



**Dinsmore & Shohl** LLP  
ATTORNEYS

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

March 2, 2010

**VIA HAND-DELIVERY**

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

RECEIVED

MAR 02 2010

PUBLIC SERVICE  
COMMISSION

**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:

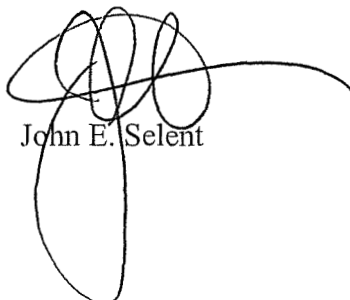
Enclosed for filing in the above-referenced case, please find one original and eleven (11) copies of the Prefiled Supplemental Direct Testimony of Allison T. Willoughby on Behalf of Brandenburg Telephone Company.

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



John E. Selent

ETD/lb  
Enclosures  
cc: All parties of record

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAR 02 2010

PUBLIC SERVICE  
COMMISSION

In the Matter of:

AN INVESTIGATION IN 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

PREFILED SUPPLEMENTAL DIRECT TESTIMONY  
OF ALLISON T. WILLOUGHBY  
ON BEHALF OF  
BRANDENBURG TELEPHONE COMPANY

March 2, 2010

John E. Selent  
Holly C. Wallace  
Edward T. Depp  
**DINSMORE & SHOHL LLP**  
1400 PNC Plaza  
500 West Jefferson St.  
Louisville, Kentucky 40202  
Tel: (502) 540-2300  
Fax: (502) 585-2207

*Counsel to Brandenburg Telephone Company*

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

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

**PREFILED SUPPLEMENTAL DIRECT 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. WHO IS YOUR EMPLOYER?**

4 A. My employer is Brandenburg Telephone Company ("Brandenburg Telephone").

5 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN THIS CASE?**

6 A. Yes. I filed direct testimony on August 8, 2008. I filed rebuttal testimony on August 15,  
7 2008. I also testified during the August 19, 2008 formal hearing before the Public Service  
8 Commission of the Commonwealth of Kentucky (the "Commission").

9 **Q. WHAT IS THE BASIS FOR YOUR FILING THIS SUPPLEMENTAL DIRECT**  
10 **TESTIMONY IN THIS CASE?**

11 A. On January 22, 2010, the Commission issued an order scheduling an informal conference for  
12 February 2, 2010. I attended that informal conference. Following discussion with the Commission's  
13 staff and the other parties, it was agreed that the parties would file supplemental direct testimony in

1 this matter by March 2, 2010. The supplemental direct testimony was to address the two central  
2 issues remaining for Commission decision.

3 First, the Commission should determine whether Windstream is entitled to any compensation  
4 for its involvement in delivering the traffic at issue to MCImetro. If the Commission determines that  
5 Windstream is entitled to compensation for its involvement in delivering the traffic to MCImetro,  
6 then the Commission should, second, determine: (i) the appropriate measure of compensation due to  
7 Windstream; and (ii) the appropriate allocation of such compensation among the parties.

8 **Q. WHAT IS BRANDENBURG TELEPHONE'S POSITION WITH RESPECT TO**  
9 **THESE ISSUES?**

10 A. Windstream is not entitled to any compensation (at least from Brandenburg Telephone) for  
11 its involvement in delivering the traffic at issue to MCImetro. Even if the Commission were to  
12 conclude, however, that Windstream is entitled to compensation for its role in delivering this traffic  
13 to MCImetro, the Commission should order that the compensation be paid to Windstream by  
14 MCImetro.

15 **Q. HAS THE COMPANY PREVIOUSLY BRIEFED THESE ISSUES FOR THE**  
16 **COMMISSION?**

17 A. Yes. By way of reference for the Commission, Brandenburg Telephone has explained its  
18 position in detail in the following filings.

