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November 14, 2011

HAND DELIVERED

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

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COMMISSION

Re: P.S.C. Case No. 2008-00203

Dear Mr. Derouen:

Enclosed please find the original and ten copies of Kerry Smith's Further Rebuttal 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

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PUBLIC SERVICE
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FURTHER REBUTTAL TESTIMONY
OF
KERRY SMITH

ON BEHALF OF WINDSTREAM KENTUCKY EAST, LLC

FURTHER REBUTTAL 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 Rebuttal Testimony?**

8 A. The purpose of my Further Rebuttal Testimony is to rebut and comment upon the written
9 testimony filed by Brandenburg Telephone Company (“Brandenburg”) and MCIMetro
10 Access Transmission Services, LLC d/b/a Verizon Access (“Verizon”) on October 4,
11 2011 (“Willoughby Further Direct Testimony” and “Price Further Direct Testimony”).

12 **Q. Before turning to your responses to the testimony filed on October 4, 2011, what is
13 the current status of Brandenburg’s usage of the Extended Area Service (“EAS”)
14 trunks between Brandenburg’s Radcliff and Vine Grove exchanges and
15 Windstream’s Elizabethtown exchange? Is dial-up ISP traffic bound for Verizon
16 customers still flowing over such trunks?**

17 A. Yes. As of November 9, 2011, the Verizon-bound dial-up ISP traffic is still flowing over
18 the EAS trunks. Six weeks have passed since my Further Direct Testimony was filed on
19 October 4, 2011, and nothing has changed. Windstream is still caught in the middle and
20 left uncompensated for calls that are not being sent by or delivered to any Windstream
21 customer.

22 **Q. What are your observations about Brandenburg’s Further Direct Testimony?**

1 A. Brandenburg’s Further Direct Testimony appears to focus on two points: (1) avoiding
2 culpability; and (2) claiming that Windstream has no basis to seek compensation for
3 handling Brandenburg’s misrouted traffic for the benefit of Brandenburg and Verizon.
4 Brandenburg is wrong on both counts.

5 **Q. How does Brandenburg attempt to avoid culpability?**

6 A. Most directly, Ms. Willoughby, Brandenburg’s witness, actually continues to
7 misrepresent that “Brandenburg Telephone was not even aware of the traffic in question
8 until it was notified by Windstream in 2007, two years after the traffic began flowing.”¹

9 **Q. Is Ms. Willoughby’s statement credible?**

10 A. Absolutely not. Ms. Willoughby admitted multiple times at hearing that Brandenburg
11 knew of this traffic as long ago as 2005, and the e-mails between Brandenburg and
12 Verizon produced on the record through the discovery prove as much. Most specifically,
13 Ms. Willoughby testified at hearing as follows: “In 2005, we did start doing the LNP
14 queries. At that point was when we recognized that there was an issue with these calls . .
15 . . .”² Ms. Willoughby later confirmed approaching Verizon about such calls in response
16 to a question from Windstream’s counsel:

17 Q. Okay. You mentioned that in 2005 was when you first
18 approached Verizon regarding an agreement after you realized,
19 Brandenburg realized, what the traffic was?

20 A. Yes.³

21
22 Brandenburg apparently thought that it could lay this problem off on Verizon and hide it
23 from Windstream, as discussed later in that same cross-examination:

¹ Willoughby Further Direct Testimony at 7, lines 5-6.

² Hearing Transcript at 169.

³ Hearing Transcript at 180-81.

1 Q. . . . In 2005, there was no notice from Brandenburg to
2 Windstream about that [11 million monthly minutes of] traffic;
3 correct?

4 A. No.

5 Q. Okay.

6 A. No, there wasn't; no. We thought MCI would recognize,
7 "Look, we've got to take care of grabbing hold of this traffic,"
8 so we did not [provide any notice to Windstream].
9

10 E-mails obtained by Windstream in discovery and submitted with and discussed in my
11 April 13, 2010 Supplemental Rebuttal Testimony in this docket confirm that
12 Brandenburg knew about the traffic in 2005.⁴ For the convenience of the Commission, I
13 am attaching those e-mails as Exhibit 1 to this testimony.

