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August 15, 2008

HAND DELIVERED

Stephanie Stumbo
Executive Director
Public Service Commission of Kentucky
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602-0615

Bruce F. Clark
(502) 209-1214
(502) 223-4386 FAX
bclark@stites.com

RE: P.S.C. Case No. 2008-00203


Dear Ms. Stumbo:

Please find enclosed and accept for filing the original and ten copies of Windstream Kentucky LLC's Rebuttal Testimony of Kerry Smith and Motion for Leave to Amend Position Statement. Please return a file-stamped copy of same.

Thank you for your attention to this matter.

Very truly yours,

STITES & HARBISON, PLLC


Bruce F. Clark

BFC:djb

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AUG 15 2008

PUBLIC SERVICE
COMMISSION

1 **COMMONWEALTH OF KENTUCKY**

2
3 **BEFORE THE PUBLIC SERVICE COMMISSION**

4
5 **In the Matter of:**

6
7 **AN INVESTIGATION IN THE TRAFFIC DISPUTE)**
8 **BETWEEN WINDSTREAM KENTUCKY LLC,)**
9 **BRANDENBURG TELEPHONE COMPANY AND)**
10 **MCIMETRO TRANSMISSION SERVICES, LLC D/B/A)**
11 **VERIZON ACCESS)**

Case No. 2008-00203

12 **REBUTTAL TESTIMONY**

13 **OF**

14 **KERRY SMITH**

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20
21 **ON BEHALF OF WINDSTREAM KENTUCKY EAST, LLC**

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28 **Filed August 15, 2008**

1 Both Brandenburg and Verizon agree that they are using or relying upon Windstream's
2 network to exchange their traffic, and it is evident that this use is the result of their failure
3 to take any action to appropriately exchange their traffic (either indirectly through
4 AT&T's Louisville tandem or directly through their own facilities). On these facts alone,
5 it is only reasonable that one or both of them compensate Windstream for the use of
6 Windstream's network.

7 **Q. What is your general reaction to the testimony of Verizon and Brandenburg**
8 **regarding their facilities dispute?**

9 A. The facilities issue between Verizon and Brandenburg are inappropriately addressed in
10 this proceeding (see, *e.g.*, Willoughby Direct page 10 and Price Direct page 11). The
11 issues here are focused on those arising as a result of the Commission's Order in this
12 proceeding as to (i) the manner in which the traffic should immediately be removed from
13 Windstream's network and routed per the LERG and (ii) the compensation due
14 Windstream for the use of its network. I do not negotiate interconnection agreements for
15 Windstream, and Windstream has not been privy to the facilities negotiations between
16 Verizon and Brandenburg. Therefore, I have no opinion on their facilities issues.
17 However, I do believe that Windstream should not continue to be held in the middle of
18 this dispute (particularly without any compensation) while Verizon and Brandenburg
19 continue to litigate their separate facilities issues. Those issues are the subject of
20 Brandenburg's Complaint in Case No. 2008-00239 and should be taken up in that
21 proceeding. Windstream should not be forced to continue having to participate in and
22 defend matters that have nothing to do with traffic originated by Windstream's customers,

1 terminated to Windstream's customers, or terminated to any carrier homed behind
2 Windstream's network.

3
4 **IMMEDIATE REROUTING OF THE TRAFFIC**

5
6 **Q. Does the testimony of Mr. Price or Ms. Willoughby deny that Verizon designated its
7 routing point in the LERG as being in Louisville, Kentucky?**

8 A. No. It goes without saying that Louisville is outside of Windstream's network.

9 **Q. Does the testimony of Mr. Price or Ms. Willoughby suggest that the traffic at issue is
10 originated by or terminated to Windstream's customers?**

11 A. No. Brandenburg and Verizon recognize that this traffic arises when Brandenburg
12 customers call a dial-up ISP that is served by Verizon.

13 **Q. Does the testimony of Ms. Willoughby recognize that the traffic should be
14 immediately removed from Windstream's network?**

15 A. Yes (see, *e.g.*, Willoughby Direct p 7, lines 15-17). Brandenburg's proposed solution is
16 that Verizon be made to immediately establish direct facilities to Brandenburg to remove
17 the traffic from Windstream's network.

18 **Q. Do you agree with Ms. Willoughby as to this course of action?**

19 A. I agree that the high volumes of traffic between Brandenburg and Verizon support direct
20 interconnection as the ultimate, appropriate course of action which is an issue between
21 those two carriers. I disagree that this is the immediate action needed now to remove
22 Windstream from the middle of their dispute. Establishment of direct facilities typically
23 takes around thirty (30) days under normal circumstances (such as where the parties
24 agree as to the establishment of the facilities). Even assuming that time was possible here,
25 which it is evident from the lack of cooperation between Brandenburg and Verizon that it

1 is not, that is too long for Windstream to continue to be held in the middle of this dispute,
2 particularly without any compensation. As Ms. Willoughby recognizes, Windstream's
3 involvement was intended to be temporary (Willoughby Direct page 6, line 1).

