Dinsmore&Shohl LLP
ATTORNEYS

John E. Selent
502-540-2315
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June 24, 2008

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

2008-239

***Re:*** ***In the Matter of: Brandenburg Telephone Company v. MCImetro 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 Brandenburg Telephone Company's formal complaint against MCImetro Access Transmission Services, LLC and Windstream Kentucky East, Inc. Please file-stamp one copy, and return it to us in the enclosed, self-addressed, stamped envelope.

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

Very truly yours,

DINSMORE & SHOHL LLP

John E. Selent

JES/lb
Enclosures

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.

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[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 reinitiate 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:

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[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. Selent
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

**From:** Rick McGolerick [mailto:rick.mcgolerick@mci.com]
**Sent:** Tuesday, December 13, 2005 11:34 AM
**To:** 'Randall Bradley'
**Cc:** Mark Turner; John Monroe
**Subject:** Brandenburg/MCI EAS Agreement
**Importance:** High

Randall – I am attaching a red line version of the EAS agreement you sent MCI for discussion purposes only. We need to discuss the EAS language in more detail for a better understanding of what Brandenberg's intent is. Please review and let me know when you are free to discuss. Thanks

Rick
703 749 7338

**From:** Randall Bradley [mailto:rbradley@bbtel.com]
**Sent:** Wednesday, February 21, 2007 10:55 AM
**To:** 'Rick McGolerick'
**Subject:** FW: [Fwd: Brandenburg LNP Query]

-----Original Message-----
**From:** George Lewis [mailto:gtlewis@bbtel.com]
**Sent:** Wednesday, February 21, 2007 8:14 AM
**To:** Randall Bradley
**Subject:** [Fwd: Brandenburg LNP Query]

-------- Original Message --------
**Subject:** Brandenburg LNP Query
**Date:** Thu, 15 Feb 2007 12:24:44 -0500
**From:** Williams, Steven G <Steven.G.Williams@windstream.com>
**To:** <troynevitt@bbtel.com>, <gtlewis@bbtel.com>
**CC:** Gilmer, Ted A <Ted.A.Gilmer@windstream.com>, Fuller, Anthony <Anthony.Fuller@windstream.com>

During a four day audit of traffic in the Elizabeth office, we discovered that Brandenburg Telephone is sending thousands of calls over its ICO trunk groups for calls that do not terminate to Windstream. This is mainly due to the fact that Brandenburg Telephone is not completing LNP queries. Your CLEC originated traffic appears to have already completed the LNP query.

Windstream's Elizabethtown end office completed approximately 12,000 LNP queries, and transited over 866,528 MOU (Minutes Of Use) for calls originated from Brandenburg Telephone.

Since the traffic is intraLATA and your switch is capable, Brandenburg Telephone must complete its own LNP dips, and as the industry standard, route the call based on the LRN.

Brandenburg Telephone needs to complete this work before Friday, February 23, 2007. On Monday, February

26, Windstream will implement the necessary translations changes on the Brandenburg Telephone trunk groups to correct this problem and allow only traffic that has completed the LNP query to terminating to the Windstream Elizabethtown office.

Please contact me if you would like to discuss.
Thanks,
Steven Williams
Staff Manager - Translations Engineering
Windstream Communication
704-845-7258
steven.g.williams@windstream.com


**********

-----Original Message-----
From: Randall Bradley [mailto:rbradley@bbtel.com]
Sent: Wednesday, March 28, 2007 10:55 AM
To: 'Williams, Steven G'
Subject: RE: Brandenburg ILEC Trunk. Groups.

Steven,

Per your last email, I wanted to confirm that if Brandenburg queries these calls there will be no impact on the call completion. With this being the case, Brandenburg will complete the queries by April 3rd. If Brandenburg finds this not to be the case, Brandenburg will not complete these queries.

If you have any questions, please give me a call.

Thanks,

Randall

-----Original Message-----
From: Williams, Steven G [mailto:Steven.G.Williams@windstream.com]
Sent: Tuesday, March 27, 2007 3:24 PM
To: Randall Bradley
Cc: Cinpinski, Rich; Wells, Jamey A; Bennett, Kimberly K; Caballero, Cesar; Logsdon, Daniel; Fallon, Kay
Subject: RE: Brandenburg ILEC Trunk. Groups.

