

COMMONWEALTH OF KENTUCKY

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BEFORE THE PUBLIC SERVICE COMMISSION

APR 21 2010

PUBLIC SERVICE COMMISSION

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 )

Case No. 2008-00203

MOTION FOR ISSUANCE OF SUBPOENAS DUCES TECUM

Windstream Kentucky East, LLC ("Windstream East"), pursuant to KRS 278.320, moves the Public Service Commission of Kentucky to issue subpoenas duces tecum to Brandenburg Telephone Company ("Brandenburg") and MCIMetro Access Transmission Services, LLC d/b/a Verizon Access ("Verizon") compelling the production of the following documents (whether in paper, electronic or other form):

- (1) For the period January 1, 2005 through December 31, 2009, all communications to or from Mark E. Turner, Lee M. Olson, John Monroe, Randall Bradley, Allison Willoughby, Troy Nevitt, George Lewis, Janet Sample, and Rick McGolerick. regarding all matters pertaining to his or her discussions regarding traffic originating with Brandenburg's end user customers and terminating to Verizon's internet service provider customers in Elizabethtown, Kentucky, including, but not limited to, any faxes, e-mails, letters, memoranda and business records; and
(2) For the period of January 1, 2005 through December 31, 2009, all records, including both internal and external communications, e-mails whether in electronic or other form, and memoranda, pertaining to the traffic originating with Brandenburg's end user customers and terminating to Verizon's internet service provider customers in Elizabethtown, Kentucky including, but not limited to, any faxes, e-mails, letters, memoranda and business records.

As grounds for this motion, Windstream East states that the data request responses filed by Verizon on March 30, 2010 included e-mail correspondence between Verizon and Brandenburg

demonstrating that they addressed the traffic issues at issue in this matter as early as 2005 and that neither party brought the issues to Windstream East's attention. Based on Windstream East's records, it appears that these emails were redacted from materials previously produced by Brandenburg in this proceeding. As set forth in the Supplemental Rebuttal Testimony of Kerry Smith filed by Windstream East on April 13, 2010, this e-mail correspondence has a direct bearing on the merits of the positions taken by Verizon and Brandenburg in this proceeding.<sup>1</sup>

Windstream East should be entitled to obtain all the records in the possession of Verizon and Brandenburg on this issue. The time for issuing data requests closed on March 16, 2010, and the impact of the communications provided by Verizon and the knowledge that there may be other communications that have not been produced by the parties did not come to Windstream East's attention until on or after Verizon filed its data request responses on March 30, 2010. In an effort to ensure that Windstream East fully understands the extent of the communications between Brandenburg and Verizon that were held without its knowledge, Windstream East is asking the Commission to exercise its authority under KRS 278.320 and issue the subpoenas duces tecum.<sup>2</sup>

Windstream East further respectfully requests that any subpoena compel production of the documents at the offices of counsel for Windstream East at the address below no later than 10 business days before any hearing in this matter. If a hearing is not scheduled, Windstream East respectfully requests that any subpoena compel production of the documents at the offices

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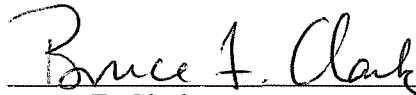
<sup>1</sup> See Supplemental Rebuttal Testimony of Kerry Smith, pp. 4-8.

<sup>2</sup> KRS 278.320 provides: "The commission and each of the commissioners may issue subpoenas, subpoenas duces tecum, and all necessary process in proceedings brought before or initiated by the commission, and such process shall extend to all parts of the state. Service of process in all proceedings brought before or initiated by the commission may be made by certified mail, return receipt requested, or by registered mail, or in the same manner as other process in civil cases, as the commission directs."

of counsel for Windstream East at the address below no later than 10 business days before the due date of the briefs in this matter.

Alternatively, Windstream East asks that the Commission authorize a limited data request from Windstream East to Verizon and Brandenburg seeking the records identified above.

Respectfully submitted,



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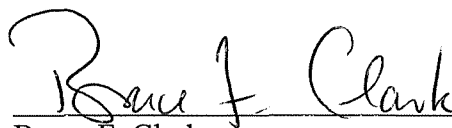
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been served by first class mail, postage prepaid, on the following on this 21st day of April, 2010.

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