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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION IN THE TRAFFIC DISPUTE)
BETWEEN WINDSTREAM KENTUCKY LLC,)
BRANDENBURG TELEPHONE COMPANY AND)
MCIMETRO TRANSMISSION SERVICES, LLC D/B/A)
VERIZON ACCESS)

Case No. 2008-00203

DIRECT TESTIMONY

OF

KERRY SMITH

ON BEHALF OF WINDSTREAM KENTUCKY EAST, LLC

Filed August 8, 2008

1 Settlement Plan. I have presented record exchange information to industry conferences
2 and was a member of several ILEC Billing and Record Exchange groups in various states
3 throughout Alltel's territory. I was responsible for ensuring compliance with required
4 settlement record exchanges in North Carolina, Pennsylvania (where I served as chairman
5 of the ITORP sub-committee of the Pennsylvania Telephone Association's Inter-
6 Company Operations Committee for four years), Florida, Alabama, Mississippi,
7 Kentucky, Georgia, Oklahoma, Missouri, Arkansas, Texas, South Carolina, New Mexico,
8 Nebraska, New York and Ohio. As Staff Manager of Wholesale Services for
9 Windstream, my current duties include issues related to switched access usage and
10 responsibility for various LEC-to-LEC matters.

11
12 **INTRODUCTION AND OVERVIEW**

13 **Q. What is the purpose of your testimony?**

14
15 A. The purpose of my testimony is to address the two issues in this proceeding pertaining to
16 the rerouting of certain traffic between Brandenburg Telephone Company
17 ("Brandenburg") and MCIMetro Transmission Services, LLC d/b/a Verizon Access
18 ("Verizon") away from Windstream's network and compensation due Windstream for the
19 use of its network. My testimony will not address the broader issues concerning the
20 establishment of facilities between Brandenburg and Verizon, which is the subject of
21 negotiations between those two parties to which Windstream has not been privy and
22 further which are the subject of the separate complaint by Brandenburg in Case No.
23 2008-00239.

24 **Q. Please summarize your testimony.**

1 A. The issues at hand are straight-forward. First, dial-up Internet calls originated by
2 Brandenburg customers and destined for Internet service providers (“ISPs”) served by
3 Verizon should be routed (if routed on an indirect basis) by Brandenburg to Verizon
4 through AT&T’s Louisville tandem and not through Windstream’s network. This traffic
5 should and can be re-routed away from Windstream’s network by Brandenburg
6 immediately, even if that routing is accomplished by Brandenburg on a non-toll billing
7 basis to Brandenburg’s customers during the time that Brandenburg and Verizon pursue
8 their separate dispute of direct interconnection. Second, it is undisputed by all parties in
9 this matter that Windstream’s network has been utilized to exchange traffic between
10 Brandenburg and Verizon during the prolonged period of time in which those two parties
11 have otherwise been unable agree on which of them should pay for establishment of
12 facilities for direct interconnection. Consequently, it should be recognized by all parties
13 that Windstream is entitled for compensation for this use of its network. In summary,
14 Windstream should not continue to be held in the middle of the seemingly interminable
15 traffic dispute between Brandenburg and Verizon. Windstream should not be made to
16 incur additional expense to defend this issue and certainly should not be made to allow
17 the use of its network by Brandenburg for free. Clearly, as long as Windstream is
18 required to remain in the middle of this traffic dispute and to endure the unauthorized use
19 of its network for free, then neither Brandenburg nor Verizon has an incentive to correct
20 the misrouting.

21
22 **TRAFFIC AT ISSUE AND CURRENT MISROUTING**

23 **Q. Can you please describe the traffic at issue in this proceeding?**

1 A. As mentioned above, the traffic at issue consists of calls by Brandenburg's customers to
2 dial-up ISPs served by Verizon. To the best of my knowledge, for years Brandenburg and
3 Verizon have failed to complete an interconnection agreement or otherwise to agree on
4 establishment of facilities between them and have perpetuated the misrouting of the
5 traffic through Windstream's network. Despite their long-standing failure to reach such
6 an agreement for almost four years, neither Brandenburg nor Verizon pursued a
7 complaint or arbitration petition before the Commission prior to Brandenburg's
8 complaint filed recently in Case No. 2008-00239 on July 1, 2008. Instead, Brandenburg
9 and Verizon - unbeknownst to Windstream - exchanged their traffic through
10 Windstream's network contrary to established industry routing protocols and without any
11 compensation to Windstream.