Randall,

As we discussed on the call today. Brandenburg is using the Elizabethtown end office to complete LNP queries. This has been discussed several times, including August 2002, May 2004, and again recently starting with email to Troy Nevitt and George Lewis on January 30, 2007.

Please be advised that starting Tuesday, April 3, all calls coming from Brandenburg into the Elizabethtown end office must be post query. Windstream will no longer complete the LNP query. Brandenburg must complete the query before routing the call to Windstream.

This change should have no impact to call completion. Per our discussion, Windstream will temporarily continue to route the call from the Elizabethtown end office to the CLEC that owns the LRN.

As also discussed, Windstream is again requesting Brandenburg work with us to establish a trunk group to the Elizabethtown tandem. Calls from Brandenburg are using the Elizabethtown end office to transit to other carriers. With no direct connection from the tandem, Windstream must send traffic terminating to Brandenburg Telephone, through BellSouth. A tandem group would be two way, allowing both companies to direct connect for all end offices in our networks. And Windstream would continue to allow Brandenburg access to the CLEC's that do not have interconnection into your network.

Again, please be advised that starting next Tuesday, Brandenburg must

complete their own LNP queries for the traffic terminating to Windstream over the Elizabethtown end office trunk groups GN056191 and GN056322.

Please let me know if you would like to discuss further.

Thanks,
Steven
704-845-7258

-----Original Message-----
From: Randall Bradley [mailto:rbradley@bbtel.com]
Sent: Tuesday, March 27, 2007 8:58 AM
To: Williams, Steven G
Subject: RE: Brandenburg ILEC Trunk. Groups.

Steven,

We are working on this whole issue and plan to have you an update on this as soon as possible.

Randall

-----Original Message-----
From: Williams, Steven G [mailto:Steven.G.Williams@windstream.com]
Sent: Thursday, March 22, 2007 1:54 PM
To: Williams, Steven G; rbradley@bbtel.com
Cc: Cinpinski, Rich; Wells, Jamey A; Bennett, Kimberly K; Caballero, Cesar; Logsdon, Daniel; Fallon, Kay
Subject: RE: Brandenburg ILEC Trunk. Groups.

Randell,

Please provide an update to this issue. We are waiting for Brandenburg to work with Windstream to establish the trunk group to the Elizabethtown tandem. Then complete LNP queries on these local calls, and route based on the LRN.

Please have your Traffic engineers contact Jamey Wells at 704-845-7437 to begin this process.

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

-----Original Message-----
From: Williams, Steven G
Sent: Friday, March 16, 2007 8:45 AM
To: 'rbradley@bbtel.com'
Cc: Cinpinski, Rich; Wells, Jamey A; Bennett, Kimberly K; Caballero, Cesar; Logsdon, Daniel; Fallon, Kay
Subject: RE: Brandenburg ILEC Trunk. Groups.

Randall,

This message is a follow up our conversation Wednesday morning, since you suggested that we put our request in writing. The request had already been conveyed in conversations over the phone and through email starting over three weeks ago.

During a four day audit of traffic in the Elizabethtown office,

Windstream discovered that our Elizabethtown end office completed approximately 12,000 LNP queries, and transited over 866,528 MOU (Minutes Of Use) for calls originated from Brandenburg Telephone. The query is being completed at Windstream's Elizabethtown end office and then the call is tandemed to other carriers, contrary to the proper use of the Elizabethtown end office.

Windstream's Elizabethtown end office is not established as, recognized in the industry as, or otherwise to be used as a LATA tandem. Brandenburg is not authorized to use Windstream's end offices to tandem/transit calls. In compliance with the industry standard, Brandenburg is directed to send only traffic to the Elizabethtown end office, that terminates to Windstream in that office. That was the original purpose of these end office trunk groups.

Since the traffic is intraLATA and your switch is capable, Brandenburg Telephone must complete its own LNP dips, and as the industry standard, route the call based on the LRN. As discussed several times over the last four years, we request that Brandenburg work with Windstream to establish a trunk group to the Elizabethtown tandem. The tandem will take the LRN and route the call to the proper carrier.