- 19 • September 12, 2008: Brandenburg Telephone Company's Post-Hearing Brief;
- 20
- 21 • January 13, 2009: Letter from Holly C. Wallace to Executive Director Jeff Derouen (in  
22 response to December 30, 2008 letter from Bruce F. Clark, Esq., on behalf of Windstream  
23 Kentucky East, LLC);
- 24
- 25 • September 25, 2009: Brandenburg Telephone Company's Response to an Order of the  
26 Kentucky Public Service Commission Dated August 26, 2009;
- 27

- 1 • October 1, 2009: Brandenburg Telephone Company's Response to MCImetro Access  
2 Transmission Services LLC's Motion for Correction and Rehearing;  
3  
4 • October 12, 2009: Brandenburg Telephone Company's Reply to the Windstream and  
5 MCImetro Briefs Filed in Response to an Order of the Kentucky Public Service Commission  
6 Dated August 26, 2009; and  
7  
8 • October 27, 2009: Brandenburg Telephone Company's Response to Windstream Kentucky  
9 East, LLC's Motion for Leave to File a Surreply.

10  
11 **Q. GIVEN THE VOLUME OF FILINGS THAT HAVE ADDRESSED THESE TWO**  
12 **CENTRAL ISSUES, WHAT IS YOUR UNDERSTANDING OF THE RATIONALE FOR**  
13 **THIS ADDITIONAL TESTIMONY?**

14 A. My understanding is that this portion of the proceeding is designed to effectuate that portion  
15 of the Commission's August 26, 2009 order (the "Order") that provided:

16 The record is not sufficiently specific to support a Commission  
17 determination that Windstream is entitled to the full amount of its  
18 requested relief, if it is indeed entitled to any recovery. The  
19 Commission must further develop the record in order to determine the  
20 proportionate liabilities and responsibilities of the parties. Therefore,  
21 a separate hearing must be held to make these determinations.

22  
23 *Id.* at 22.

24 **Q. PLEASE LOOK AT THE FIRST SENTENCE OF THAT PARAGRAPH. IS**  
25 **WINDSTREAM ENTITLED TO ANY RECOVERY?**

26 A. No.

27 **Q. WITHOUT DELVING INTO THE DETAILS OF THE MANY FILINGS YOU**  
28 **REFERENCED, ABOVE, PLEASE TELL THE COMMISSION THE BASIS FOR YOUR**  
29 **CONCLUSION THAT WINDSTREAM IS NOT ENTITLED TO ANY COMPENSATION.**

30 A. This gets into an argument for the lawyers, but I believe the short answer is that Windstream  
31 and MCImetro have already agreed that there will be no compensation due for the delivery of third-

1 party originated traffic like that at issue in this case. The legal arguments are set out in the most  
2 detail at pages 3 through 6 of Brandenburg Telephone's October 1, 2009 response to MCImetro's  
3 motion for correction and/or rehearing, referenced above. My understanding is that there is language  
4 in the Windstream-MCImetro interconnection agreement ("ICA") that the lawyers interpret as  
5 Windstream's and MCImetro's voluntary agreement to each serve, at no cost, as the intermediary for  
6 non-toll traffic originated by a third-party carrier like Brandenburg Telephone.

7 **Q. WOULD THE PROVISION TO WHICH YOU REFER, ABOVE, BE THE KIND OF**  
8 **PROVISION THAT YOU MIGHT EXPECT TO SEE IN AN INTERCONNECTION**  
9 **AGREEMENT?**

10 A. It is hard to say without knowing what other bargains may have been struck during the  
11 negotiation of Windstream and MCImetro's particular ICA, but it is likely that MCImetro would  
12 have seen some value in having third-party traffic delivered to it for free. For example, MCImetro's  
13 witness at the formal hearing (Mr. Don Price) testified that he did not believe "it was incumbent on  
14 [MCImetro] in any way, shape, or form to try to ferret out every agreement that existed between  
15 Windstream and all of the other carriers in the area and what they did, and how they did it, and what  
16 the compensation was for that." (Test. of D. Price, Transcript of Aug. 19, 2008 Hearing at 131:24-  
17 25, 132:1-3.)

