

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

November 14, 2011

RECEIVED

NOV 14 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 2nd Supplemental Rebuttal Testimony of Allison T. Willoughby on behalf of Brandenburg Telephone Company.

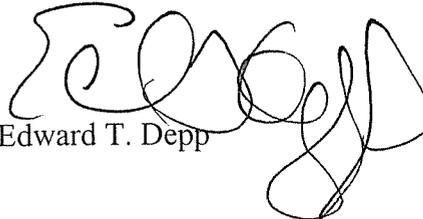
Please file-stamp one copy and return it to our delivery person.

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**

In the Matter of:

AN INVESTIGATION IN THE TRAFFIC)	
DISPUTE BETWEEN WINDSTREAM)	
KENTUCKY EAST, LLC, BRANDENBURG)	
TELEPHONE COMPANY AND MCIMETRO)	Case No. 2008-00203
ACCESS TRANSMISSION SERVICES, LLC)	
D/B/A VERIZON ACCESS)	

**PREFILED SECOND SUPPLEMENTAL REBUTTAL 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. ARE YOU THE SAME ALLISON T. WILLOUGHBY WHO FILED THE SECOND**
4 **SUPPLEMENTAL DIRECT TESTIMONY IN THIS PROCEEDING?**

5 A. Yes.

6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY TODAY?**

7 A. I am responding to the Updated Direct Testimony of Don Price on Behalf of MCImetro
8 Access Transmission Services, LLC d/b/a Verizon Access Transmission Services (“MCImetro”)
9 (“Price Test.”), and the Further Direct Testimony of Kerry Smith on behalf of Windstream Kentucky
10 East, LLC (“Windstream”) (“Smith Test.”).

11 **Q: BEFORE WE ADDRESS THE TESTIMONY OF MCIMETRO AND WINDSTREAM,**
12 **WILL YOU PLEASE BRIEFLY SUMMARIZE BRANDENBURG TELEPHONE’S**

1 **POSITION ON THE QUESTION OF WHETHER WINDSTREAM SHOULD BE**
2 **COMPENSATED FOR THE TRAFFIC IN QUESTION?**

3 A: Brandenburg Telephone's position has consistently been that Windstream is owed no
4 compensation whatsoever for the traffic in question. As I explained in more detail in my previous
5 testimony, Windstream and MCImetro executed an interconnection agreement that provided for bill-
6 and-keep treatment of this traffic; Windstream cannot now demand money from third parties for
7 carrying traffic it agreed to carry for no compensation. In addition, Windstream has provided no
8 authority for its damages claim – there is no tariff or agreement that requires such a payment.

9 **Q: PLEASE ALSO SUMMARIZE BRANDENBURG TELEPHONE'S POSITION ON**
10 **THE QUESTION OF WHO SHOULD COMPENSATE WINDSTREAM IF**
11 **COMPENSATION IS FOUND TO BE APPROPRIATE.**

12 If the Commission believes Windstream should be compensated, MCImetro should be solely
13 and directly liable for that compensation because it began the dispute, exacerbated the dispute, and
14 extended the dispute by taking every opportunity to delay an efficient resolution.

15 **Q. PLEASE REFER TO P. 4:8-16 OF MR. PRICE'S TESTIMONY FILED ON BEHALF**
16 **OF MCIMETRO. WHAT DO YOU UNDERSTAND TO BE MCIMETRO'S ARGUMENT**
17 **REGARDING WHICH PARTY SHOULD COMPENSATE WINDSTREAM?**

18 A. Mr. Price appears to be relying on testimony previously filed by Windstream to falsely
19 suggest that MCImetro and Windstream both agree that Brandenburg Telephone is solely
20 responsible for the traffic dispute and should be solely responsible for any compensation owed to
21 Windstream.

1 **Q: DO YOU AGREE WITH MR. PRICE'S SUGGESTION THAT MCIMETRO AND**
2 **WINDSTREAM AGREE THAT BRANDENBURG TELEPHONE SHOULD BE SOLELY**
3 **RESPONSIBLE FOR ANY COMPENSATION OWED?**

4 A: No, because Windstream has clearly and repeatedly indicated that it believes MCImetro bears
5 responsibility for this traffic issue and should be responsible for compensating Windstream. (*See,*
6 *e.g., Smith Test. Oct. 4, 2011, p. 10:17-11:3.*) It is absolutely false for MCImetro to suggest that
7 Windstream has no compensatory claim against it.

