AT&T to provide notice of this issue on the evening of March 10, 2009 as soon as he learned of the actions by AT&T. While it appears that AT&T may have stopped distributing some of the legislative materials, we have not received confirmed notice of the commitments AT&T intends to take to fully remedy this situation.

The testimony filed on behalf of AT&T witnesses Nurse and Oyefusi alleges that Windstream D&E, Inc. ("Windstream D&E") and Windstream Conestoga, Inc. ("Windstream Conestoga") are actively engaged in "traffic pumping" schemes and that such schemes were initiated as a

result of their being acquired by "out-of-state interests". The defamatory materials that it appears were distributed directly or indirectly by AT&T through various legislative channels contain similar misrepresentations. AT&T's assertions are false. AT&T's own corporate records show that AT&T previously supported Windstream's stance against traffic pumping. (See Attachment 1 to this letter which also contain additional materials demonstrating the Windstream corporate position on traffic pumping.) Similarly, the Pennsylvania Commission records show that Windstream Communications, Inc. (cited incorrectly on pages 1 and 2 of AT&T's apparent legislative materials as an "out-of-state owner" who "took control of" Denver and Ephrata Telephone and Telegraph Company and Conestoga Telephone and Telegraph Company) is not the parent company of either Windstream D&E or Windstream Conestoga. Windstream Communications, Inc. is an entity certified as a competitive and interexchange provider in Pennsylvania. Moreover, Windstream D&E and Windstream Conestoga are not "multi-state entities" "not even based out of Pennsylvania anymore" as suggested in AT&T's materials and are incumbent communications providers which continue to operate only in the Commonwealth.

More significantly, AT&T's defamatory materials misrepresent that certain "traffic pumping" activity began as a result of the transaction and after D&E and Conestoga became Windstream affiliates. AT&T's charts suggest this occurred around August 2009. The accurate facts demonstrate that any activity reflected in AT&T's charts began prior to the completion of any transaction involving D&E, Conestoga, and Windstream Corporation. The transaction whereby D&E and Conestoga became subsidiaries of Windstream Corporation closed on **November 10, 2009**. On **November 11, 2009**, Windstream D&E and Windstream Conestoga immediately provided notice to terminate the business relationship about which AT&T complains and which AT&T wrongfully asserts was initiated by action of some Windstream affiliation. While AT&T engaged in extensive discovery in the pending Pennsylvania proceedings, we are not aware that AT&T sought any discovery from Windstream D&E or Windstream Conestoga on these issues. I should also note that our research of the telephone numbers in AT&T's defamatory materials shows that the numbers belonging to Windstream D&E or Windstream Conestoga are no longer connected to the service. (See Attachment 2 to this letter containing a verified affidavit by Stephen Weeks.)

AT&T's defamatory materials accusing the various Windstream entities of being actively engaged in traffic pumping schemes "spearheaded" by certain "out-of-state" interests are erroneous, malicious, and harmful to Windstream D&E, Windstream Conestoga, Windstream Communications, Inc., and other Windstream affiliates. We are requesting that AT&T confirm by **12:00 noon Eastern time** today AT&T's detailed plan and commitment for resolving this situation. We suggest that AT&T's plan include a commitment to take the following actions:

- Providing the name and contact information of each employee, lobbyist, representative, agent, consultant, and attorney that assisted or participated directly or indirectly in the preparation, review, or distribution of the AT&T defamatory materials;
- Providing the name and contact information of each recipient to whom AT&T (including its counsel, lobbyists, and consultants) provided, in whole or in part, the defamatory materials either orally or in writing; and

- Establishing meetings among AT&T lobbyist(s), Windstream representatives, and legislative contacts or other governmental contacts to whom AT&T provided the defamatory materials during which meetings AT&T would explain the erroneous nature of its information.

Additionally, we are requesting that no later than **12:00 noon Eastern time today**, AT&T provide its commitment in writing to Windstream that AT&T will file in the Pennsylvania proceedings referenced above by **3:00 Eastern time today** an acknowledgement and retraction of the defamatory portions of AT&T's testimony due to the erroneous statements contained therein.

Your immediate cooperation in this matter is appreciated. I look forward to your acknowledgment of AT&T's corrective action and the receipt of the requested information as set forth above.