A traffic study indicates that at least two T1's can be removed from both end office trunk groups, GN056322 and GN056191, and the four T1's used to establish the tandem trunk group. No additional facilities will be required. These changes can be completed now in a matter of minutes.

On the call Wednesday morning, we included our Network Performance engineers so that we could work with your engineers and coordinate these changes. We do not understand why Brandenburg is not willing to accommodate this request, or why Brandenburg wants to delay this error any longer.

A conference call was held August 16, 2002 in which you participated, and this transit issue was discussed. The parties agreed that we were discussing trunking and billing questions from a CLEC perspective. However, since you represent Brandenburg ILEC interests as well as CLEC interests, Brandenburg was well aware of the issue from an ILEC perspective.

And when Dave Kunkler called me on May 28, 2004 with Brandenburg ILEC issues, 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.

Brandenburg routes CLEC traffic for these carriers through the Elizabethtown tandem. Windstream does not understand why Brandenburg refuses to work with us to route ILEC traffic to the Elizabethtown tandem, and continues to send it to the end office.

Your point about Brandenburg working on contracts with the carriers is not relevant to our request. Windstream requests that Brandenburg work with us on this issue, and establish a tandem trunk group without delaying any longer. Over three weeks have already elapsed since we contacted Brandenburg this time, concerning this issue.

Your prompt attention to this matter is appreciated. Please call to discuss building the tandem trunk group.

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

-----Original Message-----
From: Williams, Steven G
Sent: Wednesday, February 21, 2007 5:40 PM
To: 'George Lewis'
Cc: Cinpinski, Rich; Wells, Jamey A
Subject: RE: Brandenburg ILEC Trunk. Groups.

George,

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

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

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

When the new tandem trunk group is in place, Brandenburg can complete the LNP query, and route the LRN's for the three carriers in question to the Elizabethtown tandem. We will 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 is Jamey Wells. She can be reached at 704-845-7437. She can also help determine the proper capacity and the correct number of T1's to move from each group.

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

**********
**********

The information contained in this message, including attachments, may
contain
privileged or confidential information that is intended to be delivered
only to the
person identified above. If you are not the intended recipient, or the
person
responsible for delivering this message to the intended recipient,
Windstream requests
that you immediately notify the sender and asks that you do not read the
message or its
attachments, and that you delete them without copying or sending them to
anyone else.

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that you immediately notify the sender and asks that you do not read the
message or its
attachments, and that you delete them without copying or sending them to
anyone else.

-----Original Message-----
From: Williams, Steven G [mailto:Steven.G.Williams@windstream.com]
Sent: Tuesday, April 03, 2007 3:29 PM
To: Randall Bradley
Subject: RE: Brandenburg ILEC Trunk. Groups.

Randall,

Windstream translator Ted Gilmer worked with George Lewis and Nicholas, and this has been completed. Windstream is receiving the LRN's for locally ported numbers over the Elizabethtown end office trunk groups, and continues to pass the traffic to the carriers.

We appreciate Brandenburg working with us to correct this issue.

Thanks,
Steven

-----Original Message-----
From: Randall Bradley [mailto:rbradley@bbtel.com]
Sent: Wednesday, March 28, 2007 10:55 AM
To: Williams, Steven G
Subject: RE: Brandenburg ILEC Trunk. Groups.

Steven,

Per your last email, I wanted to confirm that if Brandenburg queries these calls there will be no impact on the call completion. With this being the case, Brandenburg will complete the queries by April 3rd. If Brandenburg finds this not to be the case, Brandenburg will not complete these queries.

If you have any questions, please give me a call.

Thanks,

Randall

**From:** Randall Bradley [mailto:rbradley@bbtel.com]
**Sent:** Wednesday, February 21, 2007 10:55 AM
**To:** 'Rick McGolerick'
**Cc:** 'John Monroe'; 'Mark Turner'
**Subject:** Windstream trunks

Rick,

Please review the attached letter and give me a call at your convenience. Also, I will forward you the email Windstream sent Brandenburg Telephone Co. on this subject.

