



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

RECEIVED

August 8, 2008

AUG 08 2008

PUBLIC SERVICE
COMMISSION

VIA HAND DELIVERY

Hon. Stephanie Stumbo
Executive Director
Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

**Re: *In the Matter of: Brandenburg Telephone Company v. MCI Metro Access
Transmission Services, LLC and Windstream Kentucky East, Inc.***

Dear Ms. Stumbo:

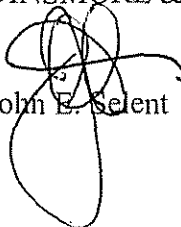
Enclosed for filing in the above-referenced case, please find one original and eleven (11) copies of the prefiled direct testimony of Allison T. Willoughby on behalf of Brandenburg Telephone Company. Please file-stamp one copy, and return it to our courier.

Please note that Ms. Willoughby's verification of this testimony will be provided to the Commission shortly.

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

Very truly yours,

DINSMORE & SHOHL LLP



John E. Selent

JES/lb
Enclosures

RECEIVED

AUG 08 2008
PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

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

August 8, 2008

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:

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

**PREFILED 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").

5 **Q. WHAT IS YOUR POSITION AT BRANDENBURG?**

6 A. I am the Assistant General Manager of Brandenburg.

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND PRIOR**
8 **PROFESSIONAL EXPERIENCE.**

9 A. I am a graduate of the University of Kentucky where I received my B A. in accounting. I am
10 a licensed certified public accountant in the Commonwealth of Kentucky. For the last twenty-two
11 years, I have held various positions with Brandenburg.

12 **Q. WHAT ARE YOUR DUTIES AND RESPONSIBILITIES AT BRANDENBURG?**

13 A. As Assistant General Manager, I am responsible for overseeing the technical, financial, and
14 managerial condition of the company so that it is able to continue providing the highest quality

1 telecommunications services to its customers. I report directly to the Board of Directors of the
2 Company with respect to these issues.

3 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY TODAY?**

4 A. I am here to request that the Commission take the following five actions. First, Brandenburg
5 requests that the Commission order MCImetro Access Transmission Services, LLC ("MCImetro") to
6 immediately establish dedicated trunking facilities to Brandenburg for the exchange of the traffic at
7 issue in this dispute. Second, Brandenburg requests that the Commission deny Windstream
8 Kentucky East, Inc. ("Windstream") the recovery of any alleged damages or other charges from
9 Brandenburg. Third, Brandenburg requests that the Commission order MCImetro to immediately
10 enter into an agreement for the exchange of this traffic with Brandenburg. Fourth, Brandenburg
11 requests that the Commission order MCImetro to be financially responsible for whatever portion of
12 the dedicated facilities that are located outside of Brandenburg's incumbent network. And fifth,
13 Brandenburg requests that the Commission order MCImetro not to charge Brandenburg for the
14 delivery of this traffic.

15 **Q. PLEASE PROVIDE THE COMMISSION WITH SOME BACKGROUND**
16 **REGARDING THIS DISPUTE.**

17 A. Certainly. This dispute is the culmination of MCImetro's nearly three years of refusal to
18 enter into an appropriate traffic exchange agreement with Brandenburg. The facts of this dispute are
19 set forth in detail in Brandenburg's formal complaint against MCImetro and Windstream (Case No.
20 2008-00239) (a copy of that complaint is attached hereto as Exhibit 1), and those facts are as
21 follows.

22 Sometime in or about 2005 – and unbeknownst to Brandenburg – MCImetro began providing
23 its internet service provider ("ISP") customer(s) with telephone numbers (for dial-up internet access)

1 that appeared to qualify as non-toll to Brandenburg's exchanges pursuant to a long-standing extended
2 area service ("EAS") agreement with Windstream. It is my understanding that these numbers were
3 originally Windstream numbers that MCImetro ported from Windstream's Elizabethtown service
4 territory (with which Brandenburg has a small amount of EAS traffic). MCImetro provided its ISP
5 customer(s) with these telephone numbers notwithstanding the facts that: (i) it had no traffic
6 exchange agreement with Brandenburg; and (ii) it had made no other interim arrangements for the
7 exchange of this traffic with Brandenburg.

8 In late 2005, Brandenburg began receiving complaints from a small number of its own end-
9 users. These Brandenburg end-users complained that they were unable to complete local calls to
10 their ISP. Brandenburg investigated these complaints, and it discovered that MCImetro had ported
11 telephone numbers from Windstream and was the underlying carrier serving the ISP(s) in question.
12 Rather than block this traffic to these former Windstream numbers, Brandenburg – believing the
13 volume of traffic to be de minimis – used its existing EAS trunk group to the Windstream
14 Elizabethtown switch to terminate the traffic to Windstream on an interim basis. In fact, given that
15 MCImetro had not established trunking facilities or a traffic exchange agreement with Brandenburg,
16 this was the only means by which Brandenburg could continue to route the calls without causing its
17 own end-users to incur toll charges.