Respectfully,

  
Kimberly Bennett  
Windstream Counsel

✓ Attachments



Henry Hultquist  
Vice President  
Federal Regulatory

AT&T Services, Inc. T: 202.457.3821  
1120 20<sup>th</sup> Street, NW F: 202.457.3072  
Suite 1000  
Washington, DC 20036

July 23, 2007

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

FILED/ACCEPTED

JUL 23 2007

Federal Communications Commission  
Office of the Secretary

**RE: WCB/Pricing Docket No. 07-10, July 1, 2007 Annual Access Charge  
Tariff Filings**

Dear Ms. Dortch:

AT&T supports Windstream's efforts<sup>1</sup> to remove its tariff from those under investigation for traffic pumping. While the fact that Windstream's new rates are lower than those under the NECA tariff would not, standing alone, warrant such relief, Windstream has also demonstrated opposition to traffic pumping,<sup>2</sup> is a large, diversified carrier that operates under both price cap and rate of return regulation, and is a significant provider of interexchange services. It is therefore implausible that Windstream would engage in the very arbitrage it recognizes as a threat to the "integrity of the existing intercarrier compensation system."

As a leader in the fight against the traffic pumping carriers AT&T appreciates and supports the Commission's efforts to address this threat to the access charge regime, but urges the Commission to reconsider the inclusion of Windstream's tariff in its investigation.

Please call me if you have any questions.

Sincerely,

/s/ Henry Hultquist

cc: Thomas Navin  
Donald Stockdale  
Albert Lewis  
Deena Shetler

<sup>1</sup> See July 17, 2007 letter from Eric Einhorn to Marlene Dortch.

<sup>2</sup> See April 30, 2007 letter from executives of fifteen local exchange carriers (including Windstream) to all five FCC commissioners urging the FCC to "move swiftly to investigate and shut down these potentially de-stabilizing schemes."

April 30, 2007

The Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission

The Honorable Michael J. Copps  
Commissioner  
Federal Communications Commission

The Honorable Deborah Taylor Tate  
Commissioner  
Federal Communications Commission

The Honorable Jonathan Adelstein  
Commissioner  
Federal Communications Commission

The Honorable Robert M. McDowell  
Commissioner  
Federal Communications Commission

Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dear Chairman Martin and Commissioners Copps, Adelstein, Tate and McDowell:

As executives of local exchange companies, we are concerned about recent reports of a very limited number of carriers unreasonably attempting to exploit perceived loopholes in the current access charge regime. We believe that schemes such as "access pumping" pose a serious threat to the integrity of the existing inter-carrier compensation system and urge you to take swift action to address this practice.

The Commission's existing rules were designed, appropriately, to allow rural local exchange carriers flexibility when leaving the NECA pool to establish their own cost-based rates at potentially lower levels without the extensive costs associated with traditional tariff filings. It was expected that these carriers' cost and demand data would not fluctuate greatly over time and thus the use of historical information to develop tariffs would be a reasonable surrogate for the period after leaving the pool. In addition, any increased efficiencies benefit the carrier's access customers through lower rates when it files its subsequent tariffs. The rules did not anticipate schemes whereby carriers leaving the pool would simultaneously enter into agreements solely designed to increase minutes by several times historical levels.

However, carriers engaged in these access pumping schemes are doing precisely that by filing tariffs based upon very low historical minutes, while entering into agreements with free chat lines, international calling platforms, or similar high-volume customers to deliver calls in

The Honorable Kevin J. Martin  
April 30, 2007  
Page 2

exchange for a portion of the access charges collected by the carrier. In other words, these carriers are filing tariffs with access rates based on historical low minutes of use in full knowledge that their actual minutes of use will be many times higher, resulting in an unreasonable windfall in profits. The sole incentive for carriers engaged in this scheme is to generate as many minutes as possible during the two year window before jumping back into the NECA pool.

It is important for the Commission to understand that it is only a very small number of companies that are taking advantage of these improper access pumping practices. The vast majority of rural companies take their filing requirements seriously. But we are very concerned that schemes designed to inappropriately inflate access revenues irreparably diminish the integrity of the access charge system. As you know, we have expressed similar concerns in the past about schemes to inappropriately avoid paying access charges.

