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November 14, 2011

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PUBLIC SERVICE
COMMISSION

Mr. Jeff DeRouen
Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, KY 40601

*RE: 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
Case No. 2008-00203*

Dear Mr. DeRouen:

Enclosed for filing in the above-referenced matter are an original and ten copies of the Supplemental Rebuttal Testimony of Don Price on behalf of MCImetro.

Please indicate receipt of this filing by placing your file stamp on the extra copy and returning to me our runner.

Very truly yours,

STOLL KEENON OGDEN PLLC

Douglas F. Brent

DFB:

Enclosures

105138.116493/535497.1

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)
)
)

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

Case No. 2008-00203

SUPPLEMENTAL REBUTTAL TESTIMONY OF DON PRICE
ON BEHALF OF
MCIMETRO ACCESS TRANSMISSION SERVICES LLC
D/B/A VERIZON ACCESS TRANSMISSION SERVICES

NOVEMBER 14, 2011

1 **I. INTRODUCTION**

2 **Q. Are you the same Don Price who filed updated direct testimony in this case**
3 **on behalf of MCImetro Access Transmission Services LLC (“MCImetro”) on**
4 **October 4, 2011?**

5 A. Yes.

6 **Q. What is the purpose of your rebuttal testimony?**

7 A. The purpose of my rebuttal testimony is to respond to the direct testimony filed by
8 Kerry Smith on behalf of Windstream Kentucky East, LLC (“Windstream”) and
9 Allison T. Willoughby on behalf of Brandenburg Telephone Company
10 (“Brandenburg Telephone”) on October 4, 2011 as their testimony relates to
11 potential claims against MCImetro.

12 **II. WINDSTREAM’S CLAIMS**

13 **Q. At page 6 of his Further Direct Testimony, Mr. Smith suggests that the**
14 **Commission should require Brandenburg Telephone and Verizon to explain**
15 **why traffic continues to flow over Windstream’s network. Can you provide**
16 **an explanation?**

17 A. Brandenburg Telephone is still using its trunks to Windstream because the new
18 interconnection between Brandenburg Telephone and MCImetro, while agreed on
19 and in the provisioning stage, is not established as of this day. Following is a
20 more detailed explanation.

1 The parties to the traffic exchange agreement filed it with the Commission
2 on July 27, 2011 along with a request for confidential treatment of the point of
3 interconnection. On September 7, 2011, MCImetro's counsel contacted Staff to
4 see if there was anything else the parties needed to do, because the agreement,
5 which by its terms was subject to Commission approval, had not been posted on
6 the Commission's website, and had not been approved by a formal order. That
7 same day, Commission Staff responded by notifying both parties by email that it
8 considered the agreement accepted and valid. After pulling together the affected
9 internal groups, MCImetro reached out to Brandenburg Telephone on September
10 28, 2001 to schedule joint implementation discussions. On October 12, 2011,
11 technical personnel from both companies met and worked out the details
12 necessary for interconnecting the two companies' networks. The parties agreed to
13 establish two-way local trunks, and that MCImetro would have "order control" for
14 placing the orders to establish the necessary trunking (a step that was necessary
15 because the trunks were being established over an AT&T/Brandenburg Telephone
16 jointly provided facility leased to a MCImetro affiliated long distance provider).
17 The orders were placed, and the parties are in the final stages of testing and
18 turning up the interconnection.

19 **Q. When do you expect the facilities to be in place and routing traffic between**
20 **Brandenburg Telephone's end users and MCImetro's ISP end user**
21 **customers?**

22 **A.** We expect that the interconnection will be complete by mid-November, probably
23 within days of this testimony being filed.

1 **Q. Is a two month timeframe for establishing interconnection longer than is**
2 **typical?**

3 A. No, this interconnection has been completed faster than most. Typically, the time
4 from an initial joint planning meeting to the interconnection is complete and
5 working is approximately two-to-three months.