18 To seek a long-term solution to what was meant to be only an interim arrangement,
19 Brandenburg promptly sent MCImetro a proposed traffic exchange agreement in late 2005 to address
20 this issue. Brandenburg and MCImetro exchanged comments regarding this agreement during the
21 next few months. Discussion ultimately stalled, however, and MCImetro did not reinstate traffic
22 exchange agreement negotiations with Brandenburg. We expect that this is because MCImetro had
23 no incentive to do so as long as the traffic was being delivered to it free of charge.

1 In February of 2007, Windstream contacted Brandenburg regarding certain traffic that
2 Brandenburg was delivering to Windstream without having performed Brandenburg's typical local
3 number portability ("LNP") query. Windstream threatened to block the traffic if Brandenburg did
4 not promptly begin completing the LNP query on these calls and routing them based upon the local
5 routing number ("LRN").

6 Brandenburg promptly investigated the matter and discovered that virtually all of the traffic
7 in question was MCImetro traffic that Brandenburg had been delivering to MCImetro (through
8 Windstream) since 2005. Brandenburg subsequently implemented the changes necessary to query
9 the traffic in question. Windstream, meanwhile, began demanding that Brandenburg establish new
10 trunking facilities to deliver this traffic to its Elizabethtown tandem. Notwithstanding this demand,
11 Windstream repeatedly indicated that it would continue to transit queried calls from Brandenburg to
12 the appropriate third-party. Specifically, and in Windstream's own words, "Windstream agreed to
13 transit the traffic for Brandenburg, but requested that Brandenburg establish direct trunks to the
14 carrier, or to establish a tandem trunk group to the Elizabethtown tandem." (*See Exhibit 1 at para.*
15 25 (citing from the March 16, 2007 (8:45 a.m.) e-mail from Windstream employee Steven G.
16 Williams to Brandenburg employee Randall Bradley, and copying Windstream's in-house legal
17 counsel and Vice President of Kentucky Governmental Affairs).)

18 Brandenburg, meanwhile, had already been working to rectify this matter by establishing
19 direct trunks to MCImetro. In fact, we had already reinitiated negotiations for a traffic exchange
20 agreement on February 21, 2007, and we continued to negotiate that agreement while we
21 simultaneously worked with Windstream to ensure that the MCImetro-bound traffic was properly
22 queried before it was delivered to Windstream. Provided Brandenburg completed the LNP query
23 prior to routing the call to Windstream, Windstream had agreed that, "Per our discussion,

1 Windstream will temporarily continue to route the call from the Elizabethtown end office to the
2 CLEC that owns the LRN." (See Exhibit 1 at para. 27 (citing from the March 27, 2007 (3:24 p.m.)
3 e-mail from Windstream employee Steven G. Williams to Brandenburg employee Randall Bradley,
4 and copying Windstream's in-house legal counsel and Vice President of Kentucky Governmental
5 Affairs).) Thus, when Brandenburg had the LNP query solution in place, Windstream informed
6 Brandenburg that it was "receiving the LRN's for locally ported numbers over the Elizabethtown end
7 office trunk groups, and [it] continues to pass the traffic to the carriers." (See Exhibit 1 at para. 29
8 (citing from the April 3, 2007 (3:29 p.m.) e-mail from Windstream employee Steven G. Williams to
9 Brandenburg employee Randall Bradley).) Once Windstream continued to "pass the traffic to the
10 carriers," negotiations for the traffic exchange agreement between Brandenburg and MCImetro
11 stalled once again.

12 MCImetro, once more, did nothing to reinitiate those negotiations. Then, in early 2008,
13 Windstream informed Brandenburg – in the context of Case No. 2007-0004 – that MCImetro was
14 terminating more than three million (3,000,000) minutes of traffic per month to its ISP customers.
15 Once again, Brandenburg contacted MCImetro to finalize a traffic exchange agreement and make
16 arrangements to place the traffic on dedicated trunks, thereby removing the traffic from
17 Windstream's network.

18 MCImetro had recently entered into such an agreement with South Central Rural Telephone
19 Cooperative Corporation, Inc. ("SCRTC"). Accordingly, Brandenburg proposed a substantively
20 identical agreement to govern its relationship with MCImetro. To date, MCImetro has refused to
21 enter into such an agreement, however, claiming that: (i) Brandenburg must establish trunking
22 facilities to a point of interface located outside Brandenburg's incumbent network; and (ii)

1 MCImetro is entitled to compensation for the transport and termination of this EAS traffic.

2 MCImetro is wrong on both issues.

3 While Brandenburg was again pushing its effort to finalize a traffic exchange agreement with
4 MCImetro, Windstream reentered the picture on June 2, 2008. That morning, with no advance
5 notice to either Brandenburg or MCImetro, Windstream unilaterally ceased delivering the
6 Brandenburg-to-Windstream traffic that it had previously been delivering for approximately two-
7 and-a-half years.