While we recognize the need for changes to the existing inter-carrier compensation regime, those changes should not be an overreaction to isolated bad acts, but must instead reflect a rational, practical transition that recognizes the different needs of all parts of the industry. In particular, the flexibility provided by section 61.39 remains a valuable option for rural carriers operating within the original intent of that rule—but that flexibility is being placed at risk through abuse by a few bad actors. For this reason, we believe it is critically important that the Commission move swiftly to investigate and shut down these potentially de-stabilizing schemes.

We appreciate your consideration on this very important matter.

Sincerely,

/s/Trent Boaldin

Trent Boaldin  
President  
EpicTouch Co.

/s/Arne (Skip) Haynes

Arne (Skip) Haynes  
President & CEO  
The Rainier Group

/s/Gary Gilmer

Gary Gilmer  
President  
Southwest Texas Telephone

/s/David Zesiger

David Zesiger  
Senior Vice President, Regulatory Policy  
& External Affairs  
Embarq

/s/Marty Rubin

Marty Rubin  
CEO & President  
Smart City

/s/Eric Einhorn

Eric Einhorn  
Vice President, Federal Government Affairs  
Windstream

The Honorable Kevin J. Martin  
April 30, 2007  
Page 3

/s/Jack Keen  
Jack Keen  
President & CEO  
Western New Mexico Telephone Co.

/s/Albert H. Kramer  
Albert H. Kramer  
Senior Vice President, Operations  
D&E Communications, Inc.

/s/Michael Shultz  
Michael Shultz  
Vice President - Regulatory & Public Policy  
Consolidated Communications

/s/Ron B. McCue  
Ron B. McCue  
Vice President  
Silver Star Communications

/s/Walter Arroyo  
Walter Arroyo, Esq.  
Director, Regulatory Affairs Department  
Puerto Rico Telephone Co., Inc.

/s/D. Michael Anderson  
D. Michael Anderson  
Vice President, External Affairs and Marketing  
Iowa Telecom

/s/Robert Hunt  
Robert Hunt  
Vice President, Regulatory Affairs  
Guadalupe Valley Telephone Cooperative, Inc.

/s/Michael R. Coltrane  
Michael R. Coltrane  
President and CEO  
CT Communications, Inc.

/s/Steven Oldham  
Steven Oldham  
President & CEO  
Surewest Communications

cc: Daniel Gonzalez  
Michelle Carey  
Ian Dillner  
Scott Deutchman  
Barry Ohlson  
Scott Bergmann  
Aaron Goldberger  
John Hunter  
Nick Alexander  
Tom Navin  
Don Stockdale

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Federal Regulatory Advocacy



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donna.m.epps@verizon.com

July 25, 2007

Ex Parte

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street S.W., Room TWB-204  
Washington, D.C. 20554

Re: WCB/Pricing Docket No. 07-10, July 1, 2007 Annual Access Charge Filings

Dear Ms. Dortch

Verizon supports Windstream's July 17, 2007 request to have its access tariff removed from the list of tariff filings that the Commission is currently investigating in connection with traffic pumping. Windstream has publicly opposed traffic pumping and has been supportive of the Commission's efforts to eliminate this practice.<sup>1</sup> Moreover, Verizon is unaware of any evidence or allegation that Windstream was or is engaged in traffic pumping. Indeed, Windstream and its predecessors or affiliates have been exiting the NECA pool since 1993 without evidence of engaging in traffic pumping and without attempting to re-enter the NECA pool to camouflage their demand.

AT&T correctly notes that the fact that the rates in Windstream's latest annual tariff filing are lower than those in NECA's 2007 annual tariff filing would not, standing alone, warrant relief from investigation.<sup>2</sup> However, given Windstream's past advocacy against traffic pumping and its behavior after exiting the NECA pool in the past, the evidence fails to support investigating Windstream for potential traffic pumping.

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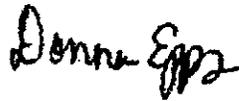
<sup>1</sup> See Letter from E. Einhorn (Windstream), T. Boaldin, A. Hayes, G. Gilmer, D. Zesiger, and M. Rubin to Chairman Martin and Commissioners Copps, Adelstein, Tate, and McDowell (April 30, 2007).

