



**STOLL
KEENON
OGDEN**

2000 PNC PLAZA
500 WEST JEFFERSON STREET
LOUISVILLE, KY 40202-2828
MAIN: (502) 333-6000
FAX: (502) 333-6099
www.skofirm.com

DOUGLAS F. BRENT
DIRECT DIAL: 502-568-5734
douglas.brent@skofirm.com

October 4, 2011

RECEIVED

OCT 04 2011

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 the updated Direct Testimony of Don Price on behalf of MCIMetro. A verification page will be filed separately.

Please indicate receipt of this filing by placing your file stamp on the extra copy and returning to me via our runner.

Very truly yours,

STOLL KEENON OGDEN PLLC

Douglas F. Brent

DFB:

Enclosures

105138.116493/535497.1

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO TRAFFIC DISPUTE
BETWEEN BRANDENBURG TELEPHONE
COMPANY, WINDSTREAM KENTUCKY
EAST AND VERIZON ACCESS

Case No. 2008-00203

UPDATED DIRECT TESTIMONY OF DON PRICE
ON BEHALF OF
MCIMETRO ACCESS TRANSMISSION SERVICES LLC
d/b/a VERIZON ACCESS TRANSMISSION SERVICES

OCTOBER 4, 2011

1 **I. INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. My name is Don Price, and my business address is 701 Brazos, Suite 600, Austin,
4 Texas, 78701.

5
6 **Q. By whom are you employed and what is your position?**

7 A. I am a Director – State Public Policy for Verizon. MCImetro Access
8 Transmission Services LLC d/b/a Verizon Access Transmission Services
9 (“MCImetro”) is an affiliate of Verizon. I am testifying here on behalf of
10 MCImetro.

11
12 **Q. What is your professional experience and educational background?**

13 A. I have more than 30 years experience in the communications industry, the vast
14 majority of which is in the public policy area.

15
16 After earning Master’s and Bachelor’s degrees in sociology from the University
17 of Texas at Arlington in 1978 and 1977, respectively, I began working for the
18 former GTE Southwest in the early 1980s, and then moved to the Texas Public
19 Utility Commission in 1983. There, I served as a Commission analyst and
20 witness on rate-setting and policy issues. In 1986, I became Manager of Rates
21 and Tariffs for the Commission Staff, and was responsible for Staff analyses of
22 rate design and tariff policy issues in all telecommunications proceedings before
23 the Commission. I was hired by MCI in 1986, where I spent 19 years focused on
24 public policy issues relating to competition in telecommunications, including

1 issues of intercarrier compensation and coordination of positions in
2 interconnection agreement negotiations.

3

4 With the close of the Verizon/MCI merger in January 2006, I assumed the
5 position of Director – State Regulatory Policy for Verizon Business. As a result
6 of internal reorganization, I assumed my current position in January 2010.

7 Among other things, I work with various corporate departments, including those
8 involved with product development and network engineering, to develop and
9 coordinate policies permitting Verizon to offer products to meet the demands of
10 various customers, including government entities, as well as customer demand in
11 wholesale markets.

12

13 During my career, I have testified before state regulators in at least 27 states on a
14 wide range of issues in many types of proceedings, including various intercarrier
15 compensation and switched access issues.

16

17 **Q. What is the purpose of your updated direct testimony?**

18 A. The purpose of my testimony is to explain why neither Windstream Kentucky
19 East, LLC (“Windstream”) nor Brandenburg Telephone Company
20 (“Brandenburg”) is entitled to recover anything from MCImetro with respect to
21 the traffic in dispute in this case.

22

1 **Q. What is the background of this proceeding?**

2 A. On July 1, 2008, the Commission initiated an investigation into a traffic dispute
3 between Windstream, Brandenburg, and MCImetro. In its August 26, 2009 Order
4 (“2009 Order”), the Commission stated that “[t]he record is not sufficiently
5 specific to support a Commission determination that Windstream is entitled to the
6 full amount of its requested relief, if it is indeed entitled to any recovery.” (2009
7 Order at 22.) The Commission therefore directed that a separate hearing be held
8 so it could further develop the record to make that determination. Last year, the
9 parties filed supplemental direct and rebuttal testimony addressing Windstream’s
10 claims. By Order dated September 15, 2011, the Commission directed the parties
11 to file updated direct and rebuttal testimony.

