

BEFORE THE COMMONWEALTH OF KENTUCKY

RECEIVED

PUBLIC SERVICE COMMISSION

OCT 28 2011

In the Matter of:

PUBLIC SERVICE  
COMMISSION

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

CASE NO.  
2008-00203

**RESPONSES AND OBJECTIONS TO BRANDENBURG’S OCTOBER 14, 2011  
SUPPLEMENTAL DATA REQUESTS TO WINDSTREAM KENTUCKY EAST, LLC**

Windstream Kentucky East, LLC (“Windstream”) submits the following responses and objections to Brandenburg Telephone Company’s (“Brandenburg’s”) October 14, 2011 Supplemental Data Requests. As used herein, MCIMetro Access Transmission Services, LLC d/b/a Verizon Access is referred to as “Verizon.”

**OBJECTIONS APPLICABLE TO ALL BRANDENBURG OCTOBER 14, 2011  
SUPPLEMENTAL DATA REQUESTS**

The following objections apply to each of the October 14, 2011 Data Requests served by Brandenburg:

1. Windstream objects that, to the extent that Brandenburg’s October 14, 2011 Supplemental Data Requests seek information regarding compensation and liability issues, those matters have been pending in this proceeding since its inception, and Brandenburg had ample opportunity to request such information prior to the final hearing in this matter.

2. Windstream objects to the October 14, 2011 Supplemental Data Requests to the extent they may be construed as calling for the disclosure of information subject to a claim of privilege or immunities, including the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, or any other applicable evidentiary privilege or immunity from disclosure. The inadvertent disclosure of any information subject to such privileges or

immunities is not intended to relinquish any privilege or immunity and shall not be deemed to constitute a waiver of any applicable privilege or immunity.

3. Windstream objects to the October 14, 2011 Supplemental Data Requests to the extent that they: (a) are overly broad; (b) are impermissibly vague and ambiguous and fail to describe with reasonable particularity the information sought; (c) seek production of information that is not relevant to the subject matter at issue in this action and/or are not reasonably calculated to lead to the discovery of admissible evidence; and (d) impose undue burdens that outweigh any probative value the information may have in this action.

4. Windstream objects to the October 14, 2011 Supplemental Data Requests to the extent they seek information that is in the public domain, is available from other, more convenient sources, and/or is accessible by, if not already in the possession of, Brandenburg or its affiliates or representatives.

5. Windstream objects to the October 14, 2011 Supplemental Data Requests to the extent they seek legal conclusions, contentions, citations to legal authority, or copies of legal authorities.

6. Windstream objects to the October 14, 2011 Supplemental Data Requests to the extent they purport to impose a burden of ascertaining information that is not in their possession, custody, control, or personal knowledge, or that cannot be found in the course of a reasonable search.

7. Windstream objects to the October 14, 2011 Supplemental Data Requests to the extent they purport to impose upon them obligations greater than or different from those authorized by the Rules of Civil Procedure.

## **RESPONSES**

Windstream does not waive and fully preserves all of the foregoing objections, which are incorporated fully herein. Any information provided herein is made on the basis of the best information available to Windstream at the time of gathering responsive materials or information, within the limits of, and subject to the general and specific objections set forth herein. The fact that Windstream is willing to provide responsive information to any particular supplemental request does not constitute an admission or acknowledgment that the supplemental request is proper, that the information sought is within the proper bounds of discovery, or that other requests for similar information will be similarly treated. Further, any and all responses provided herein are for the purpose of the above-captioned case and may not be used against Windstream in any other proceeding unless specifically agreed to by it or so ordered by a court or commission of competent jurisdiction.

Windstream reserves the right to rely on facts, documents, or other evidence, which may develop or subsequently come to its attention, to assert additional objections or supplemental responses should it discover that there is information or grounds for objections and to supplement or amend these responses at any time.

**REQUEST NO. 1:** Supplement your response (both your written answer and any documents produced) to Request for Data No. 13, served by Brandenburg Telephone on July 17, 2008:

[a.] Explain in detail the basis for your claim that Windstream is entitled to compensation for the allegedly unauthorized use of its network by Brandenburg and/or MCImetro. [b.] In conjunction with this explanation, produce all cost studies, calculations, and other documentation that supports any compensation you seek from Brandenburg and/or MCImetro, and identify the amount of compensation owed by each of Brandenburg and MCImetro.

**RESPONSE:**

- a. Please see the Further Direct Testimony of Kerry Smith.

- b. Please see Windstream's responses to Verizon Data Request Nos. 19, 21, and 22. With regard to a cost study supporting what Windstream considers to be an appropriate usage rate, Windstream refers Brandenburg to Windstream's July 31, 2008 response to Brandenburg's First Set of Data Requests No. 13. Such response, in turn, referred Brandenburg to a cost study in Commission Case No. 2007-0004 to which both Brandenburg and Verizon already. Windstream filed an updated version of such study in Case No. 2007-0004 on July 17, 2009, which remained part of the record in such docket. As a courtesy, Windstream provides the updated cost study as Confidential Attachment 1 to this data request response.