8 **Q: PLEASE REFER TO PAGE 2 OF WINDSTREAM'S TESTIMONY. ON THAT**
9 **PAGE, MR. SMITH ACCUSES BRANDENBURG TELEPHONE OF TRYING TO "AVOID**
10 **HAVING TO NEGOTIATE WITH VERIZON TO PROVIDE ACCOMMODATIONS FOR**
11 **THE PROPER EXCHANGE OF THE TRAFFIC" BY "CONCEAL[ING] THIS TRAFFIC**
12 **FROM WINDSTREAM FOR A NUMBER OF YEARS." IS MR. SMITH'S**
13 **CHARACTERIZATION OF BRANDENBURG TELEPHONE'S ACTIONS ACCURATE?**

14 A: Mr. Smith's characterization is inaccurate. Brandenburg Telephone did not avoid negotiating
15 with MCImetro. In fact, Brandenburg Telephone initiated interconnection negotiations with
16 MCImetro in 2005, 2007, and 2008, and continued to pursue negotiations throughout these
17 proceedings.

18 Brandenburg Telephone also did not seek to conceal traffic; rather, MCImetro's actions
19 prevented both Windstream and Brandenburg Telephone from learning the full extent of the problem
20 until a serious dispute had arisen. Brandenburg Telephone first learned of a potential problem in late
21 2005 when a small number of its customers complained that their local calls to internet service
22 providers could not be completed. Brandenburg Telephone investigated and learned that MCImetro

1 had ported phone numbers without notice to Brandenburg Telephone or those ISP end-users, and
2 without making any arrangements for the exchange of traffic on a going-forward basis.

3 Forced by MCImetro to choose between blocking the traffic or routing it on an interim basis
4 across Windstream's network, Brandenburg Telephone chose to not block the traffic. At that time,
5 we had every reason to believe there was only an extremely low volume of traffic involved.
6 Brandenburg Telephone also immediately began negotiating with MCImetro to execute a traffic
7 exchange agreement. MCImetro admits our initial negotiations took place in September 2005.
8 (Price Test. p. 6:17-18.)

9 Windstream first contacted Brandenburg Telephone about the traffic in question in 2007, and
10 we promptly began completing the requested LNP queries on the traffic to ensure it routed correctly.
11 At this time, we again sought to negotiate an exchange agreement with MCImetro, but to no avail.

12 It was not until 2008 that Brandenburg Telephone learned about the significant volume of the
13 traffic involved, and by that point it was too late for the parties to avoid the present dispute.
14 Nevertheless, Brandenburg Telephone again reopened negotiations with MCImetro and ultimately
15 pursued Commission intervention seeking an order for MCImetro to interconnect.

16 Of course, as I have said numerous times throughout this case, this entire problem could have
17 been avoided had MCImetro notified Brandenburg Telephone that it was porting the phone numbers
18 -- or even that it was providing service in Brandenburg Telephone's EAS areas -- and negotiated in
19 good faith to interconnect with Brandenburg Telephone. But MCImetro chose not to do those
20 things, and now we have all been fighting about this in front of the Commission for three years.

21 **Q: ON PAGES 6 THROUGH 11 OF ITS RECENTLY-FILED TESTIMONY,**
22 **MCIMETRO REPEATEDLY ACCUSES BRANDENBURG TELEPHONE OF DELAYING**
23 **INTERCONNECTION NEGOTIATIONS BY TAKING UNREASONABLE POSITIONS.**

1 **HOW DOES THIS COMPARE WITH YOUR UNDERSTANDING OF THOSE**
2 **NEGOTIATIONS?**

3 A: MCImetro's arguments make very little sense. Brandenburg Telephone was the party that
4 asked for an interconnection agreement in the first place. MCImetro mischaracterizes so many facts
5 in its recent testimony that I would prefer to discuss the negotiations one at a time.

6 **Q: OKAY. PLEASE DESCRIBE THE NEGOTIATIONS THAT BRANDENBURG**
7 **TELEPHONE INITIATED WITH MCIMETRO IN 2005 (DISCUSSED BY MCIMETRO**
8 **FROM PAGES 6:15-7:7).**

9 A: First of all, it is important to emphasize that Brandenburg Telephone was the first party to
10 address the need for a traffic exchange agreement. We approached MCImetro, not the other way
11 around. That fact is obviously inconsistent with Windstream's allegation that Brandenburg
12 Telephone attempted to avoid negotiating with MCImetro.

13 Brandenburg Telephone sent a proposed traffic agreement to MCImetro on September 9,
14 2005, very shortly after we first learned of the traffic. Because the terms of the proposed agreement
15 were standard and consistent with agreements we had executed with other carriers, we did not
16 anticipate that there would be any difficulty with MCImetro. To our surprise, these initial
17 negotiations and draft exchanges stretched on for six months, after which MCImetro rejected
18 Brandenburg Telephone's proposed agreement without any counteroffer or a new proposed
19 agreement.

