

Edward T. Depp
502-540-2347
tip.depp@dinsmore.com

October 4, 2011

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OCT 04 2011

PUBLIC SERVICE
COMMISSION

VIA HAND-DELIVERY

Hon. Jeff R. Derouen
Executive Director
Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, KY 40602-0615

Re: *In the Matter of: An investigation into the traffic dispute between Windstream Kentucky East, LLC, Brandenburg Telephone Company and MCIMetro Access Transmission Services, LLC d/b/a Verizon Access, Commonwealth of Kentucky, Case No. 2008-00203*

Dear Mr. Derouen:

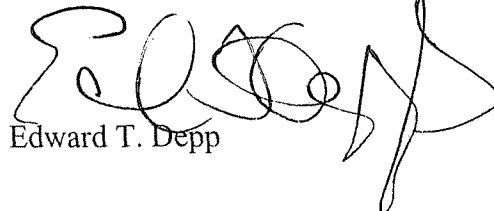
Enclosed for filing in the above-referenced case, please find one original and eleven (11) copies of the Prefiled Direct Testimony of Allison T. Willoughby on Behalf of Brandenburg Telephone Company.

Please file-stamp one copy and return it to our delivery person.

Thank you, and if you have any questions, please call me.

Sincerely,

DINSMORE & SHOHL LLP



Edward T. Depp

ETD/kwi
Enclosures
cc: All parties of record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

OCT 04 2011

PUBLIC SERVICE
COMMISSION

AN INVESTIGATION IN THE TRAFFIC)
DISPUTE BETWEEN WINDSTREAM)
KENTUCKY EAST, LLC, BRANDENBURG)
TELEPHONE COMPANY AND MCIMETRO)
ACCESS TRANSMISSION SERVICES, LLC)
D/B/A VERIZON ACCESS)

Case No. 2008-00203

PREFILED SECOND SUPPLEMENTAL DIRECT TESTIMONY OF
ALLISON T. WILLOUGHBY
ON BEHALF OF BRANDENBURG TELEPHONE COMPANY

1 Q. WHAT IS YOUR NAME?

2 A. My name is Allison T. Willoughby.

3 Q. WHO IS YOUR EMPLOYER?

4 A. My employer is Brandenburg Telephone Company ("Brandenburg Telephone").

5 Q. HAVE YOU PREVIOUSLY TESTIFIED IN THIS CASE?

6 A. Yes. I filed direct testimony on August 8, 2008. I filed rebuttal testimony on August 15,
7 2008. I also testified during the August 19, 2008 formal hearing before the Public Service
8 Commission of the Commonwealth of Kentucky (the "Commission"). I filed supplemental direct
9 testimony on March 2, 2010. Finally, I filed supplemental rebuttal testimony on April 13, 2010.

10 Q. WHAT IS THE BASIS FOR YOUR FILING THIS SUPPLEMENTAL DIRECT
11 TESTIMONY IN THIS CASE?

12 A. On September 15, 2011, the Commission ordered the Parties to file a final set of direct
13 testimony or supplementary direct testimony. Specifically, the Commission asked the Parties to

1 update their testimonies regarding what compensation, if any, is due to Windstream Kentucky East,
2 LLC (“Windstream”).

3 **Q. WHAT IS BRANDENBURG TELEPHONE’S POSITION WITH RESPECT TO**
4 **THESE ISSUES?**

5 A. Our position has not changed since our previous testimony and briefing. Windstream is not
6 entitled to any compensation for its involvement in delivering the traffic at issue. Any compensation
7 owed should be paid by MCImetro Access Transmission Services, LLC (“MCImetro”).

8 **Q. HAS THE COMPANY PREVIOUSLY BRIEFED THESE ISSUES FOR THE**
9 **COMMISSION?**

10 A. Yes. Brandenburg Telephone has explained its position in numerous filings, most notably:

- 11 • September 12, 2008: Brandenburg Telephone Company’s Post-Hearing Brief;
- 12 • January 13, 2009: Letter from Holly C. Wallace to Executive Director Jeff Derouen (in
13 response to December 30, 2008 letter from Bruce F. Clark, Esq., on behalf of Windstream
14 Kentucky East, LLC);
- 15 • September 25, 2009: Brandenburg Telephone Company’s Response to an Order of the
16 Kentucky Public Service Commission Dated August 26, 2009;
- 17 • October 1, 2009: Brandenburg Telephone Company’s Response to MCImetro Access
18 Transmission Services LLC’s Motion for Correction and Rehearing;
- 19 • October 12, 2009: Brandenburg Telephone Company’s Reply to the Windstream and
20 MCImetro Briefs Filed in Response to an Order of the Kentucky Public Service Commission
21 Dated August 26, 2009; and
- 22 • October 27, 2009: Brandenburg Telephone Company’s Response to Windstream, Kentucky
23 East, LLC’s Motion for Leave to File a Surreply.
24
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27
28