6 **Q. Does Windstream seek compensation from MCImetro in this proceeding?**

7 A. It appears so. Mr. Smith states that Brandenburg Telephone “appears most
8 culpable,” but suggests that the Commission “perhaps” should hold MCImetro
9 and Brandenburg Telephone equally and jointly responsible for compensation for
10 this traffic. Smith Direct, p. 10.

11 **Q. On what basis does Windstream claim the Commission should make**
12 **MCImetro pay Windstream for traffic originated by Brandenburg**
13 **Telephone?**

14 A. Mr. Smith appears to base this demand on a claim that MCImetro “has a revenue
15 stream to compensate them for the cost of this traffic” (Smith Direct, p. 9) and on
16 his allegation that Windstream’s evidence demonstrated efforts by both
17 Brandenburg Telephone and MCImetro “to conceal this traffic from Windstream
18 in order to avoid their own responsibility for their traffic.” Smith Direct, p. 10.

19 **Q. Does Mr. Smith identify any evidence?**

20 A. No, and in its responses to MCImetro’s discovery that were filed after the direct
21 testimony, Windstream did not provide any documents evidencing, supporting,
22 relating to, or relied upon by Windstream in making this claim.

1 **Q. At page 11 of his direct testimony Mr. Smith says there are "good reasons"**
2 **for expecting Brandenburg Telephone and/or MCImetro to compensate**
3 **Windstream. Do you agree with his claim?**

4 A. Not as to claims against MCImetro. Mr. Smith never explains why MCImetro
5 should pay for traffic originated by Brandenburg Telephone. Instead, he offers a
6 few undisputed facts, then confuses things with a kaleidoscope of arguments that,
7 at best, only explain why Brandenburg Telephone might have an obligation to
8 pay. For example, Mr. Smith is generally correct when he says that MCImetro
9 and Brandenburg Telephone should make "appropriate and lawful
10 accommodations for the exchange of their traffic in accordance with industry
11 standards." Smith Direct, p. 11, 6-8. MCImetro does, in fact, make such
12 accommodations when it enters a local calling area. For example, MCImetro has
13 an interconnection agreement with Windstream that was negotiated prior to our
14 entry into the Elizabethtown rate center.

15 As it relates to Windstream's claims here, that agreement contains provisions
16 whereby MCImetro will compensate Windstream if MCImetro sends traffic to
17 another carrier within the Elizabethtown local calling area via Windstream.
18 Although that is not the situation for which Windstream is seeking compensation
19 in this proceeding, it is nonetheless instructive, because the agreement means that,
20 if an MCImetro customer called a customer of a CLEC like Brandenburg
21 Telecom, or the customer of another CLEC in Elizabethtown, or a customer of a
22 wireless carrier or another LEC within the Elizabethtown local calling area,
23 MCImetro would either need to establish direct interconnection with those

1 carriers—Brandenburg Telecom being one example—or send the traffic indirectly
2 via Windstream and pay Windstream a transit charge, per our agreement. But
3 under no circumstances would that traffic trigger an obligation for Brandenburg
4 Telecom or any other terminating carrier to pay Windstream for traffic originated
5 by MCImetro. Thus, the "industry standard" embodied in our contract is simple:
6 the originating carrier is obligated to pay transit costs. That standard applies to
7 traffic originating from Brandenburg Telecom as well, which, like MCImetro, has
8 an interconnection agreement with Windstream. Mr. Smith would have to ignore
9 that standard to argue that MCImetro should compensate Windstream when the
10 traffic flow is *to* a customer of MCImetro.

11 **Q. Why do you mention Brandenburg Telecom’s agreement with Windstream?**

12 A. Brandenburg Telecom operates in Elizabethtown as a CLEC, and its voice
13 customers have the ability to dial the MCImetro numbers that are the subject of
14 Windstream’s compensation claim at issue in this case. Brandenburg Telecom’s
15 interconnection agreement provides a mechanism for Windstream to be
16 compensated for providing a transit function to Brandenburg Telecom when its
17 customers originate calls to other LECs’ customers in the Elizabethtown calling
18 area. It embodies the “industry standard” Mr. Smith necessarily ignores in
19 arguing for compensation from MCImetro.

