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October 4, 2011

HAND DELIVERED

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

RECEIVED

OCT 04 2011

PUBLIC SERVICE
COMMISSION

Mark R. Overstreet
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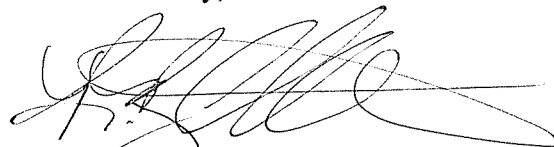
Re: P.S.C. Case No. 2008-00203

Dear Mr. Derouen:

Enclosed please find the original and ten copies of Kerry Smith's Further Direct Testimony in the above matter. The original of Mr. Smith's verification will be filed later this week or early next week.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Mark R. Overstreet
R. Benjamin Crittenden

cc: Douglas F. Brent
John E. Selent

BEFORE THE COMMONWEALTH OF KENTUCKY

PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO TRAFFIC DISPUTE)
BETWEEN BRANDENBURG TELEPHONE)
COMPANY, WINDSTREAM KENTUCKY EAST,)
LLC AND VERIZON ACCESS)

CASE NO.
2008-00203

FURTHER DIRECT TESTIMONY

OF

KERRY SMITH

RECEIVED

OCT 04 2011

PUBLIC SERVICE
COMMISSION

ON BEHALF OF WINDSTREAM KENTUCKY EAST, LLC

FURTHER DIRECT TESTIMONY OF KERRY SMITH

1 **Q. Please state your name and business address.**

2 A. My name is Kerry Smith. My business address is 4001 Rodney Parham Road, Little
3 Rock, Arkansas 72212.

4 **Q. Are you the same Kerry Smith who testified previously on behalf of Windstream
5 Kentucky East, LLC (“Windstream”) in this proceeding?**

6 A. Yes.

7 **Q. What is the purpose of your Further Direct Testimony?**

8 A. The purpose of my Further Direct Testimony is to update the record since the last time
9 that Windstream provided testimony in this proceeding – my Supplemental Testimony of
10 April 13, 2010.

REVIEW OF DISPUTE

11
12 **Q. Please summarize the nature of Windstream’s interest in how traffic is routed
13 between Brandenburg Telephone Company (“Brandenburg”) and MCIMetro
14 Access Transmission Services, LLC d/b/a Verizon Access (“Verizon”).**

15 A. Windstream has been caught in the middle of a traffic routing issue between
16 Brandenburg and Verizon in which Brandenburg has been inappropriately dumping
17 Verizon-bound traffic on Windstream’s network and expecting Windstream to carry such
18 traffic to Verizon at Windstream’s unreimbursed expense. To reiterate, the traffic in
19 question has nothing to do with any Windstream customer.

20 **Q. What is the general nature of this traffic?**

21 A. Virtually all of the traffic is calls placed by Brandenburg customers to dial-up Internet
22 service provider (“ISP”) customers of Verizon.

1 **Q. Can you please remind the Commission why this traffic – which is not**
2 **Windstream’s traffic – is being routed through Windstream’s network?**

3 A. As I explained in my prior testimony, Brandenburg is circumventing the
4 telecommunications industry standard LERG protocols and ignoring Verizon’s Louisville
5 Location Routing Number (“LRN”) to route the traffic inappropriately over the EAS
6 trunks between Brandenburg and Windstream. Because those trunks do not record the
7 traffic, Brandenburg was able to conceal this traffic from Windstream for a number of
8 years, and therefore avoid having to negotiate with Verizon to provide accommodations
9 for the proper exchange of the traffic.

10 **Q. Did Windstream previously establish that Brandenburg knew that this was**
11 **Brandenburg/Verizon traffic and not Brandenburg/Windstream traffic?**

12 A. Yes. We submitted emails between Brandenburg and Verizon that demonstrated clearly a
13 concerted effort by those two parties to not inform Windstream of this traffic, and we
14 further established that Brandenburg intentionally took action to avoid performing the
15 required local number portability (“LNP”) database queries (“dips”) which helped mask
16 the fact that it was traffic not destined to any telephone number with an Elizabethtown
17 local routing number.

18 **Q. What was the result of Brandenburg’s actions and of Verizon’s participation in this**
19 **routing scheme?**

20 A. As Windstream previously demonstrated, the result is and has been that Brandenburg has
21 been purposefully ignoring routing instructions in the LERG and forcing these calls from
22 its customers to Verizon’s customers over the EAS facilities.