Randall Bradley
Brandenburg Telephone Co.
270-422-2121

**BRANDENBURG TELEPHONE COMPANY**
200 Telco Drive
PO Box 599
Brandenburg, KY 40108
270-422-2121

February 21, 2007

MCI Metro
Attn: Mr. Rick McGolerick

Via e-mail

Dear Mr. McGolerick:

Brandenburg Telephone Company (Brandenburg) has been inadvertently sending traffic to the MCI Metro over the Brandenburg – Windstream trunk group. Windstream has notified Brandenburg that this traffic no longer will be accepted on this trunk group as of February 26, 2007. After February 26, 2007, the only arrangement Brandenburg's customers have to reach your customers is by making long distance calls. In order for this traffic to be local to Brandenburg end users, the MCI Metro and Brandenburg will need an EAS agreement which will stipulate the need for trunks between us. I have attached our standard EAS agreement.

If you have any questions, please give me a call.

Sincerely,

Randall Bradley
Controller

RB:jh
Attachment

Dinsmore&Shohl LLP
ATTORNEYS

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

May 22, 2008

***VIA CERTIFIED U.S. MAIL***
***RETURN RECEIPT REQUESTED***

Julie L. Davis
Regulatory Manager
MCIMetro Access Transmission Services, Inc.
6 Concourse Parkway
Suite 3200
Atlanta, GA 30328

Gary Carter
Agency Relations Specialist
MCIMetro Access Transmission Services, Inc.
6 Concourse Parkway
Suite 3200
Atlanta, GA 30328

Melissa Burris
Staff Specialist
MCIMetro Access Transmission Services, Inc.
6 Concourse Parkway
Suite 3200
Atlanta, GA 30328

Peter Reynolds
Director, National Carrier Contracts & Initiatives
MCIMetro Access Transmission Services, Inc.
22001 Loudoun County Parkway
G2-3-614
Ashburn, VA 20147

MCIMetro Access Transmission Services, Inc.
Network and Technology Law
22001 Loudoun County Parkway E1-3-605
Ashburn, VA 20147

***Re: Agreement for One-Way Exchange of ISP Traffic with Brandenburg Telephone Company***

Dear Ladies and Gentlemen:

We are legal counsel to Brandenburg Telephone Company ("Brandenburg"). The purpose of this letter is to request that MCImetro Access Transmission Services, LLC

("MCImetro") and Brandenburg enter into a substantively identical version of the enclosed agreement for the one-way exchange of internet service provider ("ISP") traffic ("Agreement").

By way of context, this request arises from facts set in motion by MCImetro some time ago. Brandenburg began receiving calls from its end-users, who were complaining that they were unable to complete local calls to their ISP. It is our understanding that the underlying carrier for the ISP to whom those end-users could not complete local calls was MCImetro. In an effort to alleviate this issue, Brandenburg agreed to exchange the traffic with MCImetro on an interim basis until the parties could complete the negotiation of a traffic exchange agreement. Brandenburg accomplished this (thereby alleviating its end-users' call completion issues) by routing its end-users' traffic through the switching equipment of Windstream.

Brandenburg promptly proposed a traffic exchange agreement to formalize the terms of this arrangement, but after a week of negotiations and extensive revisions, MCImetro became unresponsive. Three weeks later, Brandenburg attempted to reestablish contact. MCImetro claimed to be "unavailable," and it subsequently became uncommunicative. Consequently, the traffic exchange agreement that had been negotiated was never executed.

Unbeknownst to Brandenburg, MCImetro appears to have been receiving well more than three million minutes per month from Brandenburg end-users. Brandenburg had no idea that the volume of traffic was so significant. Had it known this, it would have never accommodated this type of informal, indirect exchange of traffic.

The Public Service Commission of the Commonwealth of Kentucky (the "Commission") has ruled that competitive local exchange carriers (like MCImetro) are obligated to connect with an RLEC at any technically feasible point within the RLEC network, within the LATA. The Commission has also ruled that competitive local exchange carriers such as MCImetro shall establish dedicated facilities for the exchange of traffic once the monthly volume of traffic being exchanged with an RLEC reaches a DS-1 volume of traffic.