18 By negotiating an agreement that resulted in Windstream agreeing to transit third-party  
19 traffic to MCImetro, MCImetro would avoid the costs of researching the existence of other LECs  
20 that may have extended area service ("EAS") calling arrangements to Elizabethtown. It would also  
21 help MCImetro avoid the costs of discovering other LECs competing in the Elizabethtown market  
22 with whom MCImetro might need to formalize traffic exchange arrangements. It does this, however,

1 at the cost of taking away those third-party carriers' rights to negotiate and formalize appropriate  
2 intercarrier arrangements with MCImetro.

3 In essence, Mr. Price's testimony admits that it is just too much work for MCImetro to "ferret  
4 out" the other carriers with which it might need to make arrangements; by implication, his testimony  
5 also shows that MCImetro has everything to gain and nothing to lose from such an ICA. So, given  
6 MCImetro's mindset, yes, I could imagine a scenario in which it would be beneficial for MCImetro  
7 to strike a deal such that Windstream would -- at no charge -- agree to serve as an intermediary  
8 between MCImetro and a third-party carrier like Brandenburg Telephone.

9 **Q. ARE THERE OTHER REASONS THAT WINDSTREAM IS NOT ENTITLED TO**  
10 **COMPENSATION FOR SERVING AS THE INTERMEDIARY FOR THIS TRAFFIC?**

11 A. Again, this would venture into the legal arguments, but Windstream's witness (Mr. Kerry  
12 Smith) testified at the formal hearing in this matter that Windstream has no tariff that applies to the  
13 traffic at issue in this case.<sup>1</sup> As Assistant General Manager of Brandenburg Telephone, I have  
14 always operated under the assumption that a utility is, generally, required to have a filed and  
15 approved tariff before it could charge for services. So, when I hear Windstream claim that it can  
16 charge for services that are not subject to a valid tariff, I question that claim. This issue was  
17 addressed in more detail at pages 5 through 8 of Brandenburg Telephone's September 12, 2008 post-  
18 hearing brief, referenced above.

19 Even if the Commission were to find that -- notwithstanding Windstream's own admissions --  
20 Windstream was providing service under the terms of its so-called transit traffic tariff (Windstream  
21 Kentucky East P.S.C. No. 7 ("Transit Tariff")), that tariff remains the subject of dispute by  
22 Brandenburg Telephone (and several other RLECs) in Commission Case No. 2007-00004. The post-

---

<sup>1</sup> See Test. of K. Smith, Transcript of Aug. 19, 2008 Hearing at 23:14-25, 24:1-15.

1 hearing brief filed by the RLECs on September 15, 2009 in that matter goes into great detail  
2 regarding the invalidity of the Transit Tariff. We explained, through legal counsel: (i) how the  
3 Transit Tariff filing was procedurally and substantively flawed; (ii) how it undermined the RLECs'  
4 statutory right to negotiate appropriate intercarrier agreements; (iii) how it required RLECs to pay  
5 for interconnection services provided outside the RLECs' networks; (iv) how it forced the RLECs to  
6 rely on Windstream's records for traffic identification, measurement, and billing; and (v) how it was  
7 utterly lacking in any legitimate cost support.

8           Given the circumstances of this case, it is impossible to ignore the particular dangers created  
9 by potentially allowing carriers to tariff non-toll intercarrier services. MCImetro has been clear that  
10 it had absolutely no interest in "ferret[ing] out every agreement that existed between Windstream and  
11 all of the other carriers in the area and what they did, and how they did it, and what the  
12 compensation was for that." (Test. of D. Price, Transcript of Aug. 19, 2008 Hearing at 131:25,  
13 132:1-3.) The Transit Tariff incentivizes this very manner of thinking, and it does so at the sole risk  
14 of an RLEC like Brandenburg Telephone, who is left staring down the barrel of a claim for  
15 approximately \$1,500,000 as a result of either the reckless inattentiveness or intentional ignorance of  
16 CLECs who do not believe it "incumbent on [them] in any way, shape, or form to try to ferret out"  
17 the necessary intercarrier arrangements associated with their entry into a new market.