14 **Q. You have said before and are saying again that Brandenburg knew about the nature
15 of the traffic and sought to conceal it. What evidence do you have for this?**

16 A. Windstream has discussed this matter several times in this proceeding. As I explain
17 above, Brandenburg knew about this traffic at least as long ago as 2005. Ms. Willoughby
18 also acknowledged that to the extent that Brandenburg was refusing to perform LNP
19 queries and route traffic according to such queries, but, instead, route traffic over the
20 EAS trunks, Windstream would not have known about either the nature or quantity of the
21 traffic:

22 Q. . . . So your testimony is you would agree that the traffic
23 coming to Windstream over those EAS trunks is not recorded,
24 so Windstream would not have known the traffic?

25 A. Nor Brandenburg.

26 Q. Okay. Is also one of those expectations . . .

27 A. But one thing I would like to point out is that – I don't know –
28 there was something – I believe it was in some testimony of
29 Windstream's witness that now they say there was as much as
30 11 million minutes, and, you know, I guess I question why
31 Windstream – and, really, we started addressing it in 2005 and
32 Windstream didn't start addressing it until 2007. So, you

⁴ Supplemental Rebuttal Testimony of Kerry Smith on Behalf of Windstream Kentucky East, LLC at 6-8, Exhibit 1.

1 know, we did know it at least ahead of Windstream,
2 apparently, or ahead of the time Windstream said anything to
3 us.

4 Q. And, again, I go back to [your testimony that] the EAS trunks
5 do not record traffic, so Windstream would not have known the
6 traffic that was coming to it; correct?

7 A. That's right.⁵

8
9 And, as evidenced by the testimony I quote further above and the attached emails,
10 Brandenburg clearly knew about the matter and apparently hoped to sweep the problem
11 under the rug so that Windstream would not discover the traffic.

12
13 Once Brandenburg got around to performing LNP queries in 2005, even though it knew
14 about numbers being ported in the Elizabethtown rate center as long ago as 2002,⁶ it
15 discovered that abiding by the results of such queries would be costly, so it then
16 immediately stopped performing them to save money and shift costs to someone else –
17 namely, Windstream.⁷

18
19 In 2007, Brandenburg again started performing LNP queries – but simply ignored the
20 results and routed the traffic over EAS trunks so that it would appear to be EAS traffic.
21 As Brandenburg has put it in a data request response sponsored by Ms. Willoughby:
22 “When those queries returned LRNs identified with the traffic in question, the LRNs
23 were changed to route the traffic to the Windstream EAS trunk.”⁸

⁵ Hearing Transcript at 183-84 (emphasis added).

⁶ Hearing Transcript at 181.

⁷ Supplemental Direct Testimony of Allison Willoughby at 12.

⁸ Brandenburg Response to Windstream Kentucky East, LLC's Data Request No. 7 (filed in this docket on Mar. 30, 2010).

1 **Q. Please respond to Brandenburg’s claims that Windstream has no basis to seek**
2 **compensation for handling Brandenburg’s misrouted traffic for the benefit of**
3 **Brandenburg and Verizon.**

4 A. Let’s start with the common sense notion of whether Windstream is owed anything.
5 Absent compensation by Brandenburg and/or Verizon, Windstream has no source of
6 revenue to recover its costs of handling traffic that should not even be traversing its
7 network when a Brandenburg end user places a dial-up ISP call to a Verizon customer.
8 Brandenburg’s traffic is essentially trespassing on Windstream’s network without
9 compensation to Windstream. This simply isn’t fair – much for the same reasons that
10 Brandenburg has expressed to this Commission a desire to have Halo compensate
11 Brandenburg for traffic that Brandenburg believes Halo has routed unlawfully through its
12 own network. It is particularly egregious for the period since the Commission’s 2009
13 order in this docket that required Brandenburg and Verizon to move the traffic off of
14 Windstream’s network.⁹ As I discussed in my Further Direct Testimony, Brandenburg’s
15 expectations of Halo Wireless, Inc. appear to be far different from Brandenburg’s
16 expectations of itself – free-riding on someone else’s network is unconscionable when
17 that network is Brandenburg’s but completely acceptable if it’s Windstream’s network.

18 **Q. What is your response to Brandenburg’s specific arguments?**

19 A. Brandenburg makes two specific arguments. First, Brandenburg surmises incorrectly that
20 Windstream’s interconnection agreement with Verizon supposedly requires Windstream
21 to transit the traffic in question to Verizon for free.¹⁰ Ms. Willoughby just refers back to

⁹ 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”).