1 **Q. What is so bad about Brandenburg sending the traffic to Windstream over the EAS**
2 **trunks?**

3 A. Setting aside that Brandenburg has ignored industry protocols to conceal the Louisville-
4 bound traffic over Windstream's facilities, Windstream incurs switching and transport
5 costs by processing the traffic and delivering it to Verizon. These costs are particularly
6 high because EAS trunks are appropriately connected to Windstream's network at the end
7 office that serves the customers with the EAS so as to make provision of EAS as cost-
8 effective as possible. But since the traffic is actually bound for Verizon, Windstream has
9 to use an end office switch for a purpose for which it was not designed – switching third-
10 party traffic onto transport trunks to the tandem switch at which Verizon interconnects.
11 Thus, Windstream incurs end office switching, transport, and tandem switching costs just
12 to process the traffic that Brandenburg should not be sending through Windstream in the
13 first place. Brandenburg has essentially found the place on Windstream's network for
14 dumping Brandenburg's traffic that has permitted Brandenburg and Verizon to pass on
15 their financial and operational responsibility for their own traffic to Windstream.

16 **Q. Has the Kentucky Public Service Commission ("Commission") heard testimony**
17 **from you on these topics before?**

18 A. Yes. Multiple times both in writing and at hearing.

19 **Q. Has the Commission drawn any conclusions from such testimony?**

20 A. Yes. In an order dated August 29, 2009, the Commission concluded that "the traffic in
21 dispute must be moved off of Windstream's network."¹

22 **Q. Did the 2009 Order include any other directives?**

¹ Investigation Into Traffic Dispute Between Brandenburg Telephone Company, Windstream Kentucky East and Verizon Access, Case No. 2008-00203, Order, p. 18 (Aug. 26, 2009)("2009 Order").

1 A. Yes. The Commission ordered Brandenburg and Verizon to enter into an agreement that
2 would govern how traffic would be exchanged once it was removed from Windstream's
3 network.

4 **DEVELOPMENTS SINCE APRIL 13, 2010**

5 **Q. When is the last time that Windstream submitted testimony in this proceeding?**

6 A. April 13, 2010.

7 **Q. Have there been any developments since then?**

8 A. Yes. There have been three developments:

- 9 (a) Brandenburg and Verizon finally entered into a traffic exchange
10 agreement filed on July 27, 2011 (23 months after being ordered to do so
11 and many years after they should have done so);
12
13 (b) Since April 13, 2010 and even after July 27, 2011 (at least through
14 September 5, 2011), Windstream has continued to receive Verizon-bound
15 traffic over the EAS trunks and continued not to be paid for it;
16
17 (c) Ironically, while continuing to ignore its responsibility to Windstream in
18 this matter, Brandenburg has taken the position before this Commission
19 that, one way or another, carriers' networks should not be used by other
20 carriers in an unauthorized manner for free.
21

22 **A. Traffic Exchange Agreement Between Brandenburg and Verizon.**

23 **Q. Please tell me about the traffic exchange agreement between Brandenburg and**
24 **Verizon.**

25 A. Twenty-three months after being told to get off of Windstream's network and to establish
26 a traffic exchange agreement governing their traffic, Brandenburg and Verizon finally got
27 around to filing a traffic exchange agreement.

28 **Q. Have you reviewed the agreement?**

29 A. Yes.

30 **Q. Do you have any observations about the agreement?**

1 A. The traffic exchange agreement appears to be within the range of typical traffic exchange
2 agreements that I have seen.

3 **Q. How have Brandenburg and Verizon allocated financial responsibility for the**
4 **connection between their networks?**

5 A. Section 4.1.1 states that “CLEC’s [Verizon’s] financial responsibility ends on the CLEC
6 side of the POC [point of connection]” and that “Brandenburg Telephone’s financial
7 responsibility ends on the Brandenburg Telephone side of the POC.” In other words, each
8 party bears financial and operational responsibility for its traffic up to the connection
9 point between the parties.

10 **Q. Is this arrangement typical in a traffic exchange agreement?**

11 A. Yes.

12 **Q. Where is the POC?**

13 A. Section 3.3 of the agreement states that “This Agreement applies only to the exchange of
14 ISP Traffic over the Parties’ network facilities . . . that are interconnected at a POC
15 located at either the boundary of, or within, a Brandenburg Telephone Local Service
16 Exchange Area identified in Appendix 1.”

17 **Q. What conclusions can you draw from the agreement’s description of the location of**
18 **the POC?**

19 A. Clearly, the POC will be located within Brandenburg’s service territory. Thus, most
20 significantly, Verizon is financially responsible for establishing its own facility to the
21 POC and hauling the ISP-bound traffic from the POC to Louisville.