29 **Q. WHAT IS THE BASIS FOR BRANDENBURG TELEPHONE’S POSITION THAT**
30 **WINDSTREAM IS NOT ENTITLED TO ANY COMPENSATION IN THIS MATTER?**

31 A. There are two primary reasons.

1 First, the Windstream/MCImetro Interconnection Agreement does not provide for
2 compensation to Windstream. (Prefiled Supplemental Direct Testimony of Allison T. Willoughby
3 on Behalf of Brandenburg Telephone Company, March 2, 2010 (“Willoughby First Supp. Test.”),
4 pp. 4:27-5:6.) This is a legal argument, and probably covered best in the briefs I outline above, but
5 my understanding is that Windstream and MCImetro agreed to serve, at no cost, as the intermediary
6 for non-toll traffic originated by a third-party carrier like Brandenburg Telephone. If Windstream
7 already agreed to not charge for these services, it certainly cannot demand compensation after-the-
8 fact. That Agreement therefore cannot provide the basis for the compensation Windstream claims it
9 is owed.

10 Second, Windstream’s so-called “transit tariff” does not apply to Brandenburg Telephone.
11 (Willoughby First Supp. Test., pp. 6:9-8:2.) Windstream has repeatedly noted, and its own witness,
12 Kerry Smith, testified at the formal hearing in this matter that Windstream’s Transit Tariff does not
13 apply to the traffic at issue in this case. (Testimony of Kerry Smith, Transcript of Aug. 19, 2008
14 Hearing, pp. 23:14-24:15.) Moreover, the Commission has already ruled that Windstream’s Transit
15 Tariff provisions should be canceled in any event. (See August 16, 2010 Order in Case No. 2007-
16 00004; Windstream has appealed the Commission’s order.) Even so, Windstream claims that the
17 Transit Tariff was effective only as of its December 1, 2006 filing date, which is after the date on
18 which the traffic at issue in this case began flowing. Windstream’s Transit Tariff therefore cannot
19 provide the basis for the compensation Windstream claims it is owed.

20 The bottom line is that, in the absence of an agreement or a tariff, I know of no rationale for
21 which (or mechanism by which) Windstream should be compensated. When it entered into its
22 interconnection agreement with MCImetro, Windstream voluntarily agreed to carry the traffic in

1 question without compensation, and even Windstream admits it has no tariff that applies to the
2 traffic. Therefore, Windstream is not entitled to compensation.

3 **Q. WINDSTREAM CLAIMS IT SHOULD BE COMPENSATED AT A RATE OF**
4 **\$0.0045. DO YOU ALSO DISAGREE WITH THE RATE WINDSTREAM SEEKS TO**
5 **IMPOSE?**

6 A. Yes, Windstream has no basis for the \$0.0045 rate it seeks to impose. Despite having years
7 to provide authority justifying its claimed rate for compensation, Windstream has failed to do so.
8 (*See* Willoughby First Supp. Test., pp. 6:9-8:2; *see also* Responses and Objections to Brandenburg’s
9 Supplemental Initial Data Requests to Windstream Kentucky East, LLC, No. 14, Ex. DR #14 (March
10 30, 2010) (refusing to provide documentation to support its claimed 0.0045 “Proxy Rate”).)
11 MCImetro also recognizes that Windstream has not “state[d] the source of that rate” (Direct
12 Testimony of Don Price on Behalf of MCImetro, March 2, 2010, p. 3:13.)

