

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

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)
)

Cast No. 2008-00203

**MOTION FOR EMERGENCY HEARING FOR JULY 9, 2008; AND FOR LEAVE TO
FILE PREHEARING STATEMENT**

Windstream Kentucky East, LLC (“Windstream”) hereby requests the Commission to conduct an emergency hearing on July 9, 2008 at 9:00 a.m., in lieu of the currently scheduled informal conference. In furtherance thereof, Windstream further requests that its position on the merits of the issues in this case, as set forth below, be filed of record in this proceeding.

I. INTRODUCTION

1. The Commission’s Order issued in this matter on July 1, 2008 (“Order”) effectively allows the continued misuse of Windstream’s network by Brandenburg Telephone Company to the detriment of Windstream. Immediate action is required to cease the unauthorized routing of Brandenburg’s traffic over Windstream’s network, to remove Windstream from the middle of a prolonged traffic dispute between two parties which should not involve Windstream’s network in any manner, and to establish the payments due to Windstream as a result of the misuse.

2. While the caption of this proceeding implies that this is a traffic dispute among three parties, the traffic dispute actually is between only two parties – Brandenburg and Verizon. These are the parties who have not been able to come to terms over the routing of traffic.

Windstream's involvement arises solely as a result of the misuse of Windstream's network by Brandenburg to circumvent Brandenburg's ongoing dispute with Verizon – a dispute in which neither party is incented to resolve so long Windstream is forced to endure the continued misuse of its network without appropriate compensation.

II. MOTION FOR EMERGENCY HEARING

3. In its communication to Commission Staff on June 20, 2008 (attached to Brandenburg's Complaint filed on June 25, 2008 in Docket No. 2008-239 ("Complaint")), Brandenburg stated its willingness to take action to correct the mis-routing in conformity with established industry protocols, but Brandenburg also disclosed that discussions between Brandenburg and Verizon appeared to be at an impasse. There has been no change in this status as of the filing of this Motion – and further delay would serve no useful purpose. The status quo should not be allowed to continue any longer. The parties will be present on July 9, 2008, and the setting of an evidentiary hearing for that date would facilitate both informal and, if necessary, formal resolution of the issues.

4. These issues merit direct intervention of Commission leadership through an emergency hearing. By Brandenburg's own admission, Brandenburg and Verizon are at an impasse. Further delay, therefore, is not in the interest of any party. Accordingly, Windstream requests that, in the interest of judicial economy, the Commission use the time currently set aside on July 9, 2008 for an informal conference, to instead conduct an emergency evidentiary hearing on the issues of correction of the routing by Brandenburg and compensation owed to Windstream.

III. WINDSTREAM POSITION STATEMENT

A. ROUTING ISSUE

5. The Commission's July 1, 2008 Order states that Windstream's notice on June 4, 2008 informed the Commission that "Windstream had blocked the transmission of traffic from Brandenburg Telephone Company" (Order at page 1) and further that investigation is needed to avoid "disruption of service by Windstream" (Order at page 4). Respectfully, from Windstream's perspective, Windstream's notice to the Commission advised that Windstream had "ceased the misuse of its Elizabethtown end office." Further, Windstream subsequently explained during the parties' informal conference that this mis-routing was not a "service" being provided by Windstream. This difference in perspective is not merely semantic, it is fundamental to the issues in this matter. Describing the issue as "blocking" indicates discontinuance of an actual service, in this case, however, Windstream was attempting to stop the deliberate and improper use of its facilities.

6. Windstream is not providing (nor is Brandenburg subscribing to) any service from Windstream. Rather, Brandenburg is wrongfully using Windstream's network without proper compensation -- and in a manner inconsistent with industry protocols -- in an effort to avoid resolving its dispute with Verizon. Simply stated, Windstream's network is being misused solely because Brandenburg and Verizon cannot agree on which of them should have to pay for delivery of their traffic. The Commission must provide a clear directive to Brandenburg to correct the routing, and to immediately compensate Windstream.

7. At various times, Brandenburg has maintained that this traffic was "transit" traffic for which Brandenburg is not required to compensate Windstream. Windstream also initially believed the traffic to be transit traffic incorrectly routed to an end office (instead of a tandem).

However, Windstream has subsequently learned that this traffic should not be directed to Windstream's network in any capacity. Rather, industry routing protocols establish that the traffic be routed to AT&T's Louisville Tandem – a fact Brandenburg itself noted in an email from counsel dated June, 20 2008.

8. Specifically, Brandenburg is directing a large volume of traffic (at least a DS3 level of traffic) to Windstream's network despite the fact that this traffic is not destined for Windstream's customers or any provider utilizing Windstream's network. Verizon's facilities are located at the AT&T Louisville Tandem. Pursuant to established industry routing protocols – which Brandenburg has acknowledged - this traffic should be routed to the Louisville tandem for delivery to Verizon – it should not be routed to Windstream.

9. The facts suggest that the misuse of Windstream's network has been undertaken by Brandenburg to avoid and/or prolong the protracted dispute between Brandenburg and Verizon. Yet, the dispute between these two parties provides no legitimate reason or lawful basis for the perpetuation of the misuse of Windstream's facilities. Rather than requiring Windstream to remain in the middle of a traffic dispute between two parties, those parties should be required to implement alternative arrangements, including the immediate rerouting of traffic to Louisville as non-toll.

B. DAMAGES ISSUE

10. Windstream should be fully compensated for the use of its network. Windstream indicated in its prior communication to Commission Staff that it intends to pursue claims against any party for damages Windstream incurs, and continues to incur, as a result of it being forced to remain in the middle of a traffic dispute between Brandenburg and Verizon that results in the misuse of its network by Brandenburg.

11. Windstream certainly is entitled to damages from Brandenburg for the improper and unauthorized use of Windstream's facilities. Whether Brandenburg believes it would subsequently be entitled to reimbursement from Verizon is a separate matter – but, again, Windstream need not be forced to remain in the middle of any such dispute.

12. As a result, the Commission should issue an order requiring Brandenburg immediately to remit current damages to Windstream in the amount of \$252,473, plus applicable interest in the amount of \$9,209, plus attorney's fees and costs and require Brandenburg to pay Windstream prospective damages incurred at an estimated rate of \$500 per day plus interest for so long as the unauthorized routing continues.

IV. REQUESTED RELIEF

WHEREFORE, for the reasons set forth above, Windstream requests that the Commission take the following action:

- (a) Conduct an emergency hearing on July 9, 2008 in lieu of an informal conference;
- (b) Based on evidence introduced at the emergency hearing, (1) Order Brandenburg to immediately cease the misuse of Windstream's network; and (2) Declare that Brandenburg is responsible for immediate payment to Windstream in the amount of \$261,682 plus attorney's fees and costs plus \$500 for every day that the unauthorized routing continues; and
- (c) Take such other action as is necessary to remove Windstream from the middle of the protracted dispute between Brandenburg and Verizon; and
- (d) grant all other necessary and proper relief to which Windstream is entitled.

Respectfully submitted,



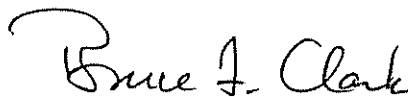
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was served by electronic mail and/or U.S. Mail, on this 3rd day of July, 2008 upon:

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