8 Although Windstream has once again been routing the traffic in the historical manner, it has
9 been clear that it no longer desires to be the intermediary for the delivery of this traffic to MCImetro.
10 Brandenburg, likewise, has no desire for Windstream to continue in its intermediary role, and it is for
11 this very reason that we began work on a complaint to address this issue even before the
12 Commission formally established this case. MCImetro receives well more than 300,000 minutes of
13 traffic per month from Brandenburg (in fact it receives approximately three million minutes per
14 month), and there is really no contest (even from MCImetro) that this volume of traffic should be
15 exchanged over dedicated trunking facilities. For that reason, Brandenburg is hopeful that the
16 Commission will order MCImetro to immediately establish those facilities, thereby allowing the
17 traffic to be removed from Windstream's network.

18 **Q. HAVE YOU ESTIMATED WHAT IT WOULD COST MCIMETRO TO ESTABLISH**
19 **THOSE FACILITIES?**

20 A. Yes. First, I want to be clear that Brandenburg does not propose to charge MCImetro for the
21 delivery of traffic over that portion of facilities that lie within Brandenburg's incumbent network.
22 From a point of interface at the edge of Brandenburg's network, we estimate that MCImetro could
23 establish dedicated DS1 trunking facilities from Brandenburg's boundary to its point of presence in

1 Elizabethtown for \$350 to \$400 per month for an initial DS1, and \$200 to \$380 per month for each
2 additional facility provisioned. Depending on the quantity ordered, each DS1 would have a
3 nonrecurring installation rate ranging from approximately \$100 to \$800 per facility. This estimate is
4 based only on rates that are known to me. It is possible that MCImetro may have other alternatives
5 available at lesser cost.

6 **Q. WHAT WOULD BE THE ANTICIPATED CONSEQUENCE OF ORDERING**
7 **MCIMETRO TO IMMEDIATELY ESTABLISH THOSE FACILITIES?**

8 A. First and foremost, it would solve any prospective issues Windstream has expressed with
9 respect to its existing role in the delivery of this traffic. That is, Windstream would no longer be
10 performing any action with respect to this traffic. Consequently, this would leave Windstream with
11 only the retrospective issue of whether it is entitled to compensation for its past involvement in the
12 delivery of the traffic, and from whom.

13 **Q. ARE THERE ANY OTHER EXISTING FACILITIES BY WHICH BRANDENBURG**
14 **MIGHT BE ABLE TO DELIVER THE TRAFFIC TO MCIMETRO ON A NON-TOLL**
15 **BASIS?**

16 A. No. Windstream and MCImetro have claimed that the traffic should be routed to an AT&T
17 tandem in Louisville, but Brandenburg has no EAS facilities available to route the traffic in this
18 manner. This is precisely the reason that MCImetro needs to immediately establish trunking
19 facilities for the exchange of this traffic.

20 **Q. WHAT IS YOUR UNDERSTANDING OF WHETHER THE COMMISSION MAY**
21 **AWARD WINDSTREAM THE DAMAGES IT SEEKS IN THIS MATTER?**

22 A. I am not a lawyer, but my understanding is that the Commission has no authority to award
23 the damages that Windstream seeks, particularly where the alleged charges are not contained in any

1 tariff or agreement. To the best of my knowledge, there is no applicable tariff or agreement
2 obligating Brandenburg to pay the amounts Windstream seeks to recover. In fact, even if the
3 Commission were able to award damages, I have seen no cost study or other evidence sufficient to
4 support the "proxy" rate Windstream claims should apply.

5 **Q. DO YOU BELIEVE BRANDENBURG IS RESPONSIBLE FOR ANY DAMAGES?**

6 A. No. My understanding of the applicable law is that Brandenburg (as a rural incumbent local
7 exchange carrier ("RLEC")) is only responsible for exchanging traffic with MCImetro at a point of
8 interface located on Brandenburg's incumbent network. It is my understanding that the Commission
9 affirmed this same principle in its orders in the CMRS - RLEC arbitrations (Case No. 2006-00215
10 and its sister cases). Because the costs in question here arise outside of Brandenburg's incumbent
11 network, Brandenburg should not be liable. Instead, any such costs should be borne by MCImetro,
12 who unilaterally chose not to establish dedicated facilities that would have removed Windstream
13 from this dispute in the first place.

14 **Q. IS THERE ANY OTHER ACTION BRANDENBURG BELIEVES THE**
15 **COMMISSION SHOULD TAKE IN THIS MATTER?**

16 A. Yes. Regardless of how the Commission resolves the other two issues, Brandenburg still
17 requires a traffic exchange agreement with MCImetro. As I have already explained, we have been
18 trying to get MCImetro to enter into a traffic exchange agreement with us for more than two years.
19 And, as I think the Commission probably sees from the facts of this case, the refusal of a company to
20 enter into a traffic exchange agreement notwithstanding the ongoing exchange of traffic only causes
21 problems for all involved. We needed an agreement more than two years ago, and we need one now,
22 and we remain hopeful that the Commission will order MCImetro to do so immediately.