13 Windstream’s claimed rate in this case seems to correspond with the \$0.0045 rate set forth in
14 its Transit Tariff. However, as I just mentioned, Windstream agrees that the Transit Tariff does not
15 apply to the traffic in question. (Testimony of Kerry Smith, Transcript of Aug. 19, 2008 Hearing,
16 pp. 23:14-24:15.) It is unclear why Windstream thinks this rate is appropriate or why Windstream
17 thinks it has the authority to collect untariffed rates, and Windstream has refused to explain its
18 calculations. None of Windstream’s data request responses, nor its exhibits, explain how, why, or
19 pursuant to what authority its \$0.0045 rate was selected. I think there probably is no authority, and
20 Windstream is simply trying to impose its now-invalidated Transit Tariff rate even though the
21 Transit Tariff does not apply and has since been canceled in any event.

22 In short, we disagree with Windstream’s apparent claim that its Transit Tariff should set a
23 rate of compensation for the traffic in question because: (i) Windstream already agreed in its

1 interconnection agreement with MCImetro to forego any compensation for this kind of traffic; (ii)
2 Windstream admits the Transit Tariff does not even apply to the traffic; and (iii) the Transit Tariff
3 was cancelled by the Commission's August 16, 2010 order in Case No. 2007-00004.

4 **Q. IF THE COMMISSION FINDS THAT WINDSTREAM IS ENTITLED TO SOME**
5 **COMPENSATION, WHO SHOULD BE RESPONSIBLE?**

6 A. MCImetro. MCImetro could have averted this entire problem, but it instead deliberately
7 decided to ignore its responsibilities, to enter the Elizabethtown market without investigation, and to
8 repeatedly refuse the necessary arrangements to exchange traffic.

9 **Q. PLEASE EXPLAIN IN MORE DETAIL WHY MCIMETRO IS THE CULPABLE**
10 **PARTY.**

11 A. MCImetro started this entire problem by intentionally disregarding its obligations to
12 investigate the traffic exchange arrangements it would need before entering the Elizabethtown
13 market. MCImetro boldly claims that "it was [not] incumbent on [it] in any way, shape, or form to
14 try to ferret out every agreement that existed between Windstream and all of the other carriers in the
15 area and what they did, and how they did it, and what the compensation was for that." (Testimony
16 of Don Price, Transcript of Aug. 19, 2008 Hearing, pp. 131:24-132:3.)

17 Worse, even after MCImetro had undoubtedly become aware of the problem it had created, it
18 continued to refuse to enter an appropriate traffic exchange agreement or to move the traffic onto
19 dedicated facilities. Even after this case began and the Commission ordered MCImetro to enter into
20 a traffic exchange agreement with Brandenburg Telephone, MCImetro refused to negotiate in good
21 faith. Despite testifying that it was "willing to negotiate a commercially reasonable interconnection
22 agreement with Brandenburg," MCImetro refused to execute an agreement substantively identical to
23 the one it had recently executed with South Central Rural Telephone Cooperative Corporation.

1 MCImetro rejected other draft agreements due to the presence of provisions substantively identical
2 to those found in other executed MCImetro agreements.

3 In essence, MCImetro turned its “commercially reasonable” requirement into a moving target
4 that extended negotiations for years, wasting the time and resources of the Commission and the
5 Parties. In 2011, six years after the traffic began and a year after the Commission ordered the Parties
6 to agree on interconnection terms, MCImetro finally agreed to an interconnection agreement that is
7 essentially identical to what Brandenburg Telephone had originally offered.

8 Consequently, MCImetro should be responsible for any amounts owed to Windstream
9 because it initiated the problem; it refused to address the problem promptly; and it took every
10 opportunity to extend the problem in order to avoid the expense of installing the dedicated trunks
11 that it knew would be required and upon which it ultimately agreed. After this case was initiated,
12 MCImetro persisted in erecting imaginary obstacles to the traffic exchange agreement that would
13 have resolved this problem years ago. Even following the Commission’s order compelling
14 MCImetro to enter into a traffic exchange agreement with Brandenburg Telephone, MCImetro still
15 spent more than a year crafting unfounded excuses as to why it could not sign an agreement identical
16 to the existing agreement between it and South Central Rural Telephone Cooperative. Even now,
17 with an interconnection agreement signed and filed, MCImetro still seeks to “discuss”
18 implementation of the interconnection rather than promptly establish the facilities required to move
19 this traffic off of Windstream’s network.