20 **Q. What other misplaced arguments does he make?**

21 A. Mr. Smith criticizes Brandenburg Telephone and MCImetro by claiming the
22 companies improperly delivered "non EAS traffic" to Windstream for years.
23 There are at least two problems with his statement. First, Brandenburg Telephone

1 delivered the traffic, not MCImetro, and there is no basis to impute that conduct to
2 MCImetro. Second, to claim it was "improperly deliver[ed] non EAS traffic"
3 begs the question. As I stated in my August 8, 2008 direct testimony in an earlier
4 part of this case:

5 [A]n Extended Area Service arrangement has existed for many
6 years between Brandenburg's exchange(s) in Radcliff and
7 Windstream's Elizabethtown exchange. In response to discovery,
8 Brandenburg stated to MCI that, while this has been a longstanding
9 arrangement, there are no written documents memorializing the
10 terms and conditions for the exchange of traffic between those two
11 exchanges. ... Nevertheless, the toll-free nature of calls between
12 Radcliff and Elizabethtown is embodied in Brandenburg's local
13 exchange service tariff. See Brandenburg Telephone Company
14 P.S.C. Ky. No. 2, Part III Ninth Revision Sheet 11, section I.B.

15 Because MCI and its predecessor have provided service to ISPs in
16 Elizabethtown since 1997, the existence of the
17 Radcliff/Elizabethtown EAS arrangement has meant that
18 Brandenburg's end users in the Radcliff exchange have been able
19 to reach certain ISPs by use of local, Elizabethtown telephone
20 numbers for more than ten years. As noted above, the change in
21 service architecture by MCI in 2003 was transparent to end users
22 in both Elizabethtown and Radcliff.

23 As the quoted passage makes clear, the period over which the disputed traffic has
24 flowed includes the time when Windstream (known then as Kentucky ALLTEL)
25 was the carrier terminating the traffic, not MCImetro. So if Windstream thought
26 it should be compensated, it had years to establish a contractual agreement with
27 Brandenburg Telephone respecting this traffic. Clearly, Windstream knows how
28 to obtain a compensation arrangement for transit traffic—as evidenced by the
29 agreements it has with MCImetro and Brandenburg Telecom. And as noted
30 above, when the Commission asked in 2008 about the existence of an agreement
31 governing the EAS traffic between Windstream's Elizabethtown exchange and
32 Brandenburg Telephone's Radcliff exchange, neither Windstream nor

1 Brandenburg Telephone could produce an agreement. *See* Brandenburg
2 Telephone's Response to PSC Staff Data Request No. 3. Whether the absence of
3 an agreement is good or bad is beside the point. Lack of an agreement is in no
4 way the fault of MCImetro. Indeed, as I noted above, we have an agreement in
5 place with respect to any traffic MCImetro might originate and transit via
6 Windstream. And I should note that MCImetro has always agreed with
7 Brandenburg Telephone's claim that this dispute involves transit traffic. *See*
8 Informal Conference Memo dated July 1, 2008. Windstream frequently
9 characterized itself as "transiting" the traffic, long before this investigation was
10 opened. We also agreed that a Windstream tariff would govern the compensation
11 due, if any. The Commission later ruled that the tariff is void. That decision,
12 right or wrong, does not create new obligations for MCImetro. Finally, while
13 MCImetro receives a modest amount of revenue from its customers, that is not a
14 basis to make MCImetro compensate Windstream for traffic originated by another
15 carrier's customers. The "industry standard" for local traffic would call for any
16 compensation to flow to MCImetro, not the other way around. For example,
17 when Windstream customers in the same local calling area dial an MCImetro
18 customer's number, the interconnection agreement calls for reciprocal
19 compensation; the carrier serving the dialed number pays nothing. Our
20 interconnection agreement with Windstream puts it this way, at Section 3.2 of
21 Attachment 12: "The Parties agree to reciprocally exchange Local Traffic and
22 ISP bound traffic between their networks. Each Party shall bill its end-users for
23 such traffic and *will be entitled to retain all revenues from such traffic* without