18           This may be why the New York Public Service Commission ("NY PSC") ruled ten years ago  
19 that:

20           Prior to activating an NXX code that can be accessed on a local basis  
21           by an independent telephone company's customer, CLECs must enter  
22           into an arrangement establishing fundamental network and service  
23           arrangements. CLECs must make arrangements for interconnection  
24           facilities to a meet-point designated as the Independent Telephone  
25           Company boundary. ... Because Independent [Telephone Company]  
26           responsibility is limited to delivering traffic to its service area



1                   borders, CLECs must either provider their own interconnection  
2                   facilities or lease facilities to the meet-point.<sup>2</sup>  
3

4     **Q.     ASSUME, WHETHER BY TARIFF OR NOT, THAT THE COMMISSION**  
5     **DETERMINES THAT WINDSTREAM IS OWED SOME COMPENSATION FOR ITS**  
6     **ROLE AS INTERMEDIARY FOR THE TRAFFIC AT ISSUE HERE. UNDER THAT**  
7     **ASSUMPTION, WHAT DO YOU THINK WOULD BE THE APPROPRIATE MEASURE**  
8     **OF COMPENSATION?**

9     A.     For the reasons I have already described, there is no basis for that assumption. Even abiding  
10    by that assumption, I cannot point to an appropriate measure of compensation. While on the one  
11    hand acknowledging that its Transit Tariff does not apply to the facts of this case, Windstream  
12    concludes that the rate it espoused in that tariff should somehow be approved as a proxy in this case.  
13    Specifically, in its post-hearing brief, Windstream claimed that it "should be awarded its requested  
14    compensation and the use of its transit tariff end office rate to award such compensation is  
15    appropriate." (Windstream Post-Hearing Brief at 26.) Windstream went on to clarify that it  
16    "demonstrated that it used the transit traffic rates as a proxy to develop the compensation it is owed  
17    in this proceeding." (Response of Windstream Kentucky East, LLC to Verizon's Motion for  
18    Correction and Rehearing, September 28, 2009, at n. 1.) This claim is particularly interesting in light  
19    of Mr. Smith's testimony on behalf of Windstream in the separate, but related, Case No. 2007-0004  
20    (the "Transit Tariff Case").

21            At the July 29, 2009 formal hearing in the Transit Tariff Case, Mr. Smith testified that the  
22    Transit Tariff "rate was developed first and then a cost study was run to make sure that that rate was  
23    cost based so that it was covering our cost[.]" (Test. of K. Smith, Case No. 2007-0004, Transcript of

---

<sup>2</sup> See Brandenburg Telephone's September 25, 2009 Response to an Order of the Commission Dated August 26, 2009, referenced above, at 9.

1 July 29, 2009 at 185:22-186:3.) Mr. Smith sought further justification for the rate by claiming, "I  
2 think that the rate that we came up with was a rate proposed to us by another big RLEC [*sic*] that  
3 they had been planning to maybe file a tariff as well." *Id.* He went on to explain that the higher end  
4 office transit rate in the Transit Tariff was chosen "strictly as a deterrent...." (Direct Test. of K.  
5 Smith, Case No. 2007-0004, at 6:21 (emphasis in original).)

6 Taking all these statements together, Windstream's own witness freely admits that its  
7 proposed "appropriate" measure of compensation is -- bear with me because this is abstract in the  
8 extreme -- a proxy of a proxy of a proposed rate that another big ILEC was "maybe" going to file.  
9 Even if the Transit Tariff could be used as some kind of "proxy" to determine compensation due to  
10 Windstream in this case, that "proxy" would appear to be so fundamentally flawed as to be  
11 unreasonable as a measure of compensation. That seems particularly true when the proxy of a proxy  
12 of a proposed rate that another big ILEC was maybe going to file is based "strictly" upon theories of  
13 deterrence, as Mr. Smith testified.<sup>3</sup>