¹⁰ Willoughby Further Direct Testimony at 3.

1 bizarre and counter-intuitive legal arguments made two years ago that Windstream will
2 rebut again on brief. The bottom line is that the interconnection agreement between
3 Windstream and Verizon provides arrangements for traffic between those two carriers
4 and does not operate to the benefit of traffic originated by Brandenburg's customers and
5 routed unlawfully by Brandenburg over Windstream's network. Further, the
6 interconnection agreement between Windstream and Verizon leaves the rates on which
7 Windstream will exchange traffic with Verizon to further or separate agreements which
8 have not occurred.¹¹ Further, even if the interconnection agreement applied to transit
9 traffic, generally, it would not apply to transit traffic that arrived on Windstream's
10 network in an illegitimate manner originated by a third party that was not Verizon (that,
11 like Brandenburg). Finally, at a minimum, the interconnection agreement does not
12 relieve Brandenburg of its responsibility to compensate Windstream for the LNP dips that
13 Windstream was forced to perform so as to properly route Brandenburg's misrouted
14 traffic during the time that Brandenburg was refusing to perform the dips itself apparently
15 in an ongoing effort to conceal the traffic from Windstream.

16 **Q. What is Brandenburg's other specific argument about why Windstream supposedly**
17 **should not be compensated at all? What is your response?**

18 A. Brandenburg also argues that there is no support for the specific \$0.0045 per minute rate
19 that Windstream seeks to assess. Windstream has explained repeatedly that such rate is
20 based on a previously-tariffed rate which is how "its \$0.0045 rate was selected."¹²

¹¹ Interconnection Agreement, Attachment 4, § 2.1.

¹² Willoughby Further Direct Testimony at 4. I should note that in response to a data request from Brandenburg in a July 31, 2008 response to Brandenburg's First Set of Data Requests No. 13, Windstream directed Brandenburg to a cost study filed in Commission Case No. 2007-0004 to which both Brandenburg was a party. Ms. Willoughby claims that Windstream "refus[ed] to provide documentation to support its claimed 0.0045 'Proxy Rate'" in response to Brandenburg Supplemental Initial Data Request No. 14. Willoughby Further Direct Testimony at 4. To

1 **Q. Do you have any observations about Verizon’s Further Direct Testimony?**

2 A. Yes. Verizon appears to incorrectly believe that Windstream is willing to forego
3 compensation from Verizon in this proceeding should it not be fully compensated by
4 Brandenburg.¹³ I explained in my April 13, 2010 Supplemental Rebuttal Testimony and
5 my attorneys already set forth in the briefs that Windstream believes that Brandenburg is
6 the party that should be “primarily” responsible for compensating Windstream but that
7 we believe Verizon is also culpable.¹⁴ This is also a matter covered in Windstream’s post-
8 hearing brief,¹⁵ and subsequent filings, such as my Further Direct Testimony. All things
9 considered, Brandenburg and Verizon have reaped the benefits of being able to avoid
10 financial responsibility for their traffic by unfairly holding Windstream in the middle.
11 Their ongoing efforts to point the fingers elsewhere and deny compensation to
12 Windstream is nothing short of irresponsible – particularly where they continue even as
13 of today to misuse Windstream’s network to exchange their traffic.

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

15 A. Yes, at this time.

the contrary, Windstream’s response (filed Mar. 30, 2010) referred Brandenburg back to Windstream’s response to Windstream’s July 31, 2008 response to Brandenburg’s First Set of Data Requests No. 14 which, in turn referred to Windstream’s response to Brandenburg’s First Set of Data Requests No. 13 which I discuss above. If Brandenburg had more detailed questions about Windstream’s July 31, 2008 response, it should have specifically asked them. Windstream updated that data request response on October 28, 2011.

¹³ Price Further Direct Testimony at 4.

¹⁴ Smith Supplemental Rebuttal Testimony at 8.

¹⁵ Windstream Post-Hearing Brief at 23-24.