1 Q. Are there any other implications of the agreement, assuming that Brandenburg and
2 Verizon intend to comply with the requirement of the 2009 Order that Brandenburg
3 and Verizon cease routing the traffic through Windstream's network?

4 A. Yes. Brandenburg must be planning on using facilities other than the EAS trunks with
5 Windstream to deliver traffic to Verizon. If this were not the case, the traffic would be
6 routed over such trunks to Windstream's Elizabethtown end office switch (non-
7 Brandenburg endpoint of the EAS trunks), which would violate the 2009 Order.

8 Q. Do you have any reason to believe that the agreement is, in fact, being implemented
9 in the manner that you assume?

10 A. While I would like to think that Brandenburg and Verizon would comply with
11 Commission orders, two months after the agreement was filed, Windstream continues to
12 receive Verizon-bound traffic on the EAS trunks from Brandenburg. I discuss this in
13 more detail below.

14 Q. Does Windstream have any requests with regard to how the Commission should
15 react to the traffic exchange agreement?

16 A. Yes. The Commission should only consider whether the traffic exchange agreement
17 satisfies the requirement of the 2009 Order to the extent that such agreement does not
18 permit the traffic to traverse Windstream's network, such as by being routed initially over
19 the EAS trunks. Specifically, the Commission should require Brandenburg and Verizon
20 to explain why traffic continues to flow over Windstream's network.

21 B. Continued Routing of Brandenburg-Originated Traffic Bound for Verizon Through
22 Windstream's Network
23

1 **Q. You stated above that Brandenburg-originated traffic bound for Verizon is still**
2 **being routed over the EAS trunks terminating at Windstream’s Elizabethtown end**
3 **office. How do you know this to be true?**

4 A. We have performed traffic studies on the EAS trunks from Brandenburg and continue to
5 see Brandenburg-originated traffic bound for Verizon on such EAS trunks.

6 **Q. At what current quantity is such traffic being routed over the EAS trunks?**

7 A. Approximately 350,000-400,000 minutes per month.

8 **Q. As of your most recent information, how much Verizon-bound traffic has**
9 **Brandenburg routed over its EAS trunks with Windstream?**

10 A. 311,855,885 minutes.

11 **Q. How much Verizon-bound traffic has Brandenburg routed over its EAS trunks with**
12 **Windstream since the Commission’s August 26, 2009 order requiring the**
13 **Brandenburg and Verizon to cease routing traffic between such carriers through**
14 **Windstream’s network?**

15 A. Approximately 25,000,000 minutes.

16 **C. Recent Advocacy By Brandenburg**

17 **Q. What recent advocacy of Brandenburg do you think is relevant to this proceeding?**

18 A. On May 24, 2011, Brandenburg, along with twelve other carriers, filed a formal
19 complaint with the Commission (designated as Case No. 2011-00199) against BellSouth
20 Telecommunications, Inc. d/b/a AT&T Kentucky (“AT&T”) (“RLEC Halo Complaint”).
21 The complaint concerned a complex intercarrier dispute regarding a party not then named
22 in the complaint, Halo Wireless, Inc., which was allegedly routing traffic through AT&T
23 to Brandenburg, among other carriers.

1 **Q. How is the RLEC Halo Complaint relevant?**

2 A. Exhibit E to that complaint, attached to this testimony as Exhibit 1, was a letter from
3 Brandenburg to Halo in which Brandenburg made a number of allegations and arguments
4 almost identical to those made by Windstream against Brandenburg in this proceeding.
5 Highlights of such allegations and arguments by Brandenburg include the following:

- 6 • Brandenburg claims that Halo Wireless, Inc. (“Halo”) had “quietly” sent a
7 substantial number of minutes of traffic to Brandenburg’s network – This is
8 no different from the extended period of time in which Brandenburg “quietly”
9 sent an untold number of Verizon-bound minutes through Windstream’s
10 network disguised as legitimate Brandenburg/Windstream EAS traffic;²
11
- 12 • Brandenburg asserts that Halo has made no effort to establish the appropriate
13 interconnection agreement with Brandenburg – very similar to Brandenburg
14 and Verizon not establishing their own traffic exchange agreement and
15 waiting nearly two years after being ordered by the Commission to establish
16 such an agreement to actually do so and many years after they had the
17 obligation to do so; further, Brandenburg has similarly made no effort to
18 establish an agreement with Windstream so as to pass the Verizon-bound
19 traffic through Windstream in a legitimate manner;
20
- 21 • Brandenburg offered to Halo to establish a dedicated facility for the exchange
22 of traffic with Halo, bypassing AT&T – this is exactly what Brandenburg
23 should have done with Verizon many years ago given the volumes of traffic
24 that they were exchanging and was ordered to do and failed to do for nearly
25 two years;
26
- 27 • Brandenburg demanded compensation from Halo for Halo’s past,
28 unauthorized use of Brandenburg’s network prior to requesting or establishing
29 an interconnection agreement – analogous to the payment for past services
30 rendered that Brandenburg is seeking to avoid in this proceeding to
31 Windstream.
32