<sup>2</sup> See Letter from H. Hultquist (AT&T) to Marlene Dortch, WCB/Pricing Docket No. 07-10 (July 23, 2007).

July 25, 2007  
Page 2

Please do not hesitate to contact me at 202.515.2527 with any questions.

Sincerely,

A handwritten signature in black ink that reads "Donna Epps". The signature is written in a cursive style with a large initial "D" and a stylized "E".

Donna Epps

cc: Tom Navin  
Don Stockdale  
Al Lewis  
Deena Shetler  
Pam Ariuk

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**ATTACHMENT 2**

COUNTY OF PULASKI     )  
  )  
STATE OF ARKANSAS     )

**ACKNOWLEDGMENT**

Before me, the Undersigned Authority, on this 11<sup>th</sup> day of March 2010, personally appeared Stephen Weeks, who, upon being by me duly sworn on oath deposed and stated as follows:

1. My name is Stephen Weeks, and I am Director - Wholesale Services for Windstream Communications, Inc. In this capacity, I am authorized to issue this Acknowledgement on behalf of Windstream Communications, Inc. ("WCI") and its affiliates, Windstream D&E, Inc. ("Windstream D&E") and Windstream Conestoga, Inc. ("Windstream Conestoga").

2. WCI is not the parent company of Windstream D&E or Windstream Conestoga. WCI is certified in Pennsylvania to provide competitive local and interexchange services. Windstream D&E and Windstream Conestoga are incumbent local providers that operate only in Pennsylvania.

3. On November 10, 2009, Windstream D&E and Windstream Conestoga were involved in a transaction whereby they became direct or indirect subsidiaries of Windstream Corporation.

4. On November 11, 2009, Windstream D&E and Windstream Conestoga provided notice to terminate the business relationship that AT&T addresses in its materials.

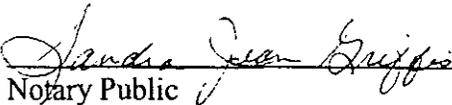
5. After receiving AT&T's materials, I called the telephone numbers listed in AT&T's materials that appeared to belong to Windstream D&E or Windstream Conestoga. I

received a recording indicating that the telephone numbers were no longer connected to the service.

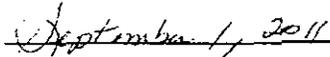
Further, Affiant sayeth not.

  
\_\_\_\_\_  
Stephen Weeks

SWORN AND SUBSCRIBED TO BEFORE me this 11<sup>th</sup> day of March 2010, to certify which witness my hand.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

  
\_\_\_\_\_



**CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of March, 2010, I did serve a true and correct copy of the foregoing upon the persons below via electronic mail and first class mail as follows:

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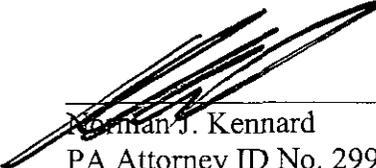
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PA Attorney ID No. 29921

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212 Locust Street, Suite 500



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Harrisburg, PA 17101

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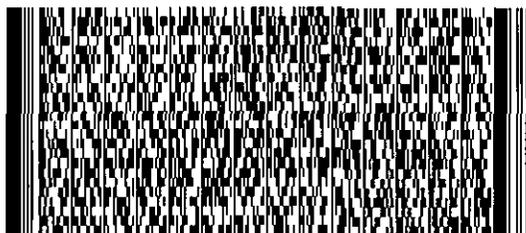


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**James J. McNulty, Secretary**  
**Pennsylvania Public Utility Comm**  
**400 NORTH ST # 2N**  
**COMMONWEALTH KEYSTONE BUILDING**  
**HARRISBURG, PA 17120**

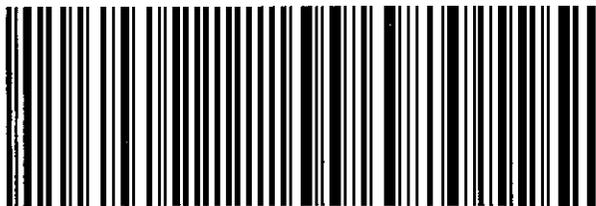
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