4 **Q. Instead of the direct connection Brandenburg suggests, what is the immediate action**
5 **needed to remove this traffic from Windstream's network?**

6 A. The immediate and appropriate course of action is for Brandenburg to perform the ten or
7 fifteen minutes worth of translations work needed to reroute the traffic properly per the
8 LERG routing protocols to AT&T's tandem in Louisville. This would provide for
9 appropriate indirect exchange of the traffic per industry routing protocols during the time
10 that Brandenburg and Verizon pursue their dispute as to direct interconnection.

11 **Q. Do you agree with Ms. Willoughby's assertion that in order to route the traffic to**
12 **Louisville that Brandenburg's end users must incur toll charges?**

13 A. No. This assertion is incorrect. Brandenburg misrepresents that "given that MCImetro
14 had not established trunking facilities or a traffic exchange agreement with Brandenburg,
15 [continued routing through Windstream] was the only means by which Brandenburg
16 could continue to route the calls without causing its own end-users to incur toll charges."
17 (Willoughby Direct page 4, lines 14-17.) Brandenburg confuses the "routing" and the
18 "rating" of a call. EAS traffic is an example of toll traffic that two carriers otherwise have
19 agreed to rate (or a state commission may have ordered to be rated) to end user customers
20 on a non-toll basis. A call can be routed as toll but rated to end user customers as non-
21 toll.

22 **Q. Is the traffic exchanged between Brandenburg and Verizon EAS traffic?**

1 A. As addressed in my direct testimony, the traffic exchanged between Brandenburg and
2 Verizon is not EAS traffic subject to the EAS agreement between Brandenburg and
3 Windstream or appropriately delivered over the EAS trunks between Brandenburg and
4 Windstream. Although Mr. Price suggests in his testimony (Price Direct page 5, lines
5 113-118) that there is no EAS agreement between Brandenburg and Windstream,
6 Windstream provided a copy of that agreement in discovery. The EAS trunks between
7 Windstream and Brandenburg are to be used for the exchange of only that traffic
8 originated by and terminated to customers of Windstream and Brandenburg. The traffic
9 in question here is between Brandenburg and Verizon and has absolutely no relationship
10 to any Windstream customer. As Mr. Price notes, these telephone numbers were ported
11 from Windstream to another carrier and are now served by Verizon. Thus, calls from
12 Brandenburg's end users to these telephone numbers are not destined to any Windstream
13 end user.

14 **Q. How does the routing versus rating distinction apply to the traffic exchanged here**
15 **between Brandenburg and Verizon?**

16 A. I should preface again that although I am not a translations engineer, Brandenburg is
17 incorrect when it contends that the traffic here is necessarily a toll call to end users
18 because the Local Routing Number ("LRN") on calls to Verizon is associated with
19 AT&T's Louisville tandem. The routing of a call and the rating of a call are separate and
20 distinct functions performed by a switch. In this instance, Verizon chose to "rate center"
21 the 270-269 telephone numbers in Elizabethtown but then selected the routing point for
22 those numbers to be at AT&T's Louisville tandem. The very term "rate center" indicates
23 how a call should be "rated" to end user customers for billing (*i.e.*, via Elizabethtown)

1 and does not indicate routing of the call which is determined by the LRN (*i.e.*, via
2 Louisville). Thus, Ms. Willoughby's suggestion that the routing of the call to Louisville
3 dictates the rating of the call to end users as toll is incorrect.

4 **Q. Can that non-toll rating be accomplished in the case here between Brandenburg and**
5 **Verizon?**

6 A. Yes. In the event that Brandenburg's translations engineers do not understand how to
7 accomplish this function, Windstream's translations engineers are willing to provide
8 training to Brandenburg so that Brandenburg's translations engineers can effectuate the
9 correct routing. We estimate that the training should take no longer than one hour and
10 that the translations changes may be accomplished in ten or fifteen minutes.