12 **Q. How are such calls from Brandenburg to Verizon currently being routed by**
13 **Brandenburg?**

14 A. Today, a Brandenburg customer calls an ISP served by Verizon at a telephone number
15 that Verizon has rate centered in Elizabethtown, Kentucky but for which Verizon has
16 designated its routing point as being in another exchange (*i.e.*, Louisville). In other
17 words, Verizon supplies a telephone number for use by its ISP customers that has a
18 routing point different from its rating point. Specifically, Verizon supplies a telephone
19 number that has an NPA-NXX associated with Elizabethtown, Kentucky and with a
20 routing point that is designated in the Local Exchange Routing Guide ("LERG") as being
21 in Louisville, Kentucky. The significant point for purposes of this proceeding is that
22 Verizon's routing point is in Louisville, Kentucky which is entirely outside of
23 Windstream's network. Despite the calls being identified to Brandenburg in the LERG

1 for routing to Louisville, Brandenburg instead instituted translations steps to misroute the
2 calls in question to Windstream's network over Extended Area Service ("EAS") trunks
3 groups between Brandenburg's Radcliff end office and Windstream's Elizabethtown end
4 office.

5 **Q. Is this routing by Brandenburg appropriate?**

6 A. No, for several reasons. The routing by Brandenburg circumvents established LERG
7 routing protocols and also is contrary to the EAS agreement between Brandenburg and
8 Windstream, which addresses routing per industry standards. The EAS trunk groups were
9 never sized or intended for the purpose of routing traffic to third party LECs and were
10 established between Windstream and Brandenburg exclusively for EAS traffic exchanged
11 between Windstream's Elizabethtown customers and Brandenburg's Radcliff customers.
12 Finally, Brandenburg's continued attempts to use Windstream's end office as a tandem to
13 deliver traffic to a third party not homed behind Windstream's network is wholly
14 inappropriate.

15 **Q. What happens to the calls after Brandenburg delivers them to Windstream's**
16 **Elizabethtown end office?**

17 A. After Brandenburg delivers the calls destined ultimately for Verizon to Windstream's
18 Elizabethtown end office, Windstream routes the calls from its end office switch to
19 Windstream's Elizabethtown tandem switch, both of which are located in the same
20 building but each of which is designed to perform entirely different functions as I explain
21 in the following section. Once the calls reach Windstream's Elizabethtown tandem
22 switch, the switch analyzes the call detail which indicates that the Local Routing Number
23 ("LRN") associated with the call is owned by Verizon. Windstream then routes the calls

1 to Verizon through a local trunk group established between Windstream and Verizon to
2 exchange local traffic only between Windstream and Verizon customers. Again, this
3 traffic is not in any way generated by or destined to Windstream customers.

4 **Q. Is Windstream's delivery of Brandenburg's traffic to Verizon over the local trunk**
5 **groups between Windstream and Verizon consistent with Windstream's**
6 **interconnection agreement with Verizon?**

7 A. No. While I do not negotiate interconnection agreements for Windstream, I understand
8 that the interconnection agreement between Windstream and Verizon does not provide
9 for use of these local trunk groups in such a manner. Thus, the failure by Brandenburg
10 and Verizon to reach agreement for proper delivery of their traffic and their continued
11 misuse of Windstream's network, also results in routing inconsistent with Windstream's
12 interconnection agreement with Verizon.

13 **Q. Is the routing scheme you describe above consistent with standard routing**
14 **protocols?**

15 A. No. The LERG is the mechanism all wireless, wireline, and inter/intraexchange carriers
16 rely upon for proper routing of their traffic. In this instance, the LERG designates that
17 calls originated by Brandenburg customers destined for ISPs served by Verizon be routed
18 by Brandenburg to AT&T's Louisville tandem. However, the routing sequence being
19 employed by Brandenburg to exchange this traffic with Verizon is inconsistent with
20 LERG protocols. Windstream's tariffs and applicable agreements do not provide for
21 routing contrary to LERG protocols.

22
23 **TRAFFIC VOLUMES AND DIRECT INTERCONNECTION**

1 **Q. What is the average volume of traffic which, as you describe above, is being**
2 **exchanged currently between Brandenburg and Verizon on an indirect basis?**

3 A. The volume of traffic being exchanged indirectly between Brandenburg and Verizon is
4 currently approximately 3 million minutes per month which is an extremely large volume
5 – namely, at a DS3 level. A DS3 is equal to 28 DS1s. Indeed, based on Verizon’s data
6 request responses, in prior years, the volume was as high as between 10 and 30 million
7 minutes per month.