1 **Q. DO YOU HAVE AN UNDERSTANDING OF WHY MCIMETRO HAS NOT**
2 **ENTERED INTO SUCH AN AGREEMENT TO DATE?**

3 A. I do not know why MCI metro has refused to enter into the traffic exchange agreements we
4 have proposed. Our proposed agreements have been reasonable. In fact, we most recently proposed
5 that MCI metro enter into an agreement that is substantively identical to one it recently executed with
6 SCRTC. And still, MCI metro refuses to enter into an agreement with us.

7 My understanding is that MCI metro is insisting on Brandenburg paying for traffic exchange
8 trunking facilities that would lie outside of Brandenburg's network. It is also my understanding from
9 counsel that Brandenburg is under no obligation to enter such an arrangement. We do not do so with
10 any other carrier with which we exchange traffic, and we believe our obligation to exchange traffic
11 extends only to the establishment of a point of interface on the RLEC's incumbent network. Like the
12 SCRTC agreement provides, we are willing to provision facilities to a point of interface on our
13 network, but we should not be forced to bear the cost of extending facilities beyond that point.

14 I also understand that MCI metro has insisted on charging Brandenburg for the transport and
15 termination of traffic destined for the ISP's it serves. Again, it is my understanding from counsel
16 that Brandenburg is under no obligation to enter such an arrangement. The traffic in question is EAS
17 traffic (as distinguished from "local traffic") at best, and we do not pay any other carrier for the
18 exchange of EAS traffic. Furthermore, this is also traffic destined for ISPs, and it is my
19 understanding from counsel that Brandenburg is under no obligation to compensate MCI metro for
20 this traffic.

21 Moreover, I fail to understand why Brandenburg's rural wireline customers (even those who
22 do not use dial-up ISP service) should be forced to subsidize out-of-state ISPs like MCI metro's end-
23 user, America Online. The traffic at issue here is not local by any stretch of the imagination. It is

1 traffic destined for a modem bank located somewhere outside Kentucky, and it is unfair for
2 MCImetro to expect Brandenburg's rural customers to bear the cost of subsidizing a dial-up ISP
3 service that many of them do not even use. Therefore, I request that the Commission determine that
4 Brandenburg is not required to compensate MCImetro for the transport and termination of the
5 "EAS," ISP traffic in question.

6 **Q. WOULD YOU PLEASE SUMMARIZE, THEN, THE ACTIONS YOU REQUEST**
7 **THE COMMISSION TAKE?**

8 A. Certainly.

9 First, Brandenburg requests that the Commission order MCImetro to immediately establish
10 dedicated trunking facilities to Brandenburg for the exchange of the traffic at issue in this dispute.

11 Second, Brandenburg requests that the Commission deny Windstream the recovery of any
12 alleged damages or other charges from Brandenburg.

13 Third, Brandenburg requests that the Commission order MCImetro to immediately enter into
14 an agreement for the exchange of this traffic with Brandenburg.

15 Fourth, Brandenburg requests that the Commission order MCImetro to be financially
16 responsible for establishing the dedicated facilities lying outside of Brandenburg's incumbent
17 network.

18 Fifth, Brandenburg requests that the Commission order MCImetro not to charge Brandenburg
19 for the exchange of this traffic.

20 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

21 A. Yes.

1
2 VERIFICATION

3 I hereby verify that the foregoing testimony is true and accurate to the best of my knowledge
4 and belief.
5

6
7 _____
8 Allison T. Willoughby,
9 Assistant General Manager of Brandenburg Telephone
Company

COMMONWEALTH OF KENTUCKY)
)SS
COUNTY OF BARREN)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by ALLISON T. WILLOUGHBY, to me known, in her capacity as Assistant General Manager of Brandenburg Telephone Company, this ____ day of August, 2008.

My commission expires: _____.

Notary Public

CERTIFICATE OF SERVICE

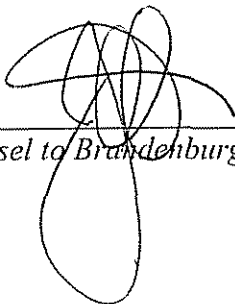
I hereby certify a true and accurate copy of the foregoing was served, by first-class United States mail, sufficient postage prepaid, on the following individuals this 8th day of August, 2008.