1 payment of further compensation to the other Party.” (emphasis added). Mr.
2 Smith doesn’t explain why transit traffic should be treated differently. And as
3 discussed above, if a Brandenburg Telecom customer in Elizabethtown dials an
4 MCImetro customer’s number, Windstream is entitled to collect a contractual
5 transit charge, from Brandenburg Telecom, but MCImetro is not required to pay
6 anything, even though it may generate some revenue from the call.

7 **Q. Mr. Smith notes that MCImetro has agreed to bear financial responsibility**
8 **for "hauling the traffic in question from Brandenburg's service territory to**
9 **Louisville." Does that constitute a "good reason" to expect MCImetro to**
10 **compensate Windstream?**

11 A. No, and Mr. Smith’s testimony does not explain how that fact is relevant to its
12 compensation claim in this proceeding. MCImetro made an exception to a
13 national practice because of the Commission’s decision that it would not require
14 Windstream to continue indefinitely to accept Brandenburg Telephone's
15 misrouted traffic destined for MCImetro’s ISP customers. That decision does
16 nothing to inform the issue of the responsibility that the originating carrier has for
17 compensating a transiting carrier.

18 **III. BRANDENBURG TELEPHONE’S CLAIMS**

19 **Q. At Page 5 of her testimony, Ms. Willoughby claims that MCImetro should be**
20 **responsible for any compensation to which Windstream may be entitled. Do**
21 **you agree?**

1 A. No. Ms. Willoughby claims MCImetro could have averted this entire problem,
2 but instead “deliberately decided to ignore its responsibilities, to enter the
3 Elizabethtown market without investigation, and to repeatedly refuse the
4 necessary arrangements to exchange traffic.” Each of these allegations is
5 incorrect.

6 First, as stated at page 5 of my testimony of October 4, 2011, this Commission
7 has never required a CLEC entering a market to establish traffic exchange
8 agreements with all local exchange carriers in the LATA as a condition of
9 offering service. Ms. Willoughby provides no citation to, or documentation of,
10 any such “obligation.” Furthermore, I am unaware of this type of requirement in
11 any state, and I have testified in a number of states on local interconnection issues
12 since passage of the Telecommunications Act in 1996.

13 Also, MCImetro did take appropriate steps to fulfill its obligations before
14 providing services in Elizabethtown. It negotiated an interconnection agreement
15 with Windstream’s predecessor consistent with the requirements of the
16 Telecommunications Act.

17 **Q. Ms. Willoughby provides her rationale as to why she thinks MCImetro**
18 **should be considered the culpable party in this case (page 5, line 9 through**
19 **page 6, line 19). Do you agree with her characterization of MCImetro’s**
20 **actions?**

21 A. No. Ms. Willoughby’s first argument is that “MCImetro ... disregard[ed] its
22 obligations to investigate the traffic exchange arrangements it would need before
23 entering the Elizabethtown market.” As noted above, Ms. Willoughby provides

1 no reference to any Commission regulation or requirement in support of her
2 assertion. Furthermore, MCImetro is acutely aware of “its obligations” when
3 entering a market, and our track record speaks for itself. Over the past 15 years
4 since passage of the Telecommunications Act, MCImetro successfully has
5 established more than 600 interconnections with incumbent LECs across 49 states
6 and the District of Columbia.

7 Ms. Willoughby also makes various unsupported claims to the effect that
8 MCImetro “refus[ed] to enter an appropriate traffic exchange agreement” with
9 Brandenburg Telephone and that it “refused to negotiate in good faith.” Again,
10 her testimony provides no factual bases to support these allegations.

11 Curiously, at page 6 of her testimony, lines 17-19, she complains that “MCImetro
12 still seeks to “discuss” implementation of the interconnection rather than promptly
13 establish the facilities required to move this traffic off of Windstream’s network.”

