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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

July 7, 2008

**EMAIL AND FIRST CLASS MAIL**

Ms. Stephanie L. Stumbo  
Executive Director  
Public Service Commission  
P.O. Box 615  
Frankfort, KY 40602

***RE: Case No. 2008-00203—Response of MCImetro Access Transmission Services  
d/b/a Verizon Access to Windstream's Motion for Emergency Hearing***

Dear Ms. Stumbo:

Windstream Kentucky East has asked that the Commission conduct an “emergency” hearing on July 9, 2008 in lieu of the currently scheduled informal conference. Windstream’s motion was filed late in the afternoon preceding a holiday weekend. The Commission’s staff has requested Verizon Access to respond by noon today. Accordingly, Verizon Access provides brief comments in response to Windstream’s motion.

Windstream has not made the case for an emergency hearing. At its heart, this is a dispute concerning the relative obligations of local carriers involved in completing calls which originate on one network and terminate on another. Windstream claims it should be “fully compensated for the use of its network” and requests that the Commission order Brandenburg Telephone Company to make “immediate payment” of more than a quarter million dollars in “damages.” Even if this is a significant amount of money to Windstream, a payment dispute of this size is not immediately customer-affecting and is therefore not an emergency. In contrast, there was an emergency when Windstream took it upon itself to block the traffic at issue, disrupting Internet access for certain customers of Brandenburg Telephone Company. In that case it was appropriate for Verizon Access to ask the Commission to schedule an emergency hearing.

With the traffic flowing again, it is not obvious that Brandenburg Telephone Company’s current routing practices are “wrongful,” as claimed by Windstream. Windstream states it is not providing any “service” to Brandenburg Telephone Company. However, Windstream provides a

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tariffed "Transit Traffic Service" which specifically includes ICO-to-CLEC traffic. *See* Windstream Kentucky East Tariff P.S.C. KY. No. 7, Section S11.1.1.D.1. (A copy of the tariff section is included with this letter.) With this tariff in effect it is difficult to conceive how the Commission could immediately order Brandenburg Telephone Company to cease what Windstream calls the "misuse" of its network.

Moreover, in light of the tariffed "Transit Traffic Service" provided by Windstream, the only real dispute here appears to be whether Brandenburg Telephone Company has paid the tariffed charges for that service. That issue may be presented in Case No. 2007-00004, an investigation of the tariff itself, where both Windstream and Brandenburg are parties. But for the purposes of *this* case, the filed tariff is the law between Windstream and Brandenburg Telephone Company.

Finally, while Windstream asks the Commission to provide it "damages", this is actually a claim over rates. The Commission would not be able to award damages in any event. *See Carr v. Cincinnati Bell, Inc.*, 651 S.W.2d 126, 128 (Ky. Ct. App. 1983) ("Nowhere in Chapter 278 do we find a delegation of power to the PSC to adjudicate contract claims for unliquidated damages. Nor would it be reasonable to infer that the Commission is so empowered or equipped to handle such claims consistent with constitutional requirement.").

Verizon Access will participate in any conference or hearing scheduled by the Commission. However, the company believes that Windstream has not made a compelling argument for immediate action to address its concerns with Brandenburg Telephone Company. The Commission does not have to put aside other matters to deal with this situation unless a party alleges severe and immediate adverse effects on third parties.

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

Sincerely yours,

Douglas F. Brent

cc: Parties of Record  
Bruce F. Clark  
Cesar Caballero  
John E. Selent  
Richard Severy  
Robert Davis  
De' O'Roark

GENERAL CUSTOMER SERVICES TARIFF

WINDSTREAM KENTUCKY EAST, INC.

P.S.C. KY. No. 7  
Original Contents Page 1

ISSUED: December 1, 2006  
BY: Vice President  
Lexington, Kentucky

EFFECTIVE: December 1, 2006

S11. TELECOMMUNICATIONS SERVICE PROVIDER SERVICES

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OF KENTUCKY  
EFFECTIVE  
12/16/2006  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)

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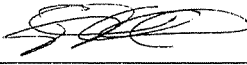
S11. TELECOMMUNICATIONS SERVICE PROVIDER SERVICES

S11.1 Transit Traffic Service

S11.1.1 Terms and Definitions

- A. Telecommunications Service Provider -a provider of local and/or access telecommunications service who is legally certified to provide service within the of Kentucky, or is licensed by the Federal Communications Commission (FCC) to provide Commercial Mobile Radio Service (CMRS). For purposes of this tariff, this definition includes, but is not limited to, CMRS providers, Competitive Local Exchange Carriers (CLECs) and Independent Telephone Companies (ICOs).
- B. Transit Traffic – Local Traffic originating on one Telecommunications Service Provider’s network that is delivered by Company to a different Telecommunications Service Provider’s network for termination.
- C. Transit Traffic Service – Company’s provision of the functions to allow a Telecommunications Service Provider to send and receive Transit Traffic.
- D. Local Traffic – for purposes of this tariff;
  - 1. For wireline-to-wireline traffic, Local Traffic is any intraLATA circuit switched call transiting Company’s network that originates from and terminates to carriers other than Company, and for which Company does not collect toll charges or access charges, either directly or indirectly, as the intraLATA toll provider for the end user. This traffic includes ICO-to-ICO traffic, CLEC-to-ICO traffic, ICO-to-CLEC traffic, and CLEC-to-CLEC traffic; or
  - 2. For wireless-to-wireless traffic, wireline-to-wireless traffic, and wireless-to-wireline traffic, Local Traffic is any circuit switched call originating from and terminating to carriers other than Company and transiting Company’s network that originates and terminates within the same Major Trading Area (MTA), subject to Company’s LATA restrictions. An MTA is the largest FCC-authorized wireless license territory which serves as the definition of local service area for CMRS traffic as defined in 47 C.F.R 24.202(a). This traffic includes, but is not limited to, CMRS-to-CMRS, CMRS-to-ICO, ICO-to-CMRS, CLEC-to-CMRS and CMRS-to-CLEC calls.