8 **Q. Is this volume an appropriate threshold for direct interconnection?**

9 A. Definitely. Indirect interconnection (that is not to imply that the routing scheme at issue
10 here is proper indirect interconnection as it is being misrouted through Windstream’s
11 network) is intended for minimal or incidental traffic volumes that otherwise may not
12 support establishment of facilities directly between two carriers. Typically, that threshold
13 is a DS1 level, or 250,000 minutes per month. However, the traffic between Brandenburg
14 and Verizon is currently at a DS3 level which is approximately 28 times the volume of a
15 DS1 level of traffic.

16 **Q. Why is it inappropriate for Brandenburg to route such traffic through**
17 **Windstream’s Elizabethtown end office?**

18 A. While I am not an engineer, even assuming for argument sake that the traffic at issue is
19 destined for a carrier homed behind Windstream’s network (which Verizon clearly is
20 not), I am aware that an end office switch is not designed to perform the functions of a
21 tandem switch. The purpose of an end office is to switch calls between end users that
22 reside on that end office. If the call is not destined for a customer that resides on that
23 switch – in this case, a Windstream customer residing in the Elizabethtown rate center –

1 then the end office forwards the call to the tandem which has the capabilities and
2 software intelligence to send the call along to its final destination. In short, an end office
3 is designed only to switch calls to end users and not to switch calls between other
4 carriers. The different functionality between an end office and a tandem is one reason that
5 Windstream included in its Transit Tariff a higher rate of \$0.0045 to be a disincentive for
6 certain carriers that were continuing to engage in routing schemes designed to force
7 Windstream's end offices to perform functions for which they are not designed. Thus,
8 even if Brandenburg were delivering traffic to Windstream that was destined per LERG
9 protocols for delivery to a carrier homed behind Windstream's network (*i.e.*, "transit
10 traffic"), Brandenburg still should not deliver such traffic to any Windstream end office.
11

12 TRANSIT TRAFFIC DISTINCTION

13 **Q. Is the traffic exchanged indirectly between Brandenburg and Verizon transit**
14 **traffic?**

15 A. No. As I described above, transit traffic would include traffic exchanged indirectly
16 through Windstream's network for delivery by Brandenburg to a carrier homed behind
17 Windstream's network. Verizon is not homed behind Windstream's network and instead
18 clearly designates itself in the LERG as being homed behind AT&T's Louisville tandem.
19 This misrouting contradicts industry standard LERG routing protocols, which prescribe a
20 call path for this traffic to AT&T's Louisville tandem and not to Windstream's
21 Elizabethtown end office or tandem. Therefore, although the traffic cannot be considered
22 valid transit traffic, because Brandenburg and Verizon nevertheless are using
23 Windstream's network in a manner similar to that of a transit scenario (albeit incorrectly

1 through an end office and not a tandem), Windstream used as a proxy rate in this instance
2 the end office transit rate set forth in its Transit Tariff filed with the Commission.

3 **Q. Did Windstream at one time believe the traffic at issue to be transit traffic?**

4 A. Yes. For a long period of time, Windstream believed that Brandenburg was among a
5 group of ILECs that were relying upon Windstream's network to provide transit service
6 but were at the same time declining to pay Windstream for providing such service.
7 Through Windstream's pursuit of payment from those ILECs for transit services and its
8 efforts to work with those ILECs to reroute traffic away from Windstream's end offices,
9 Windstream undertook a more detailed traffic analysis. It was through these pursuits that
10 Windstream came to understand that Brandenburg was not similarly situated to those
11 ILECs and instead had taken steps to misroute traffic to Windstream contrary to LERG
12 protocols. Interestingly, I should note that contrary to Brandenburg's claims in this case
13 that imply that Windstream consented to such use of its network, Windstream at no time
14 has stated – either in this proceeding or in the transit tariff matter – that Windstream
15 agreed to allow its network to be used by Brandenburg without any compensation. In
16 fact, the primary purpose behind Windstream's filing of the Transit Tariff was to seek
17 compensation from the ILECs including Brandenburg at the time that Windstream
18 believed all of the traffic to be transit traffic.