20 **Q. SHOULD BRANDENBURG TELEPHONE OWE COMPENSATION TO**
21 **WINDSTREAM?**

22 A. No. Brandenburg Telephone should not be required to compensate Windstream. Even if we
23 set aside for a moment the facts that Windstream is owed nothing and MCImetro is the culpable

1 party that should bear the burden of any compensation, there is absolutely no basis to charge
2 Brandenburg Telephone.

3 **Q. COULD BRANDENBURG TELEPHONE HAVE RESOLVED THIS ISSUE**
4 **EARLIER?**

5 No. Brandenburg Telephone was not even aware of the traffic in question until it was
6 notified by Windstream in 2007, two years after the traffic began flowing. Both MCImetro and
7 Windstream knew of the traffic before Brandenburg Telephone, and neither acted to resolve the
8 situation. The solution Windstream has suggested after-the-fact – that Brandenburg Telephone
9 should have rerouted the traffic to the AT&T tandem – is nonsensical, because Brandenburg
10 Telephone did not initially know about the traffic to reroute it, Windstream consented to continue
11 carrying the traffic, the Commission ordered Windstream to continue carrying the traffic, and there
12 were no facilities by which Brandenburg Telephone could have routed these EAS calls to AT&T on
13 a non-toll basis. There was simply nothing Brandenburg Telephone could have done to avoid
14 MCImetro’s woefully inadequate (or intentionally wrongful) network planning.

15 Brandenburg Telephone was forced into a no-win situation by MCImetro and Windstream.
16 MCImetro and Windstream had a contractual relationship that addressed the exchange of this very
17 traffic, yet both decided it would be easier to hoist the fallout from that arrangement onto
18 Brandenburg Telephone. Windstream filed its Transit Tariff after the traffic began flowing in an
19 attempt to justify charging a rate. By relying on a proxy of that tariff, Windstream had no incentive
20 to take ownership of this issue and consequently refused to work in good faith to resolve it.
21 Similarly, MCImetro was able to avoid the cost of the dedicated trunks it would require to receive
22 the traffic, and it was receiving free service pursuant to its interconnection agreement with
23 Windstream, so it also had no incentive to take ownership of this issue. As I explained above,

1 MCImetro refused to work in good faith to resolve the problem, even in the face of explicit orders of
2 the Commission.

3 Together, MCImetro and Windstream entered into a business relationship, indifferent to the
4 consequences imposed upon Brandenburg Telephone. Now, years since this case began, MCImetro
5 has finally agreed to do almost exactly what Brandenburg Telephone asked it to do in the first place:
6 establish dedicated trunks to Brandenburg Telephone's territory. Neither MCImetro nor Windstream
7 should be rewarded for their behavior, and any compensation certainly should not come at the
8 expense of Brandenburg Telephone.

9 In short, Brandenburg Telephone did not know of the problem in time to stop it. We
10 attempted to resolve the issue amicably, but neither MCImetro nor Windstream would work in good
11 faith with us. Indeed, even after the Commission was involved, MCImetro continued in its refusal to
12 negotiate in good faith. If even the Commission in its position of power could not get MCImetro to
13 do what it was required to do, what hope did Brandenburg Telephone have on its own?

14 **Q. WHAT SHOULD BE THE COMMISSION'S NEXT STEP?**

15 A. Brandenburg Telephone respectfully requests that the Commission formally find that
16 Windstream is not entitled to any compensation, because compensation is neither provided for in the
17 Windstream-MCImetro agreement nor provided for by tariff.

18 In the alternative, Brandenburg Telephone respectfully requests that MCImetro be held solely
19 responsible for paying any amounts owed to Windstream for the traffic at issue.

20 **Q. DOES THIS INCLUDE YOUR SECOND SUPPLEMENTAL DIRECT TESTIMONY?**

21 A. Yes.

22

CERTIFICATE OF SERVICE


I hereby certify a true and accurate copy of the foregoing was served, by first-class United States mail, sufficient postage prepaid, on the following individuals this 4th day of October, 2011.

Bruce F. Clark, Esq.
Stites & Harbison, PLLC
421 West Main Street
P.O. Box 634
Frankfort, KY 40602-0634

Counsel to Windstream

C. Kent Hatfield, Esq.
Douglas F. Brent, Esq.
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202

Counsel to MCImetro



Counsel to Brandenburg Telephone Company