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, Kentucky 40202

Counsel to MCImetro



Counsel to Brandenburg Telephone Company

135754_1

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

In the Matter of:

BRANDENBURG TELEPHONE COMPANY)	
)	
Complainant)	
)	Case No. _____
v.)	
)	
)	
MCIMETRO ACCESS TRANSMISSION SERVICES, LLC)	
)	
and)	
)	
WINDSTREAM KENTUCKY EAST, INC.)	
)	
Defendants)	

FORMAL COMPLAINT

Brandenburg Telephone Company ("Brandenburg"), by counsel and pursuant to KRS 278.030, 278.040, 278.170, 278.260, and 278.280, for its formal complaint against MCImetro Access Transmission Services, LLC ("MCImetro") and Windstream Kentucky East, Inc. ("Windstream"), hereby states as follows.

1. The full name and address of Brandenburg is Brandenburg Telephone Company, P. O. Box 599, 200 Telco Drive, Brandenburg, Kentucky 40108-0599. Brandenburg is an incumbent local exchange carrier authorized by the Public Service Commission of the Commonwealth of Kentucky (the "Commission") to provide telecommunications services in the Commonwealth of Kentucky. Brandenburg Telephone is a Kentucky corporation.

2. The full name and address of MCImetro is MCImetro Access Transmission Services, LLC, 2250 Wakeside Boulevard, Richardson, Texas 75082.¹ MCImetro is a competitive local exchange carrier ("CLEC") authorized to provide telecommunications services in Boone, Campbell, Gallatin, and Kenton Counties, Kentucky.² MCImetro is a foreign limited liability company that, upon information and belief, is organized under the laws of the State of Delaware.

3. The full name and address of Windstream is Windstream Kentucky East, Inc., 130 West New Circle Road, Suite 170, Lexington, Kentucky 40505. Windstream is an incumbent local exchange carrier authorized by the Public Service Commission of the Commonwealth of Kentucky (the "Commission") to provide telecommunications services in the Commonwealth of Kentucky. Windstream is a foreign corporation that, upon information and belief, is organized under the laws of the State of Delaware.

4. Upon information and belief, MCImetro provides services to one or more internet service providers ("ISPs") doing business in Kentucky. At least one of these ISPs provides dial-up internet services to Brandenburg's end-user customers.

5. The facts supporting this complaint are set forth more fully below; but briefly, this complaint concerns MCImetro's refusal to: (i) establish trunking facility arrangements with Brandenburg for the dial-up ISP traffic destined for MCImetro's ISP customers; and (ii) enter into an agreement with Brandenburg to memorialize the terms and conditions applicable to this traffic.

¹ In communications prior to the filing of this complaint, MCImetro represented to Brandenburg that its name is Verizon Access. A search of the Commission's online utility information system does not reveal a certificated entity with that name. A search of the Kentucky Secretary of State's website, however, reveals that "Verizon Access Transmission Services" is an assumed name of MCImetro. Accordingly, Brandenburg has styled this complaint against MCImetro, which appears to be the certificated entity that is involved in this dispute.

² The Commission's online utility information system indicates that MCImetro's authority to operate as a CLEC extends only to these four counties, and not to Brandenburg's territory.

6. Given Windstream's current position as the intermediary carrier terminating calls originated by Brandenburg end-user customers to MCImetro customers, Windstream is an indispensable party in resolving this dispute.

APPLICABLE LAW

7. KRS 278.040 vests the Commission with exclusive jurisdiction "over the regulation of rates and service of utilities" within the Commonwealth.

8. KRS 278.260 further vests the Commission with original jurisdiction over any "complaint as to [the] rates or service of any utility" and empowers the Commission to investigate and remedy such complaints.

9. As a utility subject to the jurisdiction of the Commission, MCImetro must engage in "just, reasonable, safe, proper, adequate, [and] sufficient" practices. KRS 278.280(1).

10. Similarly, Kentucky law permits Brandenburg to "establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service." KRS 278.030(2). It may also "employ in the conduct of its business suitable and reasonable classifications of its service ... [that] take into account the nature of the use ... the quantity used ... the purpose for which used, and any other reasonable consideration." KRS 278.030(3).

STATEMENT OF FACTS

I. MCImetro Opens Telephone Numbers Local to Brandenburg.

11. Sometime in or about 2005 – and unbeknownst to Brandenburg – MCImetro began providing its ISP customer(s) with telephone numbers (for dial-up internet access) that appeared to be local to Brandenburg's exchanges pursuant to a long-standing EAS agreement with Windstream.

12. Upon information and belief, these numbers were numbers that MCImetro had ported from Windstream's Elizabethtown service territory (with which Brandenburg has a small amount of local traffic)

13. MCImetro provided its ISP customer(s) with these telephone numbers notwithstanding the facts that: (i) it had no traffic exchange agreement with Brandenburg; and (ii) it had made no other interim arrangements for the exchange of traffic with Brandenburg.

14. In late 2005, a small number of Brandenburg's end-users began complaining that they were unable to complete local calls to their ISP.