20 **Q: WHAT HAPPENED AFTER THE 2005 NEGOTIATIONS FAILED?**

21 A: Brandenburg Telephone initiated a new round of negotiations with MCImetro on February
22 21, 2007. Windstream, to its credit, agreed to continue carrying the traffic during these negotiations.

1 Again, I want to emphasize that it was Brandenburg Telephone, not MCImetro, that initiated
2 the 2007 negotiations, just as we initiated the 2005 negotiations. We have consistently and actively
3 sought to resolve this matter. Unfortunately, just as they did in 2005, MCImetro rejected
4 Brandenburg Telephone's proposed agreement without putting forth any other proposed solution.

5 **Q: THEN THE NEGOTIATIONS RESTARTED IN 2008?**

6 A: Correct. In 2008, Windstream provided call records to Brandenburg Telephone that showed
7 that the MCImetro traffic in question was not a negligible volume, but instead involved millions of
8 minutes. That made it clear that MCImetro could no longer be allowed to delay executing an
9 agreement to resolve the problem, so we once again reopened negotiations with MCImetro to
10 finalize an exchange agreement in order to get the traffic off of Windstream's network. And yet
11 again, in light of MCImetro's allegations, I feel it is necessary to reemphasize that it was
12 Brandenburg Telephone that initiated the 2008 round of negotiations, just as we initiated the 2005
13 and 2007 negotiations.

14 In an effort to move the negotiations as fast as possible, Brandenburg Telephone proposed
15 adopting a traffic exchange agreement identical in substance to an agreement MCImetro had recently
16 executed with South Central Rural Telephone Cooperative Corporation, Inc. We thought if we
17 proposed terms MCImetro had already agreed to, it would not be able to stall the negotiations if it
18 was acting in good faith. Unfortunately, MCImetro rejected the agreement, notwithstanding the fact
19 that it was based on MCImetro's own agreement with South Central Rural, and stalled the
20 negotiations anyway.

21 During these negotiations, MCImetro made it clear that it would not sign a traffic exchange
22 agreement unless Brandenburg Telephone agreed to take on responsibilities far beyond what the law
23 required. First, MCImetro demanded that Brandenburg Telephone establish trunking facilities to a

1 point of connection outside its network, even though MCImetro had a legal obligation to
2 interconnect, and even though this Commission has made it clear that a carrier such as Brandenburg
3 Telephone has no legal obligation to interconnect outside its network.¹ Second, MCImetro refused
4 to agree to a bill-and-keep arrangement, insisting it was entitled to compensation for the traffic in
5 question. As I have said, I am not a lawyer, but it is my understanding that this type of traffic is
6 neither “toll” traffic nor “local” traffic for compensation purposes. I know for a fact that
7 Brandenburg Telephone currently exchanges this type of traffic with other carriers, including
8 Windstream, on a bill-and-keep basis and, accordingly, I think we should exchange this traffic on a
9 bill-and-keep basis with MCImetro as well.

10 Ultimately, the 2008 negotiations failed because MCImetro demanded that Brandenburg
11 Telephone establish a point of connection outside its territory. MCImetro also refused to agree to
12 bill-and-keep treatment, demanding instead that Brandenburg Telephone pay it for these dial-up
13 services it was providing to its customers. I should add that the traffic exchange agreement we
14 ultimately executed, thanks to the intervention of the Commission, matches Brandenburg
15 Telephone’s position on these issues: it does not require Brandenburg Telephone to establish a point
16 of connection outside its territory, and it provides for bill-and-keep treatment of the traffic in
17 question.

18 **Q: MCIMETRO CLAIMS IT COULD NOT ACCEPT THE SAME TERMS IT AGREED**
19 **TO IN THE SOUTH CENTRAL RURAL AGREEMENT BECAUSE OF CERTAIN**
20 **TECHNICAL DIFFERENCES. IS THAT TRUE?**

¹ *In the Matter of: Petition of Ballard Rural Tel. Coop. Corp., Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with American Cellular, Ky.* P.S.C. Case No. 2006-00215, 2007 Ky. PUC LEXIS 191, *9-10 (Order of March 19, 2007) (the Communications Act “is careful to explain that an ILEC’s obligation to interconnect . . . extends only to a ‘point within the carrier’s network.’”).

1 A: That is MCImetro's new explanation for its behavior in 2008, yes, but I think its first
2 explanation in this case was probably more accurate. In response to Brandenburg Telephone's
3 Hearing Data Request No. 1, MCImetro claimed its execution of the South Central Rural Agreement
4 was a "mistake." Based on that, I think MCImetro refused to agree to an identical agreement simply
5 because it thought it could squeeze a better deal out of Brandenburg Telephone, not because of any
6 alleged technical differences.