Exhibit 1

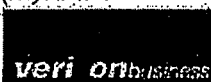
Sample, Janet

From: McGolerick, Rick (Rick) [JMCEAEX-
_O=MCI_OU=EXCHANGE_CN=RECIPIENTS_CN=RICK+2EMCGOLERICK@vzcorp.com]
Sent: Wednesday, February 21, 2007 1:40 PM
To: Randall Bradley
Cc: Turner, Mark (Mark E Turner); Olson, Lee M (Lee); Monroe, John
Subject: RE: [Fwd: Brandenburg LNP Query]
Importance: High

Randall -- I just left you a voicemail regarding the email below. During our discussions regarding an EAS agreement that started back in September 2005 we indicated that it was our understanding that traffic was being routed incorrectly to the Windstream/AITel tandem and it should be going to the Bell South Tandem. Can you provide what steps Brandenburg is taking to resolve the issue in order to meet Windstream's deadline of Friday, February 23rd?

Please give me a call today to discuss, thanks.

Rick McGolerick
National Carrier Contracts and Initiatives
(703) 749-7338



-----Original Message-----

From: Randall Bradley [mailto:rbradley@bbtel.com]
Sent: Wednesday, February 21, 2007 10:55 AM
To: McGolerick, Rick (Rick)
Subject: FW: [Fwd: Brandenburg LNP Query]

-----Original Message-----

From: George Lewis [mailto:gtlewis@bbtel.com]
Sent: Wednesday, February 21, 2007 8:14 AM
To: Randall Bradley
Subject: [Fwd: Brandenburg LNP Query]

----- Original Message -----

Subject: Brandenburg LNP Query
Date: Thu, 15 Feb 2007 12:24:44 -0500
From: Williams, Steven G <Steven.G.Williams@windstream.com>
To: <troynevitt@bbtel.com>, <gtlewis@bbtel.com>
CC: Gilmer, Ted A <Ted.A.Gilmer@windstream.com>, Fuller, Anthony
<Anthony.Fuller@windstream.com>

During a four day audit of traffic in the Elizabeth office, we discovered that Brandenburg Telephone is sending thousands of calls over its ICO trunk groups for calls that do not terminate to Windstream. This is mainly due to the fact that Brandenburg Telephone is not completing LNP queries. Your CLEC originated traffic appears to have already completed the LNP query.

Windstream's Elizabethtown end office completed approximately 12,000 LNP queries, and transited over 868,528 MOU (Minutes Of Use) for calls originated from Brandenburg Telephone.

Since the traffic is IntraLATA and your switch is capable, Brandenburg Telephone must complete its own LNP dips, and as the industry standard, route the call based on the LRN.

3/30/2010

Brandenburg Telephone needs to complete this work before Friday, February 23, 2007. On Monday, February 26, Windstream will implement the necessary translations changes on the Brandenburg Telephone trunk groups to correct this problem and allow only traffic that has completed the LNP query to terminating to the Windstream Elizabethtown office.

Please contact me if you would like to discuss.

Thanks,
Steven Williams
Staff Manager - Translations Engineering
Windstream Communication
704-845-7258
steven.g.williams@windstream.com



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Sample, Janet

From: Randall Bradley [rbradley@bbtel.com]
Sent: Monday, January 23, 2006 3:27 PM
To: McGolerick, Rick (Rick)
Cc: Turner, Mark (MarkETurner)
Subject: RE: EAS Agreement and BLOCKING
Rick,

I have a draft of our response back to concerning the EAS agreement. I'm awaiting one person's review of the draft before I can get it to you. I'll send it over to you as soon as this review is completed. Thanks.

-----Original Message-----

From: Rick McGolerick [mailto:rick.mcgoleric@verizonbusiness.com]
Sent: Friday, January 20, 2006 2:11 PM
To: 'Randall Bradley'
Cc: Mark Turner
Subject: RE: EAS Agreement and BLOCKING
Importance: High

Randall - Following up our call yesterday. When can we expect a response regarding the EAS agreement? More importantly though, our customer is still receiving complaints regarding blocking that has been going on since September. We need an interim solution while the agreement is being worked out. Can you please respond ASAP? Thanks.

-----Original Message-----

From: Randall Bradley [mailto:rbradley@bbtel.com]
Sent: Thursday, September 08, 2005 9:31 AM
To: rick.mcgoleric@mcl.com
Subject: EAS Agreement

Rick,

Attached is our standard EAS agreement that we have with several providers. After review, please give me a call if you have any questions. Thanks.

Randall Bradley
270-422-2121
270-422-4448 Fax

Brandenburg Telephone Co.
200 Telco Drive
Brandenburg, KY 40108

3/30/2010