With regard to the remainder of this data request, as Windstream has explained, Brandenburg and Verizon are appropriately considered to be jointly and separately liable for the amount of compensation owed to Windstream. Windstream notes that the amount of compensation due continues to increase as traffic has remained on the Brandenburg-Windstream EAS trunks.

**Windstream Respondent:** Kerry Smith

**REQUEST NO. 2:** Supplement your response (both your written answer and any documents produced) to Request for Data No. 14, served by Brandenburg Telephone on July 17, 2008:

Explain in detail the basis for your claim that Windstream is entitled to interest payments for the allegedly unauthorized use of its network by Brandenburg and/or MCImetro. In conjunction with this explanation, produce all cost studies, calculations, and other documentation that supports any compensation you seek from Brandenburg and/or MCImetro, and identify the amount of compensation owed by each of Brandenburg and/or MCImetro.

**RESPONSE:**

Please see Windstream's response to Brandenburg October 14, 2011 Supplemental Data Request No. 1.

**Windstream Respondent:** Kerry Smith

**REQUEST NO. 3:** Supplement your response (both your written answer and any documents produced) to Request for Data No. 14, served by Brandenburg Telephone on March 16, 2010:

To the extent not already produced, produce all documentation that Windstream alleges supports its calculation of the total amount of compensation owed to it by Brandenburg Telephone.

**RESPONSE:**

Please see Windstream's response to Brandenburg October 14, 2011 Supplemental Data Request No. 1.

**Windstream Respondent:** Kerry Smith

**REQUEST NO. 4:** Supplement your responses (both your written answers and any documents produced) to all other Requests for Data served by Brandenburg Telephone on July 17, 2008 or March 16, 2010.

**RESPONSE:**

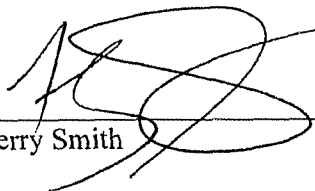
Windstream has no additional responsive information to provide.

**Windstream Respondent:** Kerry Smith

AFFIDAVIT

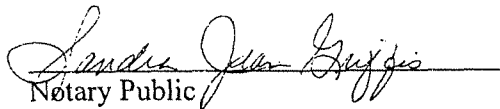
STATE OF ARKANSAS :  
                                  :  
                                  :          ss  
COUNTY OF PULASKI :

Kerry Smith, being duly sworn according to law, hereby makes oath that if the foregoing questions were propounded to him at a hearing before the Public Service Commission of Kentucky, he would give the answers recorded following each of said questions and that said answers are true.

  
\_\_\_\_\_  
Kerry Smith

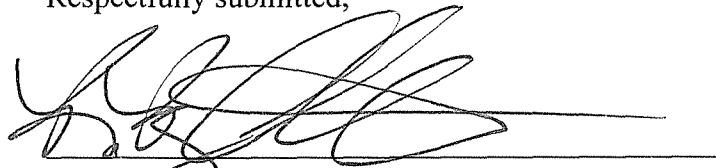
Sworn to and subscribed before me this 28<sup>th</sup> day of October, 2011.

OFFICIAL SEAL - # 12383725  
**SANDRA JEAN GRIFFIS**  
NOTARY PUBLIC-ARKANSAS  
SALINE COUNTY  
MY COMMISSION EXPIRES: 09-01-21

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

My Commission Expires: 9-1-2021

Respectfully submitted,



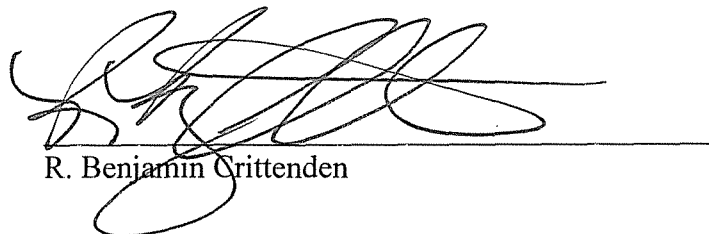
Mark R. Overstreet  
R. Benjamin Crittenden  
STITES & HARBISON, PLLC  
421 West Main Street  
P.O. Box 634  
Frankfort, Kentucky 40602-0634  
Telephone: 502-223-3477  
COUNSEL FOR:  
WINDSTREAM KENTUCKY EAST, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing has been served by United States Postal Service, First Class Mail, on this the 28<sup>th</sup> day of October, 2011, upon:

C. Kent Hatfield  
Douglas F. Brent  
Deborah T. Eversole  
STOLL KEENON OGDEN, PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202

John E. Selent  
Dinsmore & Shohl, LLP  
1400 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202