14 So, what would be an appropriate measure of compensation due to Windstream? It would be  
15 appropriate to award Windstream no compensation because it has utterly failed to provide any  
16 cognizable rate-making justifications for its claims. This failure is particularly egregious in light of  
17 the fact that Windstream repeatedly wasted its opportunities to do so: (i) in its pre-hearing  
18 testimony; (ii) at the formal hearing; (ii) in its post-hearing brief; (iii) in its perfunctory response to  
19 the Commission's August 26, 2009 Order (which sought "a detailed description of [Windstream's]  
20 alleged costs only for the disputed traffic") (*id.* at Appendix A); and (iv) in the testimony and briefs  
21 for the Transit Traffic Case. Windstream has wasted every single opportunity the Commission has

---

<sup>3</sup> In light of these admissions, Windstream has absolutely no credibility with respect to its claim (in the Transit Tariff Case) that the "cost study" purporting to justify its rate is accurate to the seventh decimal point. The mathematical odds of such a coincidence would be nothing short of staggering.

1 given it to justify compensation. Consequently, the Commission should not award any  
2 compensation to Windstream.

3 But, even if the Commission were to award Windstream some compensation, it should not  
4 order Brandenburg Telephone to pay that compensation. MCImetro and Windstream entered into an  
5 interconnection agreement that allowed for Windstream to deliver the traffic at issue to MCImetro.  
6 Brandenburg Telephone was not a party to those discussions; it did not even know MCImetro had  
7 entered the Elizabethtown market. It is unfair for those two carriers to get together, unbeknownst to  
8 Brandenburg Telephone, and agree to terms and conditions that would have the effect of forcing  
9 Brandenburg Telephone to subsidize MCImetro's provision of ISP services. Brandenburg Telephone  
10 is not responsible for this dispute, and it should not have to pay any compensation claimed by  
11 Windstream.

12 **Q. SO, WHO IS RESPONSIBLE FOR THIS DISPUTE?**

13 A. MCImetro is responsible for this dispute. As its own witness testified:

14 **Q. And what you're telling me, then, is, as a utility regulated**  
15 **by this Public Service Commission, at least to some extent, that**  
16 **you have no obligation to determine the lay of the land and what**  
17 **will happen when you enter into the kind of agreement that you**  
18 **entered into with Windstream ... to determine what effect that**  
19 **might have on callers, customers, in the Commonwealth of**  
20 **Kentucky? Is that what you're tell me or this Commission? Is**  
21 **that what you're telling these Commissioners?**

22 A. In a general sense, that's absolutely right ....

23 (Test. of D. Price, Hearing Transcript at 136:13-24.)  
24

25 Let's start with "day one." Traffic to the ISP numbers that would eventually port over to  
26 MCImetro was already flowing freely over the long-existing EAS trunks between Brandenburg  
27 Telephone and Windstream. This traffic had been flowing without incident for some time. We had  
28

1 not been receiving end-user complaints about difficulty completing calls to those numbers. Once  
2 MCImetro entered the Elizabethtown market, the problems began.

3 On the very first day that MCImetro decided that it wanted to enter the Elizabethtown  
4 market, it should have made the effort to determine the identity of the other carriers with local or  
5 EAS calling to that market. MCImetro, however, claims that "it was [not] incumbent on [it] in any  
6 way, shape, or form to try to ferret out every agreement that existed between Windstream and all of  
7 the other carriers in the area and what they did, and how they did it, and what the compensation was  
8 for that." (Test. of D. Price, Transcript of Aug. 19, 2008 Hearing at 131:24-25, 132:1-3.) Having  
9 consciously chosen ignorance, MCImetro also never learned that: (i) the neighboring ILEC  
10 (Brandenburg) serves Radcliff, Kentucky; and (ii) the Commission long-ago mandated that LEC  
11 end-users in every Kentucky county should be able to dial the county seat without incurring toll  
12 charges.<sup>4</sup>