15. Upon investigation, Brandenburg discovered that MCImetro was the underlying carrier serving the ISP(s) in question.

16. Rather than block this traffic – which Brandenburg believed to be de minimis in volume – to numbers previously belonging to Windstream, Brandenburg terminated the traffic on an interim basis.

II. Brandenburg Initiates Negotiations for a Traffic Exchange Agreement.

17. Because MCImetro had no traffic exchange agreement with Brandenburg, and because MCImetro had not contacted Brandenburg to establish such an agreement, Brandenburg then promptly sent MCImetro a proposed traffic exchange agreement in late 2005 to address this customer-affecting issue. (*See Exhibit 1.*)

18. During the next few months, Brandenburg and MCImetro exchanged comments on the traffic exchange agreement.

19. Ultimately, however, the discussions stalled, and MCImetro (who was receiving the calls from Brandenburg's end-users) did not reinstate traffic exchange agreement negotiations with Brandenburg.

III. Windstream Demands That Brandenburg Complete LNP Queries and Deliver MCImetro Traffic to the Windstream's Elizabethtown Tandem.

20. Then, in a February 15, 2007 e-mail, Windstream contacted Brandenburg regarding certain traffic that Brandenburg was delivering to Windstream without having performed Brandenburg's typical local number portability query.

21. In that same e-mail, Windstream threatened that, unless Brandenburg began completing the LNP query and routing the call based upon the local routing number ("LRN"), Windstream would block the traffic on February 26, 2007. (*See Exhibit 2*)

22. Upon investigation, Brandenburg discovered that virtually all of the traffic in question was MCImetro traffic that Brandenburg had been delivering to MCImetro (through Windstream) since 2005.

23. Brandenburg promptly began implementing the changes necessary to query the traffic in question.

24. Windstream, meanwhile, soon began demanding that Brandenburg establish new trunking facilities and deliver this traffic to its Elizabethtown tandem. (*See Exhibit 3*)

25. Notwithstanding this demand, Windstream repeatedly indicated that it would continue to transit queried calls from Brandenburg to the appropriate third-party. (*See id.*) Specifically, "Windstream agreed to transit the traffic for Brandenburg, but requested that Brandenburg establish direct trunks to the carrier, or to establish a tandem trunk group to the Elizabethtown tandem." (*See id.* at *3.)

26. With Brandenburg still working on implementing the LNP queries for the MCImetro traffic, Windstream once again demanded (on March 27, 2007) that "all calls coming from Brandenburg into the Elizabethtown end office must be post query." (*See id.* at *1 ("Please be

advised that starting Tuesday, April 3, all calls coming from Brandenburg into the Elizabethtown end office must be post query").)

27. However, provided Brandenburg completed the LNP query prior to routing the call to Windstream, Windstream agreed that, "Per our discussion, Windstream will temporarily continue to route the call from the Elizabethtown end office to the CLEC that owns the LRN." (*See id.*)

28. Within days, Brandenburg had the LNP query solution in place, and it was querying all calls delivered to Windstream.

29. Then, on Tuesday April 3, 2007, Windstream further notified Brandenburg that "Windstream is receiving the LRN's for locally ported numbers over the Elizabethtown end office trunk groups, and [Windstream] continues to pass the traffic to the carriers." (*See Exhibit 4.*)

IV. Brandenburg Reinitiates Negotiations for a Traffic Exchange Agreement.

30. Meanwhile, on February, 21, 2007, Brandenburg had also written to MCImetro and reinitiated negotiations for a traffic exchange agreement. (*See Exhibit 5.*)

31. Brandenburg and MCImetro continued negotiating a traffic exchange agreement.

32. Once Windstream "continued[d] to pass the traffic" to MCImetro, however, the negotiations between MCImetro and Brandenburg stalled once again.

V. Brandenburg Reinitiates Negotiations with MCImetro, and MCImetro Refuses to Enter an Appropriate Traffic Exchange Agreement.

33. In early 2008, Brandenburg learned – the context of Case No. 2007-0004 – that MCImetro was terminating to its ISP customer(s) more than three million (3,000,000) minutes of traffic per month.

34. As a result, Brandenburg promptly contacted MCImetro, yet again, to finalize a traffic exchange agreement and make arrangements to place the traffic on dedicated trunks, thereby removing the traffic from Windstream's network.

35. To this end, Brandenburg proposed that MCImetro execute an agreement that is substantively identical to a traffic exchange agreement that MCImetro previously executed with South Central Rural Telephone Cooperative Corporation, Inc. (*See Exhibit 6.*)

36. MCImetro responded to this request by indicating a general willingness to negotiate a mutually-acceptable arrangement with Brandenburg.

37. Nevertheless, it cited some alleged "specific circumstances" with respect to its network arrangements with South Central as meriting further discussion with Brandenburg.

38. Since that time, MCImetro and Brandenburg have had numerous discussions regarding the appropriate contents of a traffic exchange agreement between them.