14 This is curious for two reasons. First, by definition, establishing an
15 interconnection involves making sure that the interconnecting networks are
16 interoperable, which requires mutual understandings between the parties on a
17 number of technical parameters. Second, her statement seems to be complaining
18 about discussions that are required by express provisions in our agreement. In
19 particular:

20 7.1 The Parties shall jointly develop a schedule for promptly
21 implementing all requirements of this Agreement
22 (“Implementation Schedule”). Both Brandenburg Telephone and
23 CLEC shall use commercially reasonable efforts to comply with
24 the implementation schedule.

25 7.2 The Parties shall exchange good-faith, non-binding
26 technical descriptions and forecasts of the volume of expected ISP

1 Traffic to be exchanged, in sufficient detail necessary to establish
2 the interconnections required to assure traffic terminations.

3 These provisions make clear that establishing interconnection is not a
4 responsibility that either party could—or should—assume unilaterally. To the
5 contrary, these provisions demonstrate that “discussions” between Brandenburg
6 Telephone and MCImetro were necessary and required so that interconnection is
7 established in a mutually acceptable—and more importantly, workable—manner.
8 As I noted above, fruitful discussions were held on October 12, 2011, with the
9 result that Brandenburg Telephone and MCImetro are near completion on
10 establishing interconnection between our respective networks.

11 **Q. Ms. Willoughby claims that Brandenburg Telephone was not aware of the**
12 **disputed traffic until it was notified by Windstream in 2007. What is your**
13 **response?**

14 A. That is contrary to Ms. Willoughby’s own testimony in an earlier part of this case,
15 where she acknowledged on cross-examination that Brandenburg Telephone knew
16 about the traffic in 2005. (T 169) And emails provided by Brandenburg
17 Telephone in response to discovery show that Brandenburg Telephone and
18 MCImetro were in discussions about this traffic at least as early as September,
19 2005.

20 In any event, since 1997 MCImetro or its predecessor has been providing service
21 to ISPs (initially through leased facilities) that have serviced Elizabethtown. The
22 only change was that in August 2003, MCImetro began providing service to ISPs
23 using its own facilities. If Brandenburg Telephone had been performing Local
24 Number Portability (“LNP”) queries as it should have, it would have been aware

1 that MCImetro was providing facilities-based service in 2003. Indeed, in 2005,
2 Brandenburg Telephone contacted MCImetro to request a traffic exchange
3 agreement for the very traffic at issue in this case. As I outlined in my
4 Supplemental Rebuttal Testimony of April 2010, it was Brandenburg Telephone
5 that delayed these negotiations by demanding patently unreasonable terms that
6 prevented the parties from reaching agreement sooner.

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


8 A. Yes, at this time.

CERTIFICATE OF SERVICE

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

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Douglas F. Brent

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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AN INVESTIGATION INTO THE TRAFFIC)
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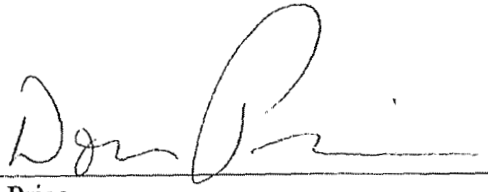
AFFIDAVIT OF DON PRICE

STATE OF TEXAS)
) ss
COUNTY OF TRAVIS)

I, Don Price, after being duly sworn, depose on oath and state as follows:


I am Director – State Public Policy for Verizon. MCImetro Access Transmission Services LLC, (“MCImetro”) is part of Verizon. I am appearing as a witness for MCImetro before the Kentucky Public Service Commission in Case No. 2008-00203, and if present before the Commission and duly sworn my statements would be set forth in the supplemental direct testimony I filed October 4, 2011 consisting of 12 pages and the supplemental rebuttal testimony I filed November 14, 2011 consisting of 12 pages in this docket.

FURTHER AFFIANT SAYETH NOT.



Don Price

Subscribed and sworn to before me
This 14th day of NOV., 2011.



Notary Public