33 **Q. Considering these claims made by Brandenburg in its letter to Halo, what should**
34 **happen in this proceeding between Brandenburg and Windstream?**

² The 2009 Order observed that Windstream only learned of the nature of such traffic by performing a traffic measurement as part of Case No. 2007-00004. 2009 Order at p. 5. In fact, in my April 13, 2010 testimony (p. 4), I discussed an e-mail that demonstrates that Brandenburg had known about the incorrect routing of the traffic since September of 2005.

1 A. Prior to answering this question, I would like to state that I am not testifying about the
2 validity of any of the allegations made by Brandenburg or any other carrier against Halo.
3 I am just saying that Brandenburg ironically is taking the same approach to Halo that
4 Brandenburg apparently considers to be unreasonable for Windstream to take with regard
5 to Brandenburg. In short, Brandenburg asserts that Halo has used its network in an
6 unauthorized manner and should compensate Brandenburg. Windstream is seeking the
7 same from Brandenburg and Verizon in this proceeding. If the Commission were to
8 accept such an approach, Brandenburg should be considered to have delivered Verizon-
9 bound traffic to Windstream in an unreasonably inconspicuous manner. Further, the
10 Commission should require Brandenburg to compensate Windstream for Brandenburg-
11 originated Verizon-bound traffic regardless of the establishment of a prior legal
12 arrangement with regard to such traffic.

13 **COMPENSATION TO WINDSTREAM**

14 **Q. Should Windstream be compensated for processing the traffic at issue?**

15 A. Yes. Windstream's network has been abused so as to provide Brandenburg a means of
16 connecting calls to Verizon that require Windstream to perform multiple switching and
17 transport functions, as well as database dips. It does not seem reasonable to require
18 Windstream to provide this service without compensation at any time in the past or now.
19 Additionally, this is not an unreasonable request when one also considers that
20 Brandenburg serves the customers who are placing the calls to Verizon's customers and
21 that Verizon serves the customers receiving the calls. Each, therefore, has a revenue
22 stream to compensate them for the cost of this traffic. Windstream, however, does not.

23 **Q. How much does Windstream believe it is owed?**

1 A. As I have stated previously, with regard to network usage, Windstream believes that it is
2 reasonable to be compensated at \$0.0045 per minute. This rate should be applied to the
3 entire 311,855,885 minutes of traffic that have unlawfully been routed through
4 Windstream's network and for which Windstream has not received compensation, which
5 would mean that Windstream is owed \$1,403,351.00 for network usage. Windstream
6 should also be compensated for the LNP dips that it has performed in the amount of
7 \$36,299.00. Further, there is the matter of interest that Windstream is owed on the
8 receivable that it has been carrying for Brandenburg and/or Verizon. Such interest is
9 \$394,528.00. These amounts add up to \$1,834,178.00 that Windstream is owed, as of
10 September 5, 2011. These amounts are growing on a daily basis. In addition,
11 Windstream should be reimbursed its legal fees for this proceeding, particularly given the
12 evidence we have introduced demonstrating the efforts by the parties to conceal this
13 traffic from Windstream for a number of years and that Windstream has incurred
14 significant costs to defend an action in which it has been forced to participate as a direct
15 result of the actions by Brandenburg and Verizon to inappropriately hold Windstream in
16 the middle of those parties' traffic dispute.

17 **Q. Who should be compensating Windstream for processing the Verizon-bound traffic**
18 **that Brandenburg has been sending through Windstream's network?**

19 A. As Windstream has previously suggested, it believes that Brandenburg (as the party
20 responsible for directing the traffic to Windstream's network) appears most culpable.
21 However, our evidence demonstrated efforts by both parties to conceal this traffic from
22 Windstream in order to avoid their own responsibility for their traffic. Perhaps the
23 Commission should hold each Verizon and Brandenburg equally and jointly responsible

1 for the amounts owed to Windstream and thus follow the lead established in their traffic
2 agreement in which they each agreed to each be responsible for their traffic up to a
3 common connection point.