13 Consequently, MCImetro claims that it had no idea that Brandenburg Telephone customers in  
14 Radcliff, for example, were calling AOL (one of MCImetro's ISP end-users) at an Elizabethtown-  
15 rated number. Implicitly, MCImetro would have the Commission conclude that it should be excused  
16 from some, if not all, culpability because it simply did not know the telecommunications landscape  
17 in Elizabethtown. That implication is preposterous not only because MCImetro's ignorance was  
18 intentional, but also because it refused to work reasonably with Brandenburg Telephone to resolve  
19 the problem, once it became known. In other words, even if the Commission were to ascribe a  
20 degree of innocence to MCImetro's deliberate decision not to survey the telecommunications  
21 landscape in the Elizabethtown area, there is no good excuse for MCImetro's steadfast refusal to

---

<sup>4</sup> Elizabethtown, of course, is the seat of government for Hardin County. Radcliff is also situated in Hardin County.

1 enter an appropriate traffic exchange agreement and move the traffic onto dedicated facilities after  
2 Brandenburg Telephone initially raised the issue in late 2005.

3 **Q. WHEN DID MCIMETRO ENTER THE ELIZABETHTOWN MARKET?**

4 It was late 2005 when MCImetro first entered the Elizabethtown market, unbeknownst to  
5 Brandenburg Telephone. Shortly thereafter, a small number of Brandenburg Telephone's end-users  
6 called to complain about calls not completing to their ISP. Rather than block this traffic,  
7 Brandenburg Telephone -- believing the calls to involve a de minimis level of traffic -- ceased local  
8 number portability ("LNP") queries on the affected numbers and continued routing the calls over the  
9 EAS facility between it and Windstream. Brandenburg Telephone did not understand, at the time,  
10 that the calls were failing after an LNP query because the underlying carrier had changed from  
11 Windstream to MCImetro. All we knew was that calls to those numbers had been completing when  
12 they had previously been routed over the EAS facility with Windstream (prior to MCImetro's entry  
13 into the market), and this was the only manner in which we could ensure the calls once again  
14 continued to complete without the end-user having to dial the call on a toll basis.

15 We had no idea that the minutes of usage for this traffic was in the "millions of minutes"  
16 range (as we would later learn from Windstream); we knew only that this traffic involved one or two  
17 numbers in Windstream's Elizabethtown territory.

18 Not long thereafter, MCImetro apparently ported another number from Windstream. As with  
19 the previous two numbers, calls from Brandenburg Telephone customers to this new MCImetro  
20 number apparently would not complete on a non-toll basis. This time, however, Brandenburg  
21 Telephone learned of the call completion problems from MCImetro, who called to find out why its  
22 customers could not complete calls to this new number.

1           This was our first knowledge that MCImetro had even entered Windstream's territory. We  
2 told MCImetro that it would need a traffic exchange agreement in order for our customers to be able  
3 to call this number without incurring a toll charge, and we immediately (on September 8, 2005) sent  
4 MCImetro a proposed traffic exchange agreement to rectify this problem. The terms of the proposed  
5 agreement were consistent with how we exchange EAS traffic with other carriers and with other  
6 carriers' Commission-approved EAS agreements.

7 **Q.     WHAT WAS WINDSTREAM'S POSITION WITH RESPECT TO THIS TRAFFIC?**

8           I do not know, but I know that while we were trying to secure the traffic exchange agreement  
9 with MCImetro, Windstream allowed the traffic to continue passing through its network for over a  
10 year without so much as a word of protest. In February of 2007, Windstream notified Brandenburg  
11 Telephone that it would block any unqueried traffic that was not queried and routed in accordance  
12 with the local routing number ("LRN"). It demanded that Brandenburg Telephone route the traffic  
13 in question over dedicated facilities with the third-party carrier (in that context, MCImetro). As the  
14 underlying problem began to come into focus, and with Windstream's interim agreement to transit  
15 queried traffic until a permanent solution could be reached, Brandenburg Telephone began  
16 performing the LNP queries on calls to MCImetro numbers. Brandenburg Telephone also redoubled  
17 its efforts to reduce its traffic exchange negotiations with MCImetro to an executed agreement.