12
13 **Q. What traffic is in dispute?**

14 A. The disputed traffic involves calls from Brandenburg’s end user customers in
15 Radcliff that are destined for Internet Service Providers, or ISPs, that are served
16 on MCImetro’s (and its affiliate’s) network. Specifically, these are calls that
17 Brandenburg has routed over extended area service (“EAS”) trunks to
18 Windstream’s Elizabethtown network for completion to MCImetro at MCImetro’s
19 point of interconnection with Windstream in Elizabethtown. The disputed traffic
20 does not include calls placed by Windstream’s Elizabethtown end user customers
21 or calls from Brandenburg’s Radcliff end user customers to Windstream’s
22 Elizabethtown end user customers.

23
24 **Q. Generally, what claims have Windstream and Brandenburg made?**

1 A. Windstream claims that Brandenburg should be required to pay it for transiting
2 the disputed traffic and for Windstream’s cost of performing local number
3 portability (“LNP”) queries, plus interest. Windstream has not asserted a claim
4 against MCImetro. Brandenburg asserts that it is not liable to Windstream, but
5 that if it is found liable, MCImetro should be required to reimburse it for the full
6 amount awarded.

7

8 **Q. Has Windstream previously testified that it is only seeking compensation**
9 **from Brandenburg, not MCImetro, in this proceeding?**

10 A. Yes. Regarding the respective liability of MCImetro and Brandenburg for the
11 compensation allegedly due to Windstream, Mr. Kerry Smith testified that
12 “Brandenburg is the party responsible for compensating Windstream East for the
13 claimed amounts. Whether Brandenburg believes it should be reimbursed by
14 [MCImetro] for some of those amounts is a separate matter that should be handled
15 between those two parties and without further inconvenience to Windstream
16 East.” (March 2, 2010 Direct Testimony of Kerry Smith at page 11.)

17

18 **Q. What is Brandenburg’s theory that MCImetro should indemnify**
19 **Brandenburg for any compensation Brandenburg has to pay Windstream?**

20 A. In her direct testimony filed on March 2, 2010 (at pages 10-17), Ms. Willoughby
21 asserts that MCImetro should be responsible for any payment to Windstream
22 because it had not obtained a traffic exchange agreement with Brandenburg.

23

24 **Q. Has Brandenburg pointed to any tariff, contract, statute or Commission**

1 **order that would require MCImetro to indemnify Brandenburg for claims**
2 **relating to Brandenburg’s traffic in dispute?**

3 A. No. In her direct and rebuttal testimony filed in this case last year (on March 2,
4 2010 and April 13, 2010, respectively) Ms. Willoughby does not point to any such
5 authority. Likewise, Brandenburg has not identified any specific authority in
6 response to MCImetro’s discovery requests. (See Brandenburg’s response to
7 Interrogatory No. 18 in Exhibit A, which is attached to my testimony.)

8

9 **Q. Was MCImetro required to have a traffic exchange agreement with**
10 **Brandenburg before it began providing facilities-based service in**
11 **Elizabethtown?**

12 A. No. To my knowledge, the Commission has never required a CLEC to establish
13 traffic exchange agreements with all local exchange carriers in a LATA before it
14 could begin to offer service.

15

16 **Q. Has either MCImetro or Brandenburg sought an interconnection agreement**
17 **under section 251 of the Telecommunications Act of 1996?**

18 A. No, because such an agreement is not necessary. MCImetro has not made such a
19 request because it does not have any customers in Brandenburg’s service territory.
20 Indeed, MCImetro has never offered services in Brandenburg’s exchanges.
21 Likewise, Brandenburg has never requested negotiations under section 251. The
22 parties only have sought to negotiate a commercial agreement, rather than an
23 interconnection agreement that would be subject to arbitration under section 252.