Currently, MCImetro receives well in excess of this DS-1 volume of traffic monthly from Brandenburg. Despite this high level of traffic, MCImetro has unilaterally decided not to execute a traffic exchange agreement with Brandenburg. This decision is tantamount to a business strategy of freeloading upon the administrative and networking costs of carriers like Brandenburg and Windstream. Accordingly, Brandenburg holds MCImetro responsible for any transiting or other charges that Windstream may ultimately seek to impose upon Brandenburg as a result of MCImetro's unilateral decision to subvert state and federal law by avoiding the establishment of definitive traffic exchange agreements.

Consequently, Brandenburg is contemplating whether it should bring MCImetro before the Commission to address the resolution of these issues. Likewise, unless present circumstances change, Brandenburg would be within its rights to refuse completion of calls from its own end-users to MCImetro. Brandenburg would prefer not to be forced into pursuing such relief. If MCImetro refuses to enter into the attached agreement, however, it may be forced to do so.

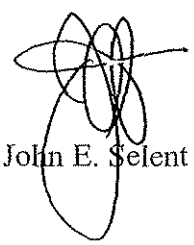
Accordingly, Brandenburg proposes that MCImetro execute a substantively identical version of the enclosed Agreement, which governs MCImetro's exchange of similar traffic with South Central Rural Telephone Cooperative Corporation, Inc. This Agreement will clarify the parties' respective obligations with respect to the local traffic that MCImetro seeks to exchange with Brandenburg. It will also clarify the parties' respective obligations with respect to any third-party carriers that may be involved in the receipt and delivery of such traffic.

We ask that MCImetro indicate its assent to the terms of the enclosed agreement no later than Friday, May 30, 2008, whereupon we will prepare and send you an executable version for filing with the Commission.

Thank you, and we look forward to your response.

Sincerely,

DINSMORE & SHOHL LLP



John E. Selent

JES/mbt
Enclosure
cc: Edward T. Depp, Esq.
Mr. Rick McGolerick *(via email: Rick.McGolerick@verizonbusiness.com)*

## Depp,Tip

**From:** Depp,Tip
**Sent:** Friday, June 20, 2008 3:56 PM
**To:** 'jeb.pinney@ky.gov'
**Cc:** 'Brent, Douglas'; 'Overstreet, Mark R.'; Selent, John
**Subject:** RE: Windstream/Verizon/Brandenburg

Mr. Pinney:

We apologize for our delay in responding to your request for an update on the status of the above-referenced matter. Nonetheless, we have been working closely with MCImetro's counsel to determine whether there is a possibility of some informal resolution of the dispute regarding the delivery of Brandenburg Telephone Company's end-user traffic to MCImetro. To date, the dispute remains unresolved, and it appears that the parties may be at an impasse with respect to the following two issues.

First, MCImetro disputes Brandenburg's obligation to interconnect only within its network boundaries. Second, MCImetro has claimed that it is entitled to reciprocal compensation for ISP-bound traffic. Brandenburg has advised MCImetro that a traffic exchange agreement incorporating these principles is unacceptable, and it has advised MCImetro that its demands are inconsistent with MCImetro's existing traffic exchange agreements with other ILECs in Kentucky. (For example, MCImetro's traffic exchange agreement with South Central Rural Telephone Cooperative Corporation, Inc. ("SCRTC") contains exactly the same substantive terms as those proposed by Brandenburg. It implements a bill-and-keep compensation scheme, and it requires MCImetro to bring its facilities to SCRTC's network at no charge to SCRTC.)

To that end, Brandenburg has advised MCImetro that MCImetro must: (i) sign an appropriate traffic exchange agreement within two weeks of yesterday's date; and (ii) establish dedicated trunks to Brandenburg's network for the exchange of the more than three million (3,000,000) minutes of traffic per month at issue. Brandenburg has also advised MCImetro that, if MCImetro does not do so, Brandenburg will -- in conformity with established industry routing protocols -- begin routing traffic from its end-user customers to MCImetro in accordance with the local routing number ("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 AT&T Louisville tandem, which also means that the calls will have to be placed as toll calls by Brandenburg's end-user customers.