18           With Windstream continuing to deliver the traffic, however, MCImetro once more ignored its  
19 obligation to enter an appropriate traffic exchange agreement with Brandenburg Telephone. Then, in  
20 early 2008 (through proceedings in the Transit Traffic Case), Windstream notified Brandenburg  
21 Telephone that the volume of traffic reached into the millions of minutes of use (a volume that was

1 very surprising to us given the two to three numbers at issue)<sup>5</sup> and once more demanded that the  
2 traffic be routed over dedicated facilities to MCImetro.

3 Yet again, Brandenburg Telephone contacted MCImetro about finalizing a traffic exchange  
4 agreement. In an effort to facilitate matters, Brandenburg Telephone proposed that the parties  
5 execute a traffic exchange agreement that was substantively identical to a traffic exchange agreement  
6 MCImetro had recently executed with South Central Rural Telephone Cooperative Corporation, Inc.  
7 ("SCRTC"). That agreement provided for a demarcation of financial and operational responsibilities  
8 at a point of connection ("POC") to be located on the ILEC's service territory boundary. It also  
9 provided that MCImetro would not charge reciprocal compensation for terminating EAS traffic  
10 destined for its ISP customers. Again, I note that this is consistent with how we exchange EAS  
11 traffic with other carriers, and it is consistent with how other carriers exchange EAS traffic with each  
12 other.

13 Notwithstanding the obvious contradiction in its actions, MCImetro refused to sign a  
14 substantively identical agreement with Brandenburg Telephone. It refused to sign that agreement  
15 then. It refused through the formal hearing in August of 2008. It refused through the October 12,  
16 2009 date by which the Commission ordered the parties to either reach agreement or submit a joint  
17 matrix identifying the issues upon which the parties could not come to agreement.

18 In that matrix, the parties jointly identified the following three issues of dispute:

19 Issue 1: Where should the point of interconnection be, and what are  
20 the parties' respective financial responsibilities associated with that  
21 interconnection?  
22

---

<sup>5</sup> It is important to remember that Brandenburg Telephone did not, at the time, know that the MCImetro numbers in question belonged to an ISP. It knew only that MCImetro had one or two numbers in Elizabethtown. Accordingly, there is no basis to suggest that Brandenburg Telephone should have known that -- even with two or three numbers -- the traffic volume destined for MCImetro reached into the millions of minutes per month.

1            Issue 2: Should the traffic exchanged pursuant to the agreement be  
2            subject to reciprocal compensation?

3  
4            Issue 3: Should billing dispute provisions be reciprocal?<sup>6</sup>

5  
6            (*See* October 12, 2009 Issues Matrix.)

7            From the outset of negotiations, MCImetro had opposed establishing a point of connection on  
8            Brandenburg Telephone's network boundary. Likewise, it had insistently claimed a right to charge  
9            Brandenburg Telephone reciprocal compensation for terminating the EAS calls destined for the out-  
10           of-state modem banks owned by MCImetro's ISP customers. Then, at the February 2, 2010 informal  
11           conference in this matter, it appeared that there may have been a breakthrough.

12           In discussion with Commission staff, MCImetro proposed a so-called "new" potential  
13           solution to the parties' previous inability to reach agreement. I say "new" with quotations because  
14           the proposal was not new to Brandenburg Telephone. It was, in fact, exactly the same as what  
15           Brandenburg Telephone had proposed years before: (i) MCImetro would establish a POC on  
16           Brandenburg Telephone's network boundary; (ii) the parties' financial and operational  
17           responsibilities would be demarcated at the POC; (iii) the parties would exchange traffic over  
18           dedicated facilities; and (iv) the traffic would be exchanged on a bill-and-keep basis. (*See also* Staff  
19           Memorandum of February 2, 2010 Informal Conference at 2.) MCImetro even indicated that its  
20           traffic exchange agreement with SCRTC should serve as the template.