24

1 **Q. Did MCImetro ultimately reach terms on a traffic exchange agreement with**
2 **Brandenburg?**

3 A. Yes, as I will describe, MCImetro attempted repeatedly to reach agreement with
4 Brandenburg from 2005, when negotiations began, until agreement was finally
5 reached in July 2011.

6
7 **Q. Please describe the background of MCImetro's and Brandenburg's initial**
8 **negotiations for a traffic exchange agreement.**

9 A. Since 1997, MCImetro or its predecessor has been providing service to ISPs that
10 have served Elizabethtown, initially using leased facilities and, beginning in 2003,
11 using MCImetro's own facilities. If Brandenburg had been performing LNP
12 queries as it should have, it would have been aware immediately that MCImetro
13 was providing facilities-based service in 2003.

14
15 **Q. Please describe MCImetro's efforts to reach a traffic exchange agreement**
16 **with Brandenburg before June 2008.**

17 A. The parties initially attempted to negotiate a traffic exchange agreement in
18 September 2005 after Brandenburg started blocking some of MCImetro's traffic.
19 The parties held several negotiating sessions and exchanged a number of drafts
20 between then and April 2006, when it became clear that Brandenburg was
21 demanding that ISPs served by MCImetro had to be physically located within
22 Brandenburg's local calling scope. MCImetro serves ISPs using centralized
23 facilities, so installing duplicative facilities in Brandenburg's service territory

1 would have made no operational or financial sense. As a practical matter,
2 Brandenburg's proposal would have excluded the only traffic that MCI metro was
3 receiving from Brandenburg's network, so it was obviously unacceptable to
4 MCI metro. Negotiations petered out shortly after Brandenburg made its
5 unreasonable proposal. MCI metro requested that Brandenburg put its proposal in
6 the form of a red-lined draft, but according to MCI metro's records, Brandenburg
7 never provided one.

8
9 The parties restarted negotiations in February 2007, when Windstream threatened
10 to stop routing the traffic in question over EAS trunks. The parties exchanged
11 drafts and again Brandenburg proposed that ISPs served by MCI metro would
12 have to be physically located within Brandenburg's local calling scope. This
13 proposal was unacceptable to MCI metro for the reasons I just explained.
14 MCI metro responded to the proposal with a red-lined draft on March 15, 2007 to
15 which Brandenburg never responded. As a result, negotiations again fell through.

16
17 Subsequently, in May 2008, Brandenburg's attorney sent a letter to MCI metro
18 requesting that MCI metro enter into a traffic exchange agreement that was
19 substantively identical to a traffic exchange agreement that MCI metro had with
20 South Central Rural Telephone Cooperative ("South Central"). MCI metro
21 responded that it was willing to discuss entering a similar arrangement, but noted
22 that the terms of the South Central agreement reflected the particular
23 circumstances of the two parties' networks. In fact, South Central and MCI metro

1 both had facilities in the same building, so it was possible for the parties to
2 interconnect at a meet point there. Moreover, MCImetro had access to spare
3 trunking facilities from its IXC affiliate in South Central's exchange territory,
4 which enabled MCImetro to accept traffic from that point. These factors, and
5 South Central's cooperation, allowed a quick resolution. Because MCImetro was
6 able to interconnect without the expense of constructing new facilities, it agreed
7 to exchange traffic with South Central on a bill-and-keep basis.

8
9 **Q. During these negotiations with Brandenburg, what was MCImetro's basic**
10 **position?**

11 A. MCImetro presented two alternative solutions. MCImetro stated that it would
12 interconnect with Brandenburg on its network if Brandenburg would agree to pay
13 reciprocal compensation on the traffic MCImetro terminated. Alternatively,
14 MCImetro was willing to exchange traffic on a bill-and-keep basis if the parties
15 could establish an interconnection point that did not require MCImetro to build
16 out its network. I explained this position in my 2008 testimony in this case.

