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July 15, 2008

RECEIVED

JUL 15 2008

PUBLIC SERVICE
COMMISSION

VIA HAND DELIVERY

Ms. Stephanie L. Stumbo
Executive Director
Public Service Commission
Post Office Box 615
Frankfort, Kentucky 40602

RE: Brandenburg Telephone Company v. MCImetro Access Transmission Services, LLC and Windstream Kentucky East, Inc.
Case No. 2008-00239

Dear Ms. Stumbo:

Enclosed please find an original and ten copies of MCImetro Access Transmission Services, LLC's Answer and Counterclaim in the above-referenced matter. Please indicate receipt of this filing by your office by placing a file stamp on the extra copy and returning to me via our runner.

Sincerely yours,

Douglas F. Brent

DFB:ec
Enclosures
cc: Parties of Record

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUL 15 2008

PUBLIC SERVICE
COMMISSION

In the Matter of:

BRANDENBURG TELEPHONE COMPANY)
)
Complainant)
)
v.)
)
MCIMETRO ACCESS TRANSMISSION)
SERVICES, LLC)
)
And)
)
WINDSTREAM KENTUCKY EAST, INC.)
)
Defendants)

Case No. 2008-00239

MCImetro's ANSWER AND COUNTERCLAIM

Defendant, MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services ("MCImetro"), by counsel, for its Answer to the specific averments set forth in the Complaint, states as follows:

1. In response to paragraph 1 of the Complaint, Defendant MCImetro admits that Brandenburg Telephone Company ("Brandenburg") is authorized to provide telecommunications services in the Commonwealth of Kentucky. MCImetro is without knowledge or information sufficient to form a belief as to the truth of the remaining averments set forth in paragraph 1 of the Complaint and therefore denies same.

2. In response to paragraph 2 of the Complaint, MCImetro admits that it is a Delaware limited liability company, that it is a competitive local exchange carrier, and that it is authorized to provide telecommunications service in Boone, Campbell, Gallatin, and Kenton

counties in Kentucky. MCImetro further states that its service territory extends beyond those four counties. MCImetro denies the remaining averments of paragraph 2 of the Complaint.

3. MCImetro is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 3 of the Complaint and therefore denies same.

4. MCImetro admits the averments set forth in paragraph 4 of the Complaint.

5. Paragraph 5 of the Complaint consists of characterizations, conclusions and arguments to which no response is necessary. However, MCImetro disputes those characterizations, conclusions, and arguments.

6. In response to paragraph 6 of the Complaint, MCImetro admits that Windstream Kentucky East (“Windstream”) is an intermediary carrier. MCImetro is without knowledge or information sufficient to form a belief as to the truth of the remaining averments set forth in paragraph 6 of the Complaint and therefore denies same.

7. Paragraph 7 of the Complaint sets forth legal conclusions to