19
20 **PROPER ROUTING AND TOLL DESIGNATION**

21
22 **Q. How should the traffic exchanged between Brandenburg and Verizon be routed?**

23 A. For the reasons discussed above, the traffic volumes support routing through direct
24 interconnection between Brandenburg and Verizon. Nevertheless, absent those carriers'

1 ability to agree on direct interconnection, then any indirect interconnection should occur
2 pursuant to LERG protocols which provide for routing through AT&T's Louisville
3 tandem and away from Windstream's network altogether. To be clear, the traffic that
4 Brandenburg is sending to Windstream's Elizabethtown end office is not destined for any
5 Windstream end user residing in Elizabethtown. Rather, the traffic is ISP traffic destined
6 for delivery to an ISP served by Verizon which has designated its routing point as being
7 at AT&T's tandem in Louisville. Put another way, Windstream's facilities in
8 Elizabethtown are not on the designated call path, and the traffic exchanged between
9 Brandenburg and Verizon should not touch Windstream's network in any capacity.

10 **Q. Is it clear why the traffic between Brandenburg and Verizon is being routed**
11 **through Windstream's network?**

12 A. We cannot affirmatively state why the traffic is being routed through Windstream's
13 network, especially considering that Brandenburg has its own tandem in Radcliff which
14 could direct the traffic in question to Louisville. It appears to Windstream that the routing
15 of traffic over the EAS trunk group may be symptomatic of Brandenburg and Verizon's
16 efforts to avoid financial responsibility for the proper routing of their traffic.

17 **Q. Did Brandenburg take certain actions to establish the current misrouting?**

18 A. This appears to be the case. According to Brandenburg, its customers in 2005 began
19 experiencing problems when attempting to reach certain phone numbers in
20 Elizabethtown. Brandenburg stated that its switch was attempting at that time to route
21 certain ported numbers to the Louisville tandem as toll calls. This likely was because
22 Brandenburg was performing the Local Number Portability ("LNP") dips (which it
23 subsequently ceased doing) and learned that the traffic was ISP traffic destined for

1 Verizon's routing point in Louisville. Yet, Brandenburg then indicates that it decided to
2 disable its switch's capability as to the calls in question. Thus, Brandenburg began
3 routing the calls over its EAS trunks with Windstream despite Brandenburg being aware
4 at that time that the calls were not destined to Windstream customers in Elizabethtown.

5 **Q. When did Windstream discover that Brandenburg was not performing LNP dips on**
6 **the traffic in question?**

7 A. Around 2007, Windstream's translations engineers discovered that Brandenburg was
8 sending calls to Windstream's Elizabethtown end office without performing the LNP dips
9 (or call routing look-ups). At this time, Windstream pushed Brandenburg to perform the
10 required LNP queries for this traffic. Brandenburg began performing the queries on April
11 3, 2007. It appears that Brandenburg at the same time made a deliberate translations
12 change in its switch to continue the routing of the Brandenburg-Verizon traffic over the
13 Windstream-Brandenburg EAS trunks.

14 **Q. Do you agree with the contention that the traffic in question must be routed to the**
15 **Louisville tandem as a toll call?**

16 A. No. Again, "routing" is not "rating". Thus, Brandenburg is not required to "rate" a call as
17 toll in order to "route" that call properly to Verizon at AT&T's Louisville tandem.

18
19 **COMPENSATION DUE WINDSTREAM**
20

21 **Q. Should Windstream be compensated for the use of its network?**

22 A. Yes. Neither Verizon nor Brandenburg has disputed that Windstream's network has been
23 used to exchange their traffic or that their traffic has any relevance to any Windstream
24 end user. Further, it is clear that the current misrouting through Windstream's network
25 exists solely because of the inability or unwillingness of Brandenburg and Verizon to

1 reach an agreement as to which of them should bear financial responsibility for their
2 traffic. These undisputed facts clearly support compensation to Windstream for the use of
3 its network.