11 **Q. Why do you contend that this course of action is appropriate as compared to**
12 **Brandenburg's proposal for establishment of direct facilities?**

13 A. As I noted above, Brandenburg's proposal may provide an ultimate resolution for the
14 dispute between Brandenburg and Verizon, but it provides no relief in the interim for
15 Windstream and allows for the continued misrouting through Windstream's network.
16 Until such time as those two carriers agree on the method of direct interconnection or the
17 Commission decides that issue for them, there is no reason why Windstream should
18 continue to be held in the middle of this issue. Windstream's network is not on the call
19 path for this traffic. As I explained in detail in my direct testimony, this traffic is not
20 transit traffic destined to any carrier homed behind Windstream's network and thus,
21 should not be exchanged on an indirect basis through Windstream's network in any
22 capacity. Verizon has designated its routing point as the AT&T Louisville tandem which

1 is where this traffic can and should be rerouted immediately by Brandenburg (again,
2 within minutes).

3 **Q. Is it fair for Brandenburg to route the traffic to Louisville and to rate the calls to its**
4 **end users as non-toll?**

5 A. I have not been privy to the negotiations between Verizon and Brandenburg and really
6 cannot render any opinion as to whether any one result is fair to either Brandenburg or
7 Verizon. However, it seems to me that, because Verizon chose to rate center telephone
8 numbers in Elizabethtown while at the same time choosing to designate the routing point
9 for those telephone numbers in Louisville, the Commission could consider allowing
10 Brandenburg to assess a charge to its end users for calling those numbers similar to the
11 type of EAS additives that carriers are permitted to charge to end users when they
12 establish an EAS route. I can say with certainty, however, that it is unfair to continue
13 holding Windstream in the middle of this dispute and allowing Brandenburg to direct
14 traffic to Windstream's network that clearly should be routed to Louisville per LERG
15 routing protocols.

16
17 **COMPENSATION DUE WINDSTREAM**

18 **Q. Based on your understanding of the testimony of Mr. Price and Ms. Willoughby,**
19 **what are the positions of Brandenburg and Verizon with respect to compensation**
20 **due Windstream?**

21 A. Each readily admits to the use of Windstream's network to exchange their traffic but then
22 points the finger at the other to deny financial responsibility to Windstream. It is evident
23 that a significant reason Brandenburg and Verizon are using Windstream's network to
24 exchange their traffic is because they cannot agree on which of them bears financial

1 responsibility for their traffic. It is inexcusable to suggest that Windstream somehow
2 should bear financial responsibility for their traffic exchange. The use of Windstream's
3 network in this case is without any benefit to any Windstream customer. Yet, the use of
4 Windstream's network directly benefits Brandenburg and Verizon who have used
5 Windstream's network to exchange their traffic and avoid their facilities dispute and also
6 have collected revenues from their end users with respect to the delivery of such calls.
7 Again, considering the foregoing, it would be reasonable for the Commission to consider
8 assessing amounts owed to Windstream equally between Brandenburg and Verizon until
9 such time as they remedy the routing and otherwise agree on financial arrangements
10 between them.

11 **Q. Is it your understanding that Ms. Willoughby contends that Verizon is financially**
12 **responsible for all amounts owed to Windstream? If so, do you agree?**

13 A. Yes. I disagree with this assertion. For example, part of the recovery Windstream is
14 seeking relates to LNP queries that Windstream had to perform during the time that
15 Brandenburg would not perform these queries. Additionally, as explained in my direct
16 testimony, it is Brandenburg that is directing the traffic in question to Windstream's
17 Elizabethtown end office. Further, Ms. Willoughby's testimony suggests that
18 Brandenburg knew as early as 2005 the true nature of this traffic when she states that
19 Brandenburg investigated the issue and determined the level of traffic to Verizon to be
20 de-minimus (Willoughby Direct page 4, line 13). This suggests that Brandenburg
21 performed some LNP queries at that time, determined that the traffic was destined for
22 Louisville, but then ceased performing the queries maybe in an effort to avoid the issue. I
23 should note that, in its data request responses, Verizon revealed that the traffic was not de

1 minimus and was in excess of eleven million minutes a month. It was not until April of
2 2007 at Windstream's demand that Brandenburg began performing the required queries.
3 In fact, Ms. Willoughby acknowledges that Brandenburg realized at that time that it
4 needed to pursue a traffic arrangement with Verizon. Yet, she does not explain why
5 Brandenburg took no action either through arbitration or a general complaint case against
6 Verizon for those many months.

7 **Q. Did Windstream take action during that time to pursue compensation from**
8 **Brandenburg?**

9 A. Yes. In December 2006, Windstream filed a transit tariff applicable to carriers who did
10 not have transit agreements with Windstream but who were nevertheless using
11 Windstream's network to deliver calls to providers homed behind Windstream's network.
12 At that time, Windstream believed that Brandenburg was one such carrier. Thus, the
13 emails that Ms. Willoughby references from Steven Williams sought to correct
14 inappropriate transit traffic directed to an end office instead of a tandem and also were in
15 support of Windstream's pursuit of transit compensation. Thus, Ms. Willoughby's
16 implication that Windstream authorized the free use of its network is illogical. No email
17 from Windstream and no action by Windstream stated or implied that Brandenburg could
18 use Windstream's network without compensation. Attached to my Rebuttal Testimony as
19 Exhibit A is the full email exchange between Brandenburg and Windstream in which
20 Brandenburg recognized on February 20, 2007 that Brandenburg was taking action to
21 "have traffic delivered correctly based on LNP query."

