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July 30, 2010

RECEIVED

JUL 30 2010

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 MCImetro's Response to Brandenburg Telephone Company's Motion for Informal Conference.

Please indicate receipt of this filing by placing your file stamp on the extra copy and returning to me via the enclosed, self-addressed envelope.

Very truly yours,

STOLL KEENON OGDEN PLLC


Douglas F. Brent

DFB:

Enclosures

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JUL 30 2010

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**MCIMETRO ACCESS TRANSMISSION SERVICES LLC’S RESPONSE TO
BRANDENBURG’S MOTION FOR INFORMAL CONFERENCE**

MCImetro Access Transmission Services LLC (“MCImetro”) does not oppose an informal conference, but disagrees with the reasons given by Brandenburg Telephone Company (“Brandenburg”) concerning the need for one and the purpose it should serve. Because the parties appear to be at impasse in their settlement negotiations, MCImetro respectfully submits that if an informal conference is convened, it should be for the purpose of developing a procedural schedule in this case.

Brandenburg contends that an informal conference is necessary because MCImetro has refused to execute a traffic exchange agreement. That is untrue. MCImetro has proposed a traffic exchange agreement that would provide the meet-point arrangement described as the “third solution” in Staff’s February 24, 2010 memorandum summarizing the parties’ February 2, 2010 settlement conference. As recently as two weeks ago (July 14), MCImetro sent Brandenburg a letter proposing two alternative sections to be inserted in the contract, either of which would have been acceptable to MCImetro and concluded the negotiations. MCImetro also expressed willingness to consider alternative proposals from Brandenburg. Brandenburg has not accepted either of MCImetro’s proposals and has proposed no alternative but instead has filed its Motion for Informal Conference.

Brandenburg states that the parties reached agreement, at least on “key provisions,” at the February 2, 2010 settlement conference. (Motion at 1, 3.) But Staff’s summary of the parties’ discussions correctly reflects that no agreement was reached. Staff’s memorandum states that “[t]he parties concluded that the third solution might resolve their dispute and that further negotiations among the technical experts were necessary.” (Feb. 24, 2010 memorandum, p. 2.) Staff also noted that “[t]he parties proposed to allow the technical experts to continue discussions and offered to file status updates with the Commission regarding the state of the negotiations.” (*Id.*) In short, the parties clearly articulated their understanding at the settlement conference that agreement had not yet been reached and that further negotiations were required.

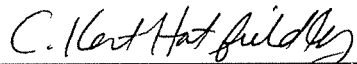

Brandenburg’s motion summarizes at some length the Supplemental Rebuttal Testimony of Ms. Willoughby describing the parties’ negotiations. Rather than responding to this account point by point, MCImetro notes that Don Price addressed the parties’ negotiations in detail in his supplemental rebuttal testimony at pages 6-10. His testimony makes clear that MCImetro has sought in good faith to enter into a traffic exchange agreement with Brandenburg and indeed that it has “gone the extra mile” in attempting to complete the deal.

As discussed in Mr. Price’s testimony, one of the two alternative sections that MCImetro has proposed would state as a condition that the parties must have exchanged a certain amount of traffic over the previous twenty-four months. This provision is important to MCImetro because other carriers may request the same arrangement as Brandenburg and an issue may arise as to whether they are similarly situated. MCImetro would agree to set the traffic level so Brandenburg meets the condition and to include an attachment specifying traffic levels for the previous twenty-four months, so Brandenburg could be absolutely certain that the condition has been met. Despite this assurance, and the lack of any cost or inconvenience to Brandenburg, it has refused to agree, without giving any

practical business reason for its rejection. (*See* Motion at 3.) Brandenburg’s refusal to make even this slight accommodation for MCImetro’s concerns illustrates the difficulty MCImetro has had in attempting to reach agreement.

Brandenburg claims that an informal conference would “help eliminate certain issues from this proceeding” and “help clarify certain issues about the terms of the proposed agreement.” It is not clear what issues Brandenburg hopes to eliminate or clarify, but from MCImetro’s perspective it appears that the parties’ understand each other’s settlement negotiating positions and have reached impasse. MCImetro therefore respectfully submits that if an informal conference is scheduled, it should be used to establish a procedural schedule for addressing the disputed issues in this case.

Respectfully submitted,



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CERTIFICATE OF SERVICE


I hereby certify that a true and accurate copy of the foregoing was served on the following by first-class United State mail, sufficient postage prepaid, this 30th day of July, 2010.

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