17
18 **Q. Has MCImetro been able to reach agreement with other carriers on this**
19 **basis?**

20 A. Yes, MCImetro has many traffic exchange agreements nationwide under which
21 carriers have agreed to pay reciprocal compensation for ISP-bound traffic.
22 MCImetro also has entered into several agreements in which MCImetro is not

1 required to build out its facilities and as a *quid pro quo* exchanges traffic on a bill-
2 and-keep basis.

3
4 **Q. Did MCImetro seek to reach a compromise in 2008 based on the South
5 Central agreement to bridge the gulf between the parties' positions?**

6 A. Yes, MCImetro proposed a variation of the South Central approach that took into
7 account the different circumstances presented by Brandenburg's network. Unlike
8 the South Central situation, MCImetro did not have access to sufficient spare
9 capacity from its IXC affiliate to achieve the same solution. As an alternative,
10 MCImetro offered Brandenburg a compromise: split the cost of trunking between
11 the two networks, and exchange traffic on a bill-and-keep basis. Brandenburg
12 rejected that offer.

13
14 **Q. Did the Commission issue an order in 2008 that addressed the traffic in
15 dispute?**

16 A. Yes. In June 2008, after Windstream began blocking the traffic, the Commission
17 scheduled an emergency hearing, which was canceled only after Windstream
18 agreed to stop blocking the traffic, at least temporarily. After Windstream
19 threatened to block the traffic again, the Commission issued an Order on July 1,
20 2008 directing that "[t]he traffic arrangements, as they exist on June 30, 2008,
21 shall continue in their current form until this dispute is resolved." Later that year
22 the Commission held a hearing on the dispute, which resulted in the 2009 Order
23 that initiated this case.

1

2 **Q. After the 2009 Order was issued, did MCImetro renew its efforts to reach a**
3 **traffic exchange agreement with Brandenburg?**

4 A. Yes. MCImetro complied with the 2009 Order by again attempting to negotiate a
5 traffic exchange agreement with Brandenburg and by filing a joint matrix of
6 disputed issues on October 12, 2009.

7

8 **Q. Did MCImetro take further steps to try to resolve its dispute with**
9 **Brandenburg?**

10 A. Yes. In the interest of resolving this dispute, in February 2010 MCImetro offered
11 to pick up the full cost of trunking between its network and Brandenburg's
12 network.

13

14 **Q. Did Brandenburg accept that offer?**

15 A. No. Because MCImetro was offering to make an exception to its national policy
16 concerning such networking arrangements, MCImetro proposed that the parties
17 agree to one of two alternative provisions making clear the limited circumstances
18 in which the arrangement was being made available. One of the alternative
19 provisions was a condition precedent stating that Brandenburg must have met a
20 certain average traffic level over the previous two years. The purpose of this
21 language, as MCImetro explained to Brandenburg, was to make clear that
22 MCImetro was willing to enter this agreement based in part on the volume of
23 traffic involved, so that carriers with low traffic volumes could not claim that they

1 were similarly situated and should receive the same arrangement. MCImetro
2 informed Brandenburg that it was willing to adjust the traffic level stated in the
3 proposal to ensure that Brandenburg met the condition precedent. A copy of
4 MCImetro's July 14, 2010 letter conveying that proposal is attached to my
5 testimony as Exhibit B. Even though this proposal would not have imposed any
6 obligation on Brandenburg as a practical matter, Brandenburg did not accept it or
7 make an alternative proposal.

8
9 **Q. What happened next?**

10 A. Rather than responding to MCImetro's proposal, Brandenburg requested another
11 informal settlement conference. In response, MCImetro stated that it did not
12 oppose convening another informal conference, but that if one were scheduled it
13 should be for the purpose establishing a procedural schedule addressing the
14 disputed issues between the parties.

15
16 **Q. Were the parties finally able to reach agreement on a traffic exchange
17 agreement?**

18 A. Yes. After an informal conference on June 9, 2011, the parties reached agreement
19 with a condition precedent similar to the one MCImetro proposed in 2010. The
20 agreement was executed on July 21, 2011 and a redacted version was filed with
21 the Commission on July 27, 2011.