7 **Q: WHAT HAPPENED AFTER THE 2008 NEGOTIATIONS FAILED?**

8 A: After 2008, the Commission got involved.

9 Consistent with its position since 2005, Brandenburg Telephone asked the Commission to
10 order MCImetro to establish dedicated trunking facilities to a point of connection located on
11 Brandenburg Telephone's network, and further order MCImetro to exchange the traffic in question
12 on a bill-and-keep basis. After more negotiations, MCImetro and Brandenburg Telephone attended
13 an informal conference with Commission staff in 2010 to discuss the issues.

14 At that conference, MCImetro put forth a proposal that, as I have testified before, shocked
15 me. It suggested that we establish a point of connection on our network boundary and agree to
16 exchange the traffic on a bill-and-keep basis. These points were, of course, exactly what
17 Brandenburg Telephone had been arguing for since 2005, and MCImetro had consistently and
18 repeatedly rejected then for five years. MCImetro even suggested using the South Central Rural
19 Agreement as a template, even though it had explicitly refused to do so before the Commission got
20 involved.

21 Thanks to the Commission's involvement, MCImetro was forced to negotiate in good faith
22 and we have executed a traffic exchange agreement that is almost substantively identical to the one
23 proposed by Brandenburg Telephone six years ago, which MCImetro rejected.

1 **Q: PLEASE REFER TO WINDSTREAM'S TESTIMONY ON PAGES 6 AND 7.**
2 **WINDSTREAM ALLEGES THAT, EVEN THOUGH A TRAFFIC EXCHANGE**
3 **AGREEMENT IS IN PLACE, THE TRAFFIC IN QUESTION IS STILL FLOWING OVER**
4 **WINDSTREAM'S NETWORK. IS THAT TRUE?**

5 A: That is no longer true. As of November 11, MCImetro has deployed the necessary trunks
6 and, while we continue to monitor the situation, we believe the traffic in question has been removed
7 from Windstream's network.

8 **Q. THANK YOU. NOW, PLEASE REFER TO WINDSTREAM'S TESTIMONY, PP.**
9 **7:16-9:12, IN WHICH WINDSTREAM DISCUSSES BRANDENBURG TELEPHONE'S**
10 **COMPLAINT RELATED TO HALO WIRELESS, INC. DO YOU AGREE THAT THIS**
11 **COMPLAINT IS RELEVANT TO THIS MATTER?**

12 A: No, not at all. Windstream has completely misrepresented the facts of the AT&T/Halo
13 Wireless case to invent factual parallels and alleged inconsistencies that do not exist. The only thing
14 these two cases have in common is that, in each, two carriers reached traffic agreements without
15 stopping to consider the effect those agreements would have on Brandenburg Telephone and its
16 customers. This case is about the agreements made by Windstream and the ongoing bad behavior of
17 MCImetro; Brandenburg Telephone's complaint in the AT&T/Halo Wireless matter is irrelevant.

18 **Q: DO YOU HAVE ANY FINAL COMMENTS?**

19 The simple fact is that this dispute would not exist if MCImetro had taken basic steps to
20 ensure it had connectivity before offering service or porting telephone numbers. Even then, this
21 dispute would not have existed for more than a few months if MCImetro had executed the
22 interconnection agreement Brandenburg Telephone proposed in September of 2005 – an agreement
23 which contained provisions almost identical to those MCImetro ultimately agreed to, by order of the

1 Commission, almost six years later. MCImetro caused this problem, exacerbated this problem, and
2 extended this problem, and if Windstream is indeed owed any compensation for the traffic in
3 question, MCImetro should be solely and directly responsible for paying that compensation.

4 **Q: DOES THAT CONCLUDE YOUR TESTIMONY?**

5 A: Yes.

6

CERTIFICATE OF SERVICE

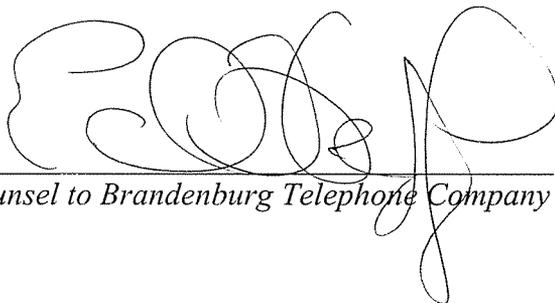
I hereby certify a true and accurate copy of the foregoing was served, by first-class United States mail, sufficient postage prepaid, on the following individuals this 14th day of November, 2011.

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