BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition of Geneva Broadband LLC, Geneva, for arbitration of an Interconnection Agreement with Windstream Nebraska Inc., Lincoln.	))))))	Application No. C-3927 ORDER Entered: June 3, 2008

BY THE COMMISSION:

O P I N I O N A N D F I N D I N G S

On April 28, 2008, Geneva Broadband LLC ("Geneva Broadband"), Geneva, Nebraska, filed a Petition seeking arbitration of an Interconnection Agreement with Windstream Nebraska Inc. ("Windstream") of Lincoln.

On May 9, 2008, Windstream filed a Motion to Dismiss, Request for Expedited Ruling and Request (Windstream Motion) for Stay of Proceeding accompanied by an affidavit and several attachments. A response to the Motion to Dismiss was filed by Geneva Broadband on May 16, 2008, in the form of an affidavit and attachments.

On May 20, 2008, a hearing and an oral argument were held on the Windstream Motion. At issue was the date the Bona Fide Request (BFR) for Interconnection was received by Windstream. Geneva Broadband argues the BFR was received by Windstream on December 5, 2007. Windstream argues that the BFR was received on November 12, 2007, making the petition for arbitration untimely.

Section 252 of the federal Telecommunications Act of 1996 ("the Act"), provides in pertinent part, "[d]uring the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues." This Commission has the jurisdiction to arbitrate open issues only within this window of time between the 135th to the 160th day of negotiations. Accordingly, the Commission must make a factual determination as to when the BFR was received by the incumbent local exchange carrier.

It is unfortunate in this circumstance that no written request for interconnection was clearly propounded. Geneva Broadband claims that the BFR was not received until December 5, 2007, when during a telephone call Geneva Broadband was formally asked whether it wanted to receive a Geneva Broadband-specific

interconnection agreement "that could be used to start the negotiation". Baltzer Aff. ¶6. At which point it responded affirmatively.

Windstream argues that the BFR was actually received prior to that date when Mr. Lee Elliott, Staff Manager of Interconnection Services, was contacted by Geneva Broadband. According to Windstream, Geneva Broadband contacted Windstream on November 12, 2007, which was logged into its system as a BFR and when in response to that contact, Windstream electronically mailed Geneva Broadband an interconnection agreement template. *See* Elliott Aff. ¶¶ 3,7. Attached to the affidavit at Exhibit C was an electronic mail message dated November 13, 2007, in which Mr. Baltzer responded that he would like "to see lower rates for leasing dry loops."

Geneva Broadband countered that beginning on November 12, 2007, it contacted Windstream to pose several questions and was exploring partnership arrangements with Windstream. *See* Baltzer Aff. ¶ 3.

Based upon the information presented to the Commission, including the affidavits and attachments, testimony of Greg Baltzer, and the arguments made at the May 20, 2008, hearing/oral argument, the Commission is of the opinion and finds the Petition of Geneva Broadband must be dismissed for lack of jurisdiction. The date the BFR was received by the incumbent local exchange carrier does not necessarily correlate with the date the carrier has a full understanding of what would be offered in the negotiation, nor does it hinge upon the date on which draft interconnection agreements are exchanged. Rather, the BFR precedes the exchange of information, irrespective of whether it is a cooperative or adversarial negotiation process. Based on the information contained in the affidavits on file, the Commission finds the BFR was received by Windstream on November 12, 2007, when Windstream was contacted by Mr. Baltzer. Accordingly, the petition for arbitration was filed after the 160th day of negotiations.

Since the Commission dismisses the petition for lack of jurisdiction, the above-captioned docket is hereby closed. Nothing precludes Geneva Broadband from sending a new BFR to Windstream to trigger Section 252 of the Act.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission the Motion to Dismiss filed by Windstream Nebraska Inc. is hereby granted.

MADE AND ENTERED at Lincoln, Nebraska, this 3rd day of June, 2008.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission the Motion to Dismiss filed by Windstream Nebraska Inc. is hereby granted.

MADE AND ENTERED at Lincoln, Nebraska, this 3rd day of June, 2008.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

//s// Anne C. Boyle
//s// Frank E. Landis