1 **Q. Has MCImetro initiated discussions with Brandenburg to arrange to move**
2 **the traffic in question to the new interconnection point?**

3 **A. Yes.**

4

5 **Q. Does this conclude your updated direct testimony?**

6 **A. Yes.**

CERTIFICATE OF SERVICE

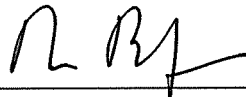
I hereby certify that a true and accurate copy of the foregoing was served on the following by first-class United State mail, sufficient postage prepaid, this 4th day of October, 2011.

Bruce F. Clark
Stites & Harbison, PLLC
421 West Main Street
P.O. Box 634
Frankfort KY 40602-0634

Counsel to Windstream

John E. Selent
Edward T. Depp
Holly C. Wallace
DINSMORE & SHOHL LLP
1400 PNC Plaza
500 W. Jefferson Street
Louisville, KY 40202

Counsel to Brandenburg Telephone Company



*Counsel to MCImetro Access Transmission Services
LLC d/b/a Verizon Access Transmission Services*

105138.116493/762897.1

105138.116493/762897.1

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

COPY

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

**BRANDENBURG TELEPHONE COMPANY'S RESPONSES TO
MCIMETRO'S SUPPLEMENTAL REQUESTS FOR INFORMATION
TO BRANDENBURG TELEPHONE COMPANY
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Brandenburg Telephone Company ("Brandenburg"), by counsel, and pursuant to the July 11, 2008 procedural order entered by the Public Service Commission of the Commonwealth of Kentucky (the "Commission") in this matter, hereby files its responses to MCImetro Access Transmission Services, LLC d/b/a Verizon Access ("MCImetro") Supplemental Requests for Information to Brandenburg Telephone Company. In response to those requests, Brandenburg states as follows.

INTERROGATORIES

18. Does Brandenburg claim that MCImetro must indemnify it for any amounts Brandenburg is ordered to pay Windstream Kentucky East LLC ("Windstream") in this proceeding? If so:
- a. If the indemnity claim is based on one or more tariff provisions, please identify each such provision, the basis for Brandenburg's claim that it requires MCImetro to pay Brandenburg, the amount claimed, and how that amount was calculated.
 - b. If the indemnity claim is based on one or more statutory provisions, please identify each such provision, the basis for Brandenburg's claim that it requires MCImetro to pay Brandenburg, the amount claimed, and how that amount was calculated.
 - c. If the indemnity claim is based on one or more FCC or Commission rules or regulations, please identify each such rule or regulation, the basis for Brandenburg's

claim that it requires MCImetro to pay Brandenburg, the amount claimed, and how that amount was calculated.

- d. If the indemnity claim is based on one or more FCC or Commission orders, please identify each such order, the basis for Brandenburg's claim that it requires MCImetro to pay Brandenburg, the amount claimed, and how that amount was calculated.
- e. If the indemnity claim is based on one or more contractual provisions, please identify each such provision, the basis for Brandenburg's claim that it requires MCImetro to pay Brandenburg, the amount claimed, and how that amount was calculated.
- f. If the indemnity claim is based on any other legal theory, please identify each such theory, the basis for Brandenburg's claim that it requires MCImetro to pay Brandenburg, the amount claimed, and how that amount was calculated.

Responsible Witness: None. See objection.

RESPONSE: Brandenburg objects to this interrogatory on the grounds it requires the production of attorney/work product and, in any event, counsel's theory of the matter may change as further facts emerge. Moreover, Brandenburg has fully explained its legal position to date in this matter in its briefs.

19. Does Brandenburg assert claims against MCImetro in this proceeding other than for indemnification? If so, please state each such claim.

Responsible Witness: None. This is a legal question.