Brandenburg and MCImetro continue to try and resolve these differences, and if the parties are able to do so, we will advise the Commission promptly. Brandenburg further notes that if MCImetro will execute an appropriate traffic exchange agreement, it is likely that the issues identified in Windstream's status report (from Wednesday afternoon) may also be resolved.

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

-Tip

Edward T. Depp
Dinsmore & Shohl LLP
1400 PNC Plaza
500 W. Jefferson St.
Louisville, KY 40202
Direct Dial: 502-540-2347
Cell: 502-599-5731
Fax: 502-585-2207
tip.depp@dinslaw.com
www.dinslaw.com

Dinsmore&Shohl LLP
ATTORNEYS

Edward T. Depp
502-540-2347
tip.depp@dinslaw.com

June 20, 2008

***Via Hand Delivery***
Douglas F. Brent
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202

***Re: MCImetro Traffic Exchange Agreement with Brandenburg Telephone Company***

Dear Doug:

The purpose of this letter is to memorialize yesterday morning's telephone call regarding the status of traffic exchange agreement negotiations between Brandenburg Telephone Company ("Brandenburg") and MCImetro Access Transmission Services, LLC ("MCImetro").

Based on our discussion from yesterday and previous discussions, it sounds as though we are still at an impasse. Particularly, it sounds as though MCImetro believes it has some entitlement to: (i) force Brandenburg to pay for establishing traffic exchange facilities outside of its network; and (ii) recover reciprocal compensation from Brandenburg for ISP-bound traffic. Neither belief is supported by applicable law.

As you know, the Public Service Commission of the Commonwealth of Kentucky (the "Commission") has clarified that a rural incumbent local exchange carrier is not responsible (financially or otherwise) for establishing traffic exchange facilities outside of its incumbent network. Likewise, the law is clear that Brandenburg is not obligated to pay reciprocal compensation on ISP-bound traffic like the AOL-bound traffic at issue in this dispute.

In short, this dispute can be easily and quickly resolved if MCImetro will simply sign an agreement that is substantively identical to the agreement it signed with South Central Rural Telephone Cooperative Corporation, Inc. ("SCRTC"). Just as MCImetro agreed with SCRTC, MCImetro should pay for and establish dedicated interconnection facilities to Brandenburg's

network. It should also abandon its meritless demands for reciprocal compensation on ISP-bound traffic.

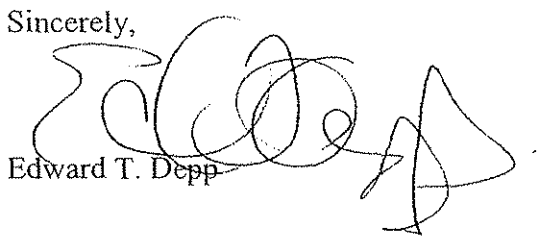
This entire dispute is MCImetro's making, and it has the power to resolve the dispute by simply signing the SCRTC-based agreement that Brandenburg has already proposed. MCImetro's attempt to freeload on Brandenburg's and Windstream's networks has injured relations between those companies, and it must cease immediately.

Therefore, as we advised you yesterday, MCImetro must: (i) sign Brandenburg's proposed traffic exchange agreement by July 3, 2008; and (ii) establish dedicated trunks to Brandenburg's network for the exchange of the more than three million (3,000,000) minutes of traffic per month at issue. If MCImetro does not do so, Brandenburg will – in conformity with established industry routing protocols (and in order to avoid MCImetro causing further harm to Windstream) – begin routing traffic from Brandenburg end-user customers to MCImetro in accordance with the local routing number ("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.

We reiterate to you that signing the proposed traffic exchange agreement (which MCImetro has already signed with SCRTC) should rectify the entire dispute among Brandenburg, Windstream, and MCImetro. We remain hopeful that MCImetro will make the reasonable choice by doing so.

Thank you.

Sincerely,



Edward T. Depp

ETD/lb
cc: John E. Selent, Esq.