4 **Q. Are there good reasons for expecting Brandenburg and/or Verizon to compensate**
5 **Windstream?**

6 A. Yes. These are calls that Brandenburg's end users are placing to Verizon's end users. It is
7 the responsibility of both Verizon and Brandenburg to make appropriate and lawful
8 accommodations for the exchange of their traffic in accordance with industry standards.
9 In an unreasonable attempt to unlawfully minimize their costs and avoid dealing with
10 their long-standing traffic dispute, however, Brandenburg and Verizon have been
11 intentionally imposing costs on Windstream for years by improperly delivering non EAS
12 traffic over EAS trunks to a Windstream end office that should not be used as a transit
13 point. As I have discussed, Windstream has been unreasonably expected to perform
14 network functions to deliver the traffic to Verizon. Further, Brandenburg has been
15 intentionally ignoring industry guidelines regarding the LRN to make this happen.
16 Finally, it should be noted that Verizon ultimately agreed to bear financial responsibility
17 for hauling the traffic in question from Brandenburg's service territory to Louisville –
18 something Verizon should have done long before being ordered to do so by the
19 Commission.

20 **Q. Are there any other aspects the Commission should consider in its order in addition**
21 **to the appropriate compensation to be paid to Windstream?**

22 A. As I discussed above, Windstream is due an amount, including LNP dips and interest, in
23 the amount of \$1,834,178.00. Further, the Commission should condition closing of this

1 docket on Brandenburg and Verizon implementing their new agreement in a manner that
2 does, in fact, finally remove their traffic from Windstream's network. Absent
3 confirmation that the parties have in fact moved their traffic, the Commission should
4 enter an order authorizing Windstream to end permitting the routing of the unauthorized
5 traffic over its facilities within no more than three (3) days of the Commission's order. As
6 I have previously testified, this is not an unreasonable amount of time considering that it
7 takes only a matter of minutes for Brandenburg to perform the translations work needed
8 to reroute the traffic in accordance with LERG protocols.

9 **Q. Does this conclude your testimony?**

10 **A.** Yes, at this time.

Exhibit 1

Dinsmore & Shohl LLP
ATTORNEYS

John E. Selent
502-540-2315
john.selent@dinslaw.com

March 28, 2011

Halo Wireless, Inc.
Attn: Interconnection Manager/Legal Dept.
3437 West Seventh Street, Suite 127
Fort Worth, TX 76107

Re: Interconnection Agreement with Brandenburg Telephone Company

Dear Sir/Madam:

We are counsel to Brandenburg Telephone Company ("Brandenburg Telephone").

It has come to our attention that, in January and February of 2011, Halo Wireless ("Halo") used AT&T's network to quietly send more than 568,000 minutes of traffic for termination on Brandenburg Telephone's network. We have reason to believe that this practice is continuing in nature.

Halo has made no effort to establish the appropriate interconnection agreement ("ICA") for the exchange of this traffic with Brandenburg Telephone. Halo has also failed to compensate Brandenburg Telephone for the termination of this and any future traffic.

Applying the rate approved by the Kentucky PSC (\$.005040/MOU) to traffic terminated by Halo Wireless to date (568,772 MOU in January and February of 2011), Halo Wireless owes Brandenburg Telephone \$3,851.33 for the termination of the traffic delivered in January and February of 2011.

In order to resolve this matter, Halo must promptly do the following:

1. Execute an ICA with Brandenburg Telephone, effective on the date traffic was first delivered by Halo Wireless. Brandenburg Telephone is willing to use its existing agreement with T-Mobile (subject to an appropriate modification of the traffic factors therein) as a template for the ICA with Halo.

Halo Wireless, Inc.
March 28, 2011
Page 2

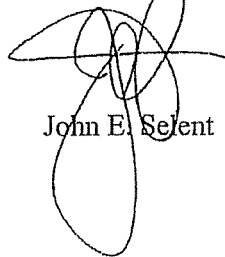
2. Establish a dedicated facility for the exchange of traffic. Consistent with the PSC's decision, a DS-1 is appropriate given the current volume of traffic.
3. Compensate Brandenburg Telephone for the traffic termination services it has provided through the date an ICA is executed. (This amount grows daily. Likewise, if we discover that Halo has terminated traffic to Brandenburg Telephone since before January of 2011, the total due to Brandenburg Telephone may be greater than \$3,851.33.)

We hope to resolve this matter promptly and without the need to resort to the Public Service Commission of the Commonwealth of Kentucky. Accordingly, please contact us within the next two weeks to arrange for execution of an Interconnection Agreement and payment of the outstanding balance.

Thank you.

Very truly yours,

DINSMORE & SHOHL LLP



John E. Selent

JES/KRH/ksc

Cc: Edward T. Depp, Esq.