RESPONSE: As set forth in Brandenburg's Complaint in Kentucky Public Service Commission Case No. 2008-00239, in addition to indemnification, Brandenburg seeks the following forms of injunctive relief against MCImetro:

- "A. Order MCImetro to, at no cost to Brandenburg, establish dedicated trunking facilities to an interconnection point on Brandenburg's network;
- B. Order MCImetro to maintain those dedicated interconnection facilities unless and until the volume of traffic exchanged between Brandenburg and MCImetro falls below a DS-1 level of traffic; [and]
- C. Order that MCImetro shall not collect reciprocal compensation with respect to any traffic originated by Brandenburg's end-user customers and destined for MCImetro's ISP customer(s)[.]"

20. With respect to each claim stated in response to Interrogatory No. 2 [sic]:

Dulaney L. O'Roark III
Deputy General Counsel, Southeast
Legal Department



5055 North Point Parkway
Alpharetta, Georgia 30022

Phone 678-259-1657
Fax 678-259-5326
de.oroark@verizon.com

July 14, 2010 – VIA ELECTRONIC MAIL AND U.S. MAIL

Edward T. Depp, Esq.
Dinsmore & Shohl L.L.P.
1400 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202

Re: 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

Dear Tip:

I am writing to follow up on our settlement discussions concerning a proposed traffic exchange agreement between MCImetro Access Transmission Services LLC ("MCImetro") and Brandenburg Telephone Company ("Brandenburg"). As we have discussed, to settle this matter, MCImetro is willing to make an exception to its national policy and arrange to lease facilities from its network to the Brandenburg network boundary and to exchange traffic on a bill-and-keep basis. MCImetro is willing to make that exception in order to save litigation costs and because of the traffic levels involved.

Because such a compromise would be an exception to MCImetro's policy, we have proposed language making clear the limited circumstances in which it has been made available. Either of the following provisions would be acceptable to MCImetro:

- "The Parties further agree that if traffic volumes fall below 250,000 MOUs for three consecutive months CLEC may disconnect facilities that were established at the POC and the Parties will exchange traffic indirectly.)" (This language would be inserted at the end of section 4.1.1.)
- "The obligations of the Parties under this Agreement are subject to the condition that, for the twenty-four calendar months immediately preceding the Effective Date, traffic volumes exceeded an average of one million seven hundred fifty thousand (1,750,000) minutes of use per month during such twenty-four month period. The Parties acknowledge and agree that

Edward T. Depp, Esq.
July 14, 2010
Page 2

Appendix 1D accurately reflects the traffic volumes between the Parties for the twenty-four calendar months immediately preceding the Effective Date." (This language would be included in a new section 14.20.)

Please note that the second provision has been modified since the last time the parties discussed it. The average traffic volume has been lowered to reflect recent decreases and we have proposed to include as an appendix a chart showing the actual traffic volumes that the parties would acknowledge and agree is accurate. (The chart is enclosed for your reference.) Those changes should address any concern that Brandenburg would not meet the stated condition.

Please let us know by July 28, 2010 whether Brandenburg is willing to accept either of the two provisions noted above or if Brandenburg has an alternative proposal. If we are not able to reach terms based one of the provisions MCImetro has offered, or an acceptable alternative that addresses our concerns, MCImetro will inform the Commission that the parties are at impasse and request that the Commission proceed to resolve our dispute.

I look forward to your response.

Sincerely,



Dulaney L. O'Roark III

APPENDIX 1 D

Originating MOUs

Jul-08	2,341,122
Aug-08	2,411,607
Sep-08	2,232,310
Oct-08	2,196,820
Nov-08	2,243,621
Dec-08	2,200,697
Jan-09	1,986,703
Feb-09	1,546,288
Mar-09	1,869,483
Apr-09	1,609,956
May-09	1,536,389
Jun-09	1,504,015
Jul-09	1,575,638
Aug-09	1,480,322
Sep-09	1,399,360
Oct-09	1,630,538
Nov-09	2,018,041
Dec-09	1,972,950
Jan-10	1,926,465
Feb-10	1,683,507
Mar-10	1,843,593
Apr-10	1,593,013
May-10	1,523,359
Jun-10	1,362,134

43,687,931

1,820,330 Average monthly Brandenburg Originating MOUs from July
2008 to June 2010