R. Benjamin Crittenden

RECEIVED

OCT 28 2011

PUBLIC SERVICE  
COMMISSION

BEFORE THE COMMONWEALTH OF KENTUCKY

PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO TRAFFIC DISPUTE	)	
BETWEEN BRANDENBURG TELEPHONE	)	CASE NO.
COMPANY, WINDSTREAM KENTUCKY EAST,	)	2008-00203
LLC AND VERIZON ACCESS	)	

**MOTION FOR CONFIDENTIAL TREATMENT**

Windstream Kentucky East, LLC (“Windstream”) moves the Commission, pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 7, for an Order granting confidential treatment to information included in responses to data requests issued by Brandenburg Telephone Company (“Brandenburg”) and MCIMetro Access Transmission Services, LLC d/b/a Verizon Access (“Verizon”).

In particular, Windstream seeks confidential treatment of Confidential Attachment 1 to its response to Brandenburg Data Request No. 1, a study of Windstream’s network costs (“Windstream Network Cost Study”), and Confidential Attachment 1 to Windstream’s response to Verizon Data Request No. 19, a study of the traffic over the Extended Area Service (“EAS”) trunks between Brandenburg and Windstream’s Elizabethtown end office switch (“Traffic Study”).

Pursuant to 807 KAR 5:001, Section 7, an original of the CD for the response to Brandenburg and the response to Verizon (one CD each) is being filed under seal with this motion. Because the Confidential Information is being filed on the CDs and confidential treatment is being sought for all of the information contained on the CDs, Windstream is not highlighting the information for which it seeks confidential treatment or filing redacted copies of



the responses (which would just be blank pages in this instance). Windstream understands that this approach is consistent with the Commission's established practice.

#### Statutory Standard

KRS 61.878 excludes from the public disclosure requirements of the Open Records Act the following information:

- "Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;"<sup>1</sup>
- "[R]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records."<sup>2</sup>

The Confidential information at issue in this motion satisfies these exceptions to Kentucky's Open Records Act.

#### The Information is of a Personal Nature and Disclosure Would Constitute an Unwarranted Invasion of Privacy

The Traffic Study primarily consists of records of calls placed by Brandenburg end users that constitute Customer Propriety Network Information ("CPNI"). These include the time, data, duration, originating telephone number, and terminating telephone number. IN this case, the information at issue involves confidential usage information. This information is protected from disclosure by the Section 222 of the Communications Act of 1934, as amended, 47 U.S.C. § 222.

#### The Information Is Generally Recognized As Confidential and Proprietary.

The information for which confidential treatment is sought is "generally recognized as confidential or proprietary." The information in the Traffic Study is clearly so recognized pursuant to federal statute. The information in the Network Cost Study is highly confidential and

---

<sup>1</sup> KRS 61.878(1)(a).

<sup>2</sup> KRS 61.878(1)(c)(1).

confidentiality is critical to Windstream's ability to provide competitive products. Dissemination of the requested information is restricted by the Windstream and it takes all reasonable measures to prevent its disclosure to the public as well as persons within the company who do not have a need for the information. Wind stream takes steps to ensure that only a restricted list of employees have access to such information. This type of information is provided only to those employees who have a particular need to know the information.

None of the information for which confidential protection is sought is readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use.

Further, Windstream notes that it filed such study in Case No. 2007-0004 on July 17, 2009 requesting confidential treatment of the same and was granted such confidential treatment on July 24, 2009.

The Information is Generally Recognized as Confidential and Proprietary and Disclosure Will Result in an Unfair Commercial Advantage to Other Carriers

The wireline industry in Kentucky is highly competitive. In addition to Windstream, other wireline providers in Kentucky providing local exchange service in the areas served by Windstream include a variety of competitive local exchange carriers. Disclosure of the information described above may affect Windstream's relationship with its customer as well as the customer's business plans. As a result, disclosure of the confidential information will result in a significant, non-trivial unfair commercial advantage to competitors of Windstream.

*Southeastern United Medigroup, Inc. v. Hughes*, Ky. App., 952 S.W.2d 195, 199 (1997) .

Wherefore, Windstream respectfully request the Public Service Commission of Kentucky to protect both the Network Cost Study and the Traffic Study from public disclosure.

Respectfully submitted,




Mark R. Overstreet  
R. Benjamin Crittenden  
STITES & HARBISON, PLLC  
421 West Main Street  
P.O. Box 634  
Frankfort, Kentucky 40602-0634  
Telephone: 502-223-3477  
COUNSEL FOR:  
WINDSTREAM KENTUCKY EAST, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing has been served by United States Postal Service, First Class Mail, on this the 28<sup>th</sup> day of October, 2011, upon:

C. Kent Hatfield  
Douglas F. Brent  
Deborah T. Eversole  
STOLL KEENON OGDEN, PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202

John E. Selent  
Dinsmore & Shohl, LLP  
1400 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202

  
R. Benjamin Crittenden