22 **Q. Please respond to Ms. Willoughby's suggestion that the Commission does not have**
23 **jurisdiction to award compensation to Windstream.**

1 A. I am not an attorney and cannot speak to any jurisdictional arguments. I can say that at
2 the time that Windstream believed this was transit traffic and that Windstream was
3 pursuing compensation from Brandenburg, Brandenburg declined to compensate
4 Windstream for the use of its network. Then, when Windstream fully realized that this
5 traffic was not transit and was being routed contrary to LERG protocols, Brandenburg
6 stated during a conference call with Commission Staff that Windstream should still be
7 forced to allow this use of its network. While, Brandenburg has declined to properly route
8 the indirect traffic away from Windstream's network per LERG routing protocols,
9 Brandenburg now claims that it still is not required to compensate Windstream.
10 Brandenburg's position that the Commission has no jurisdiction to award compensation to
11 Windstream seems to me to contradict its position that the Commission can continue to
12 hold Windstream in the middle of the dispute.

13 **Q. Is Windstream's position as to the Commission's role in this matter inconsistent?**

14 A. No. Windstream consistently has questioned the Commission's jurisdiction over this issue
15 which my attorneys advise me is tantamount to a trespass or encroachment rather than
16 provision of a service. However, as the Commission has asserted jurisdiction and
17 required the continued use of Windstream's network, Windstream has asked that the
18 Commission also award associated compensation to Windstream from Brandenburg,
19 Verizon or both.

20 **Q. Is it your understanding that Mr. Price contends that Verizon is absolved of any
21 financial responsibility in this matter? If so, do you agree?**

22 A. Yes, and I disagree. It seems that Verizon should bear responsibility in this matter as the
23 Commission deems appropriate based on the benefits Verizon has derived from the use of

1 Windstream's network and for Verizon's decision to rate center numbers in Elizabethtown
2 while establishing routing points for those numbers in Louisville. Additionally, it appears
3 that it is a direct result of Verizon's statements advocating continued use of Windstream's
4 network (particularly Windstream's Elizabethtown end office) that led to the
5 Commission's order requiring Windstream to be held in the middle of the dispute.

6 **Q. Does this conclude your rebuttal testimony?**

7 A. Yes.

8

From: Williams, Steven G
Sent: Wednesday, February 21, 2007 4:40 PM
To: 'George Lewis'
Cc: Cinpinski, Rich; Freeman, Jamey
Subject: RE: Brandenburg ILEC Trunk. Groups.

George,

As we have discussed, the two existing trunk groups GN056322 and GN056191 are the Radcliff and Elizabethtown end offices.

Since Brandenburg apparently has chosen not to interconnect with the three carriers mentioned below, you are sending Windstream the traffic over these end office trunks.

I propose that a new trunk group is established to the Elizabethtown tandem. The office trunk groups appear to be over capacity, and two T1's could be removed from the group.

When the new tandem trunk group is in place, Brandenburg can complete the LNP and route the LRN's for the three carriers in question to the Elizabethtown tandem and continue to hand the traffic off to the appropriate carrier.

To establish the new tandem trunk group, and move the T1's, the Windstream contact Jamey Wells. She can be reached at 704-845-7437. She can also help determine capacity and the correct number of T1's to move from each group.

Windstream will continue to transit the Brandenburg originated traffic to these offices. However, as previously discussed, we cannot continue to take the traffic at the Elizabethtown office.

Please contact me if you would like to discuss further.

Thanks,
Steven Williams
Staff Manager - Translations Engineering
Windstream Communication
704-845-7258
steven.g.williams@windstream.com

-----Original Message-----

From: George Lewis [mailto:gtlewis@bbtel.com]
Sent: Tuesday, February 20, 2007 2:26 PM
To: Williams, Steven G
Subject: Brandenburg ILEC Trk. Grp.

Steven,

Brandenburg Telephone Company is sending a registered letter to the three companies whose traffic is not being queried and not routing properly. Stating they need to establish trunks with Brandenburg or make arrangements to have traffic delivered correctly based on LNP query. Hope to have this problem resolved quickly.

George Lewis
C.O. Supv.
Brandenburg Tel. Co.
270-351-4466