4 **Q. How has Windstream thus far determined compensation for the misuse of its**
5 **network?**

6 A. As I mentioned previously, Windstream does not maintain a tariff or agreement providing
7 for the use of its network in a manner contrary to LERG protocols. Nevertheless, because
8 of the similarity of functionalities being performed by Windstream's network in this
9 matter to that in a transit traffic scenario (albeit one inappropriately involving
10 Windstream's end office instead of a tandem), Windstream used the rate set forth in its
11 Transit Tariff for end office transit as a proxy rate in this case. Factoring in the
12 information from Verizon's data request responses demonstrating high volumes of traffic
13 as early as August 2005 and applying the same end office proxy rate, I recalculated
14 compensation due Windstream in the amount of \$1,161,809.00 Using current average
15 volumes, I estimate that the compensation increases approximately \$500 for every day
16 that Windstream continues to be held in the middle of this dispute. Windstream also
17 applied interest at the rate of 0.5% to the amounts in question for a revised interest total
18 of \$68,316.00. Consequently, based on the information made available through parties'
19 data requests, Windstream now estimates that it is due compensation plus interest in the
20 amount of \$1,230,125.00.

21 **Q. Is Windstream also due compensation for LNP queries?**

22 A. Yes. As I addressed above, Windstream performed LNP queries for the months of August
23 2005 through March 2007 during the time that Brandenburg declined to perform its

1 queries. Using a current estimate of 16.5 minutes per message (for a total of 11.9 million
2 calculated messages) and applying a rate of \$0.00305, Windstream requests further that it
3 be reimbursed an amount of \$36,299.00 plus interest in the amount of \$2,217.00 for
4 performing the required LNP queries during the time that Brandenburg did not do so.

5 **Q. Does Windstream believe it is also entitled to be reimbursed for its attorneys' fees
6 and costs?**

7 A. Yes. Although Windstream does not have a final invoice for these amounts at this time,
8 Windstream has had to incur significant expenses to defend this matter as it continues to
9 be held in the middle of a traffic dispute that should never have involved Windstream's
10 network.

11 **Q. From whom is Windstream seeking payment of the amounts above?**

12 A. Windstream believes that, as Brandenburg is the party directly misrouting the traffic in
13 question to Windstream's network and the party that declined to perform the required
14 LNP queries for a period of time, Brandenburg is primarily responsible for payment to
15 Windstream. Notwithstanding, Verizon also has advocated continued misrouting to a
16 Windstream end office and routing in violation of LERG protocols and should be held
17 equally responsible for its actions in perpetuating the misrouting which directly led to the
18 Commission's action to hold Windstream in the middle of the traffic dispute.

19
20 **REQUESTED RELIEF**

21 **Q. What relief is Windstream seeking?**

22 A. Windstream is seeking a very simple solution with respect to its required continued
23 involvement in this matter. Windstream is requesting that the Commission act

1 immediately to remove Windstream from the middle of the dispute between Verizon and
2 Brandenburg, order immediate rerouting of the traffic away from Windstream's network,
3 order payment of the requested compensation to Windstream by the appropriate party,
4 and take all appropriate action to ensure that Windstream is not forced to incur further
5 expense as a result of being held in the middle of what appears to be an interminable
6 dispute between Brandenburg and Verizon.

7 **Q. Does this conclude your testimony?**

8 A. Yes, at this time.

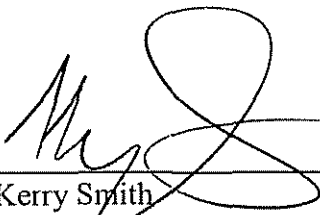
COUNTY OF PULASKI)
)
STATE OF ARKANSAS)

AFFIDAVIT OF KERRY SMITH

Before me, the Undersigned Authority, on this 6th day of August 2008, personally appeared Kerry Smith, who, upon being by me duly sworn on oath deposed and said the following:

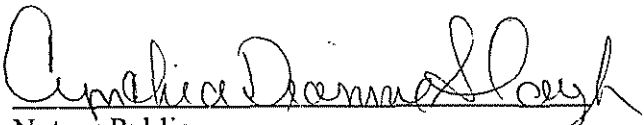
My name is Kerry Smith. I am over the age of twenty-one (21), of sound mind, and competent to testify to the matters stated herein. I am testifying on behalf of Windstream Kentucky East, LLC as Staff Manager – Wholesale Services and have personal knowledge of the provisions contained in the Testimony filed by me in this proceeding.

Further, Affiant sayeth not.



Kerry Smith
Staff Manager – Wholesale Services

SWORN AND SUBSCRIBED TO BEFORE me this 6th day of August 2008, to certify which witness my hand.



Notary Public

My Commission Expires:

August 10, 2016



Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served by electronic mail and first class mail on those persons whose names appear below this 8th day of August, 2008.

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