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S11. TELECOMMUNICATIONS SERVICE PROVIDER SERVICES

S11.1 Transit Traffic Service (Continued)

S11.1.2 Rules and Regulations

- A. This tariff provides the rates, terms and conditions for Company's provision of Transit Traffic Service. Pursuant to this tariff, charges for Transit Traffic Service in this tariff shall apply only to those Telecommunications Service Providers that do not have an interconnection agreement with Company providing for payment for Transit Traffic Service for any particular type of Transit Traffic as described in B. following. Charges for Transit Traffic Service in this tariff shall not be applied to any carrier who has an expired interconnection agreement providing for payment for Transit Traffic Service if the carrier is engaged in ongoing negotiation or arbitration for a new interconnection and the former agreement provides for continuing application during that period.
- B. If Transit Traffic is specifically addressed in a separate agreement between Company and the originating Telecommunications Service Provider, then the rates, terms and conditions contained in that separate agreement will apply in lieu of this tariff. If such separate agreement is limited to certain types of traffic or carriers, then the separate agreement will apply to those traffic types or carriers, and this tariff will continue to apply to any traffic types and carriers not covered under the separate agreement.
- C. Company offers Transit Traffic Service only for Transit Traffic that is intended to terminate to a Telecommunications Service Provider whose network is directly interconnected with Company's network. Where Company accepts Transit Traffic from a Telecommunications Service Provider, Company is not liable or responsible for payment to the terminating carrier. Such payment is the sole responsibility of the originating Telecommunications Service Provider. By utilizing Company's Transit Traffic Service for the delivery of Transit Traffic, the originating Telecommunications Service Provider is committing to establishing a traffic exchange agreement or other appropriate agreement to address compensation between the originating Telecommunication Service Provider and the terminating carrier(s).
- D. Notwithstanding anything in C. preceding to the contrary, in the event that the terminating Telecommunications Service Provider imposes on Company any charges or costs for the delivery of Transit Traffic, the originating Telecommunications Service Provider utilizing Company's Transit Traffic Services pursuant to this tariff shall reimburse Company for such charges or costs.

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S11. TELECOMMUNICATIONS SERVICE PROVIDER SERVICES

S11.1 Transit Traffic Service (Continued)

S11.1.2 Rules and Regulations (Continued)

- E. Company, as the tandem switching provider for Transit Traffic, will generate and deliver to the terminating Telecommunications Service Provider industry standard call detail records, where available, for its use in billing the originating Telecommunications Service Provider for the termination of Transit Traffic. Notwithstanding the foregoing, unavailability of such call detail records does not relieve the originating Telecommunications Service Provider of its obligation to pay the charges for Transit Traffic Service as specified in this tariff, nor does it create any liability to the terminating Telecommunications Service Provider on the part of Company.
- F. Telecommunications Service Providers originating Transit Traffic may elect one of two options for measuring Transit Traffic minutes of use for which charges are due.
1. The originating Telecommunications Service Provider shall utilize its originating switch recordings to compensate Company based upon actual Transit Traffic minutes of use ("Actual Measurements"). Telecommunications Service Providers electing to utilize Actual Measurements shall provide a monthly report to Company reflecting actual Transit Traffic minutes of use, along with payment on a per minute of use basis at the applicable rate set forth in Section S11.1.3 below, within sixty days of the date of usage.
  2. In lieu of Actual Measurements, the originating Telecommunications Service Provider shall provide to Company a percent local usage factor (PLU) estimating the percentage of total minutes of use delivered to Company that constitutes Transit Traffic ("Estimated Measurements"). The PLU must be provided to Company in writing within 30 days of the effective date hereof, or within 30 days of delivering Transit Traffic to Company. In the event the originating Telecommunications Service Provider fails to provide a PLU to Company during this timeframe, Company will assign a PLU to be used until a PLU is provided. To the extent a PLU is provided after the default PLU has taken effect, the PLU provided by the Telecommunications Service Provider shall be applied on a prospective basis only. The PLU shall be updated annually, or sooner in the event of a change in Local Traffic volume.

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S11.1 Transit Traffic Service (Continued)

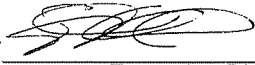
S11.1.2 Rules and Regulations (Continued)

- G. Company reserves the right to contest the accuracy of both the Actual Measurements and Estimated Measurements provided by Telecommunications Service Providers and may conduct audits or internal studies for verification.
- H. In the event a dispute arises regarding Actual Measurements or Estimated Measurements, Company will continue to bill based upon information provided by the Telecommunications Service Provider or utilizing the assigned PLU until the dispute is resolved.
- I. If Company and the Telecommunications Service Provider are unable to successfully negotiate a resolution to the dispute within 30 days of notice of the existence of a dispute, the aggrieved Party shall seek dispute resolution with the appropriate governing regulatory body.
- J. Once the dispute is resolved, the parties shall utilize the resulting Actual Measurements or Estimated Measurements on a going forward basis. The parties shall negotiate a true up of any billing inaccuracies occasioned by application of such Measurement on a retroactive basis.
- K. Charges shall be billed to the originating Telecommunications Service Provider and shall be payable under the terms of A2.4 of the General Subscriber Services Tariff.

S11.1.3 Rates and Charges

	<u>Charge</u>
Tandem Transit Traffic Service, per MOU	\$0.0030
End Office Transit Traffic Service, per MOU	0.0045

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