VI. MCImetro Refuses to Establish an Interconnection Point on Brandenburg's Network, and It Demands Reciprocal Compensation for ISP-Bound Traffic.

39. Given the approximately three million (3,000,000) minutes of traffic being exchanged each month, MCImetro has not contested the appropriateness of exchanging traffic with Brandenburg by means of dedicated facilities.

40. Instead, MCImetro takes issue with: (i) its obligation to establish trunking at an interconnection point within Brandenburg's network; and (ii) the exchange of MCImetro's ISP traffic on a bill-and-keep basis.

41. As telecommunications carriers under the *Communications Act of 1934, as Amended* by the *Telecommunications Act of 1996* (the "Act"), both MCImetro and Brandenburg are obligated "to interconnect directly or indirectly with the facilities and equipment" of each other. 47 U.S.C. 251(a)(1).

42. However, as an ILEC, Brandenburg's interconnection obligations do have some limitation. Specifically, "[t]he Act is careful to explain that an ILEC's obligation to interconnect . . . extends only to a 'point within the carrier's network.'" *In the Matter of: Petition of Ballard Rural*

*Telephone Cooperative Corporation, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with American Cellular f/k/a ACC Kentucky License LLC, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, Kentucky Public Service Commission Case No. 2006-00215, 2007 Ky. PUC LEXIS 191, *9-10 (Order of March 19, 2007) (hereinafter CMRS-RLEC Arbitrations)*

43. While the Commission certainly encourages carriers to interconnect their facilities in an efficient manner, it also "recognizes that an RLEC, as an ILEC, cannot be required to establish interconnection points beyond its network." *Id.* at *24.³

44. No reasonable interpretation of any federal or state law, however, permits MCImetro to indefinitely exchange traffic with Brandenburg without entering a traffic exchange agreement defining the parties' rights and obligations with respect to that relationship.

45. Likewise, no reasonable interpretation of any federal or state law permits MCImetro to exchange more than three million (3,000,000) minutes of traffic per month with Brandenburg without establishing dedicated facilities to Brandenburg's network to do so.

46. Similarly, MCImetro may not demand that Brandenburg pay reciprocal compensation to MCImetro with respect to the ISP-bound traffic at issue in this dispute.

47. Paragraph 81 of the April 27, 2001, Order on Remand and Report and Order of the Federal Communications Commission ("FCC") in CC Docket No. 96-98 (*In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*) and CC Docket No. 99-68 (*In the Matter of Intercarrier Compensation for ISP Bound Traffic*) (hereinafter "ISP Order") provides:

³ The Commission also recognizes that it is appropriate for carriers to interconnect with RLECs on a dedicated basis once the volume of traffic being exchanged exceeds the threshold of a DS-1 facility. *Id.* at *17. A monthly volume of 300,000 minutes of use per month satisfies this DS-1 threshold. *Id.* (Order of November 9, 2007 at *16.)

Finally, a different rule applies in the case where carriers are not exchanging traffic pursuant to interconnection agreements prior to adoption of this Order (where, for example, a new carrier enters the market or an existing carrier expands into a market it previously had not served) In such a case, as of the effective date of this Order, carriers shall exchange ISP-bound traffic on a bill-and-keep basis during this interim period. We adopt this rule for several reasons. First, our goal here is to address and curtail a pressing problem that has created opportunities for regulatory arbitrage and distorted the operation of competitive markets. In so doing, we seek to confine these market problems to the maximum extent while seeking an appropriate long-term resolution in the proceeding initiated by the companion *NPRM*. Allowing carriers in the interim to expand into new markets using the very intercarrier compensation mechanisms that have led to the existing problems would exacerbate the market problems we seek to ameliorate. For this reason, we believe that a standstill on any expansion of the old compensation regime into new markets is the more appropriate interim answer. Second, unlike those carriers that are presently serving ISP customers under existing interconnection agreements, carriers entering new markets to serve ISPs have not acted in reliance on reciprocal compensation revenues and thus have no need of a transition during which to make adjustments to their prior business plans.

Id. (emphasis added).

48. Even though the FCC subsequently determined that certain local ISP-bound traffic is subject to reciprocal compensation at a rate of \$0.0007 per minute of usage ("MOU"), *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Order*, WC Docket 03-171 (October 18, 2004) (hereinafter, *Core Forbearance Order*), this determination does not affect the essentially non-local ISP-bound traffic that MCImetro has, in this case, homed behind AT&T's Louisville tandem

49. That is, the ISP-bound traffic in question here is not actually local traffic; it is, instead, traffic that MCImetro (through the use of a virtual NXX or some other practice) has made to appear local to Brandenburg, even though it is not.

50. MCImetro and Windstream effectively acknowledge this conclusion by agreeing to exchange this type of traffic on a bill-and-keep basis, rather than the \$0.0007 MOU rate that the FCC applied in the *Core Forbearance Order*.

51. Specifically, in Section 1.3 of Attachment 12 ("Compensation") of their November 14, 2005 interconnection agreement (which was executed after the *Core Forbearance Order*), MCImetro and Windstream agreed:

The Parties agree to exchange ISP Bound Traffic in accordance with the Order on Remand by the Federal Communications Commission ("FCC") in CC Docket No. 96-98 on April 27, 2001. Specifically, ALLTEL has not offered or adopted the FCC's rate caps as set forth in that Order; pursuant to paragraph 81 of that Order, ALLTEL is required to pay interCarrier compensation for ISP Bound Traffic on a bill and keep basis. Further, the Parties acknowledge that because they did not exchange any ISP Bound Traffic pursuant to an interconnection agreement prior to the date of the above-referenced Order, all minutes of ISP Bound traffic are to be exchanged on a bill and keep basis between the Parties in accordance with paragraph 81 of the Order, such that neither party owes the other Party any compensation for the origination, transport or termination of such traffic.

Id.

52. MCImetro also agreed to exchange the same traffic on a bill-and-keep basis with South Central Rural Telephone Cooperative Corporation, Inc.

53. Nevertheless, MCImetro has refused to enter into any agreement recognizing these basic obligations.

VII. MCImetro's Refusal to Execute an Appropriate Traffic Exchange Agreement Endangers Brandenburg's End-User Customers.

54. As a direct result of MCImetro's refusal to execute an appropriate traffic exchange agreement, the traffic at issue continues to be exchanged through the network of Windstream, who has once blocked this traffic and threatened to do so again if Brandenburg does not begin routing the

MCImetro traffic to Windstream's Elizabethtown tandem or, in accordance with industry routing protocols, to the Louisville tandem, which these numbers subtend.

55. Unfortunately, Brandenburg's end-user customers are the ones who bear the threat of MCImetro's obstinance.

56. MCImetro's refusal to establish dedicated facilities to Brandenburg's network and enter into an appropriate traffic exchange agreement with Brandenburg constitutes an "[un]just, [un]reasonable, [im]proper, [in]adequate, and [in]sufficient" practice prohibited by KRS 278.280(1).

57. Likewise, Windstream's demands that Brandenburg establish new trunking facilities and deliver the traffic to MCImetro at Windstream's Elizabethtown tandem constitutes an "[un]just, [un]reasonable, [im]proper, [in]adequate, and [in]sufficient" practice prohibited by KRS 278.280(1).

58. The volume of the traffic MCImetro seeks to exchange with Brandenburg well exceeds a DS-1 volume of traffic. Despite this fact, MCImetro's refusal to enter into an appropriate traffic exchange agreement forces Brandenburg and Windstream to continue to transit the traffic.

59. Windstream, in turn, may seek to hold Brandenburg liable for those same costs, despite the fact that any such costs result solely from MCImetro's unilateral decisions not to establish dedicated facilities to an interconnection point on Brandenburg's network and not to execute a traffic exchange agreement with Brandenburg.

60. In short, MCImetro's strategy throughout the life of this matter has been to freeload upon the administrative and networking costs of carriers like Brandenburg and Windstream.

61. Brandenburg reiterates that if MCImetro does not, by July 3, 2008, sign the traffic exchange agreement Brandenburg has already proposed (and which MCImetro already executed with South Central Rural Telephone Cooperative Corporation, Inc.), Brandenburg will begin routing traffic from Brandenburg end-user customers to MCImetro in accordance with the LRN, which is a

502 number located in Louisville, with which Brandenburg has no EAS calling. This, of course, means that the traffic will be routed to the Louisville tandem, which also means that the calls will have to be placed as toll calls by Brandenburg's end-user customers. (See June 20, 2008 Status Report to Commission Staff and June 20, 2008 Letter from Edward T. Depp to Douglas F. Brent, attached hereto as Exhibits 7 and 8, respectively.)

WHEREFORE, Brandenburg Telephone respectfully requests that the Commission take the following actions.

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;

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);

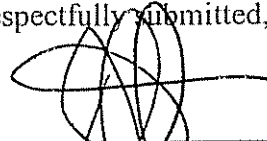
D. Order MCImetro to pay any charges or other costs that Windstream may seek to impose on Brandenburg for exchanging traffic with MCImetro;

E. Order that Brandenburg shall not be required to establish new trunking facilities and deliver traffic to MCImetro at Windstream's Elizabethtown tandem;

F. Schedule an informal conference or conferences to facilitate efficient resolution of this matter; and

G. Grant Brandenburg Telephone any and all other legal and equitable relief to which it is entitled.

Respectfully submitted,



John E. Selen

Edward T. Depp

Holly C. Wallace

DINSMORE & SHOHL LLP

1400 PNC Plaza

500 W. Jefferson Street

Louisville, KY 40202

(502) 540-2300 (telephone)

(502) 585-2207 (facsimile)

*Counsel to Brandenburg Telephone
Company*

133583_1