21           I was utterly taken aback. For years, we had fought with MCImetro in an effort to secure  
22           agreement to these very terms. These terms are consistent with longstanding Commission treatment  
23           of ILEC interconnection obligations, appropriate levels for dedicated interconnection, and bill-and-

---

<sup>6</sup> This third issue is essentially a subissue of Issue 2. The agreement proposed by Brandenburg Telephone would treat the EAS traffic destined for MCImetro's ISP customers as subject to bill-and-keep; therefore, that version of the agreement did not require mutual billing dispute provisions, thus negating the necessity for MCImetro's proposed change to the affected sections.



1 keep treatment of traffic exchanged pursuant to EAS calling arrangements. And perhaps most  
2 importantly, these terms would result in the simple practical solution that has so long evaded  
3 Windstream and Brandenburg Telephone: it would move the traffic off of Windstream's network  
4 and onto a dedicated facility between MCImetro and Brandenburg Telephone.

5 Now that we are so close to finally resolving this matter, however, MCImetro has once again  
6 thrown a wrench into resolution of this dispute. Even though the parties reached an agreement in  
7 principle on the terms described above, MCImetro is now insisting on language that would allow  
8 MCImetro to simply disconnect its dedicated facilities if the volume of traffic diminishes below an  
9 agreeable threshold. Notwithstanding the facts that: (i) this issue was never discussed as part of the  
10 agreement reached at the informal conference; (ii) MCImetro did not identify this issue in the joint  
11 issues matrix filed back on October 12; and (iii) MCImetro's traffic volume is nowhere close to the  
12 threshold level at this time (nor has it ever been to the best of my knowledge), Brandenburg  
13 Telephone has tried to accommodate MCImetro's desire to address a hypothetical situation where the  
14 volume of traffic may eventually no longer justify a dedicated connection.

15 The problem with MCImetro's language is that it does nothing to address the manner in  
16 which the traffic would continue to be delivered in the event the dedicated facilities are  
17 disconnected. Thus, MCImetro's proposal would effectively send the parties back to "square one" in  
18 the event the traffic were to fall below the agreed threshold. Accordingly, we countered that  
19 MCImetro could disconnect facilities at the threshold level they requested, provided that MCImetro  
20 had made prior arrangements for receipt of this traffic. We also proposed to clarify that whatever  
21 alternative arrangements MCImetro might pursue, they would not modify the guiding principle that  
22 Brandenburg Telephone is operationally and financially obligated to deliver the traffic only to a POC

1 on its network boundary, consistent with terms upon which we had already agreed elsewhere in the  
2 document.

3 Counsel informs me that they have contacted counsel for MCImetro to discuss this latest  
4 development but that counsel for MCImetro has indicated it is unavailable until early this week.

5 Regardless of whether an agreement is voluntarily reached, however, the fact remains that  
6 MCImetro is the party responsible for this case, and it always has been. If it had just done its due  
7 diligence and made appropriate arrangements for the exchange of EAS traffic before entering the  
8 Elizabethtown market, this entire dispute would have been avoided. The traffic would have been  
9 routed over dedicated facilities from Brandenburg Telephone to MCImetro from day one, and  
10 Windstream's network would have never even been involved. Therefore, MCImetro is the culpable  
11 party, and if there is any compensation due to Windstream, MCImetro should pay it.

12 **Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL DIRECT TESTIMONY?**

13 A. Yes.



**CERTIFICATE OF SERVICE**

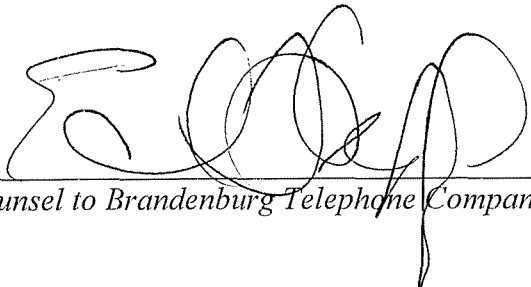
I hereby certify a true and accurate copy of the foregoing was served, by first-class United States mail, sufficient postage prepaid, on the following individuals this 2nd day of March, 2010.

Bruce F. Clark, Esq.  
Mark R. Overstreet, 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*