

**Dinsmore & Shohl** LLP  
ATTORNEYS

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

July 19, 2010

RECEIVED

JUL 19 2010

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 MCI metro Access Transmission Services, LLC d/b/a Verizon Access - before the Public Service Commission of the Commonwealth of Kentucky, Case No. 2008-00203***

---

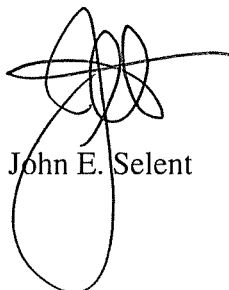
Dear Mr. Derouen:

Enclosed for filing in the above-referenced case, please find one original and eleven (11) copies of Brandenburg Telephone Company's Motion for Informal Conference.

Thank you, and if you have any questions, please call me.

Very truly yours,

DINSMORE & SHOHL LLP



John E. Selent

JES/bmt  
Enclosures

cc: All parties of record

794009\_1  
30256-100

1400 PNC Plaza, 500 West Jefferson Street Louisville, KY 40202  
502.540.2300 502.585.2207 fax www.dinslaw.com

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

*In the Matter of:*

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

**BRANDENBURG TELEPHONE COMPANY'S  
MOTION FOR INFORMAL CONFERENCE**

Brandenburg Telephone Company ("Brandenburg Telephone"), by counsel, hereby moves the Public Service Commission of the Commonwealth of Kentucky (the "Commission") to schedule an informal conference in this matter.

As grounds for this motion, Brandenburg Telephone states that it has worked diligently to execute a traffic exchange agreement with MCImetro, as ordered by the Commission. However, as recently testified to by Allison T. Willoughby in her Prefiled Supplemental Rebuttal Testimony, MCImetro continues to refuse to execute such an agreement. (*See* Prefiled Supplemental Rebuttal Testimony of Allison T. Willoughby ("Willoughby Test."), p. 11:6-11.)

**I. ARGUMENT**

807 KAR 5:001 § 4(4) establishes that informal conferences with Commission staff are appropriate "to provide opportunity for settlement of a proceeding or any of the issues therein . . . ." Brandenburg Telephone believes an informal conference may help eliminate certain issues from this proceeding now that it has provided a timeline of MCImetro's repeated refusals to negotiate a traffic exchange agreement in good faith. Moreover, MCImetro's continued refusal to execute an agreement, even after agreeing to key provisions in the February 10, 2010 informal conference with

Commission staff, violates the Commission's direct order and, unfortunately, suggests that little progress is likely to be made unless Commission staff can help guide negotiations.

At the 2008 informal conference before the Commission, Brandenburg Telephone believed an executed traffic exchange agreement with MCImetro was imminent. (Willoughby Test., p. 11:20-26.) This belief, as Ms. Willoughby testifies, was grounded on the fact that Brandenburg Telephone had proposed an agreement substantively identical to one MCImetro previously approved and executed with another carrier. (*Id.*) Further, to the extent disagreements remained between the parties (such as whether Brandenburg Telephone should incur interconnection costs outside of its network), Brandenburg Telephone had clear statutory authority supporting its positions. (*Id.*) MCImetro, however, after representing to the Commission that an executed interconnection agreement was imminent, refused to execute the agreement substantively identical to one it executed with a different carrier. (*Id.*)

The negotiation history between Brandenburg Telephone and MCImetro establishes that MCImetro has, based on pretext, repeatedly refused to execute a traffic exchange agreement, often in the face of contradictory legal authority. More troubling is that every time MCImetro has finally relented on certain provisions it seeks, it suddenly invents a new provision or condition that is allegedly necessary before it will execute the agreement.

In 2008, Brandenburg Telephone offered to cover all interconnection costs within its network. (Willoughby Test., p. 19-20.) MCImetro refused to execute an agreement because it insisted that all costs be split 50/50 (despite clear statutory authority setting forth that Brandenburg Telephone was only responsible for in-network costs). (*Id.*, p. 11:19-22.) After significant

negotiation, MCImetro conceded that it would be appropriate for Brandenburg Telephone to only be responsible for its in-network costs. (*Id.*, p. 11:22-12:1.)

MCImetro's most obvious attempt to avoid executing an agreement came in early 2010. At the February 2, 2010 informal conference with Commission staff, MCImetro represented that it would bring interconnection facilities to Brandenburg Telephone's network, cover all costs on its side of the point of interconnection, and agree to no reciprocal compensation. Interconnection appeared to be imminent. Shortly after the Commission was no longer directly involved, however, MCImetro insisted on a minimum traffic provision that would require elimination of the connection if traffic ever fell below 250,000 MOU/month. (*Id.*, p. 12:4-7.) Brandenburg Telephone pointed out that MCImetro never proposed such a provision despite multiple years of negotiating, and refused to agree to it due to concerns that it may unexpectedly render the interconnection agreement null and that it served no apparent legitimate purpose. (*Id.*, p. 12:7-10.) After significant negotiation, MCImetro agreed to the exclusion of the "MOU floor" provision. (*Id.*)

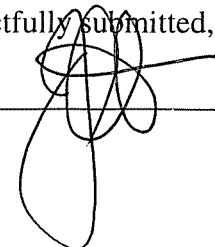
Immediately after that concession, MCImetro once again discovered it desired a new provision that absolutely must be included in order to execute the agreement. (*Id.*, p. 12:10-11.) This new provision would create a condition precedent that would prevent the interconnection agreement from ever taking effect if the parties discovered that the traffic in question averaged less than 2 million MOU/month in the two years preceding execution. (*Id.*, p. 12:11-14.) Brandenburg Telephone believes this condition is inappropriate, particularly when the Commission has ordered the parties to interconnect, has made no mention of such a condition, and there is no precedent supporting such a condition.

MCImetro's numerous refusals to execute an agreement are inappropriate, particularly where they are made with respect to an agreement that includes specific provisions that are substantively identical to those MCImetro has previously executed with other carriers. (*Id.*, p. 12:16-18.) For example, as Ms. Willoughby testified, "the language regarding dedicated interconnection, once refused by MCImetro because it is presumably commercially unreasonable, appears in a substantively identical form in MCImetro's interconnection agreement with AT&T . . . ." (*Id.*, p. 12:18-20.) Brandenburg Telephone has worked diligently to execute a traffic exchange agreement, but its efforts have been frustrated at every turn by MCImetro's refusals to adopt commercially reasonable terms. Now, even after MCImetro represented to Brandenburg Telephone and Commission staff that an agreement had been reached on the critical provisions, it again demands completely new and unreasonable provisions solely to stall progress.

## II. CONCLUSION

In short, Brandenburg Telephone has exerted significant effort and time in its attempts to execute an interconnection agreement with MCImetro, as ordered by the Commission. Despite these efforts, Brandenburg Telephone has been met only with a constantly-moving target: MCImetro's ever-changing demands and its refusals of previously-acceptable provisions. For these reasons, Brandenburg Telephone believes that an informal conference at this time might help clarify certain issues about the terms of the proposed agreement. Therefore, in order to conserve the resources of the parties and for reasons of administrative efficiency, Brandenburg Telephone requests that an informal conference be scheduled at the Commission's convenience.

Respectfully submitted,



---

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

*Counsel to Brandenburg Telephone Company*

**CERTIFICATE OF SERVICE**

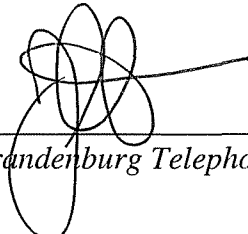
I hereby certify a true and accurate copy of the foregoing was served, by first-class United States mail, sufficient postage prepaid, on the following individuals this 19th day of July, 2010.

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, KY 40202

*Counsel to MCImetro*

  
\_\_\_\_\_  
*Counsel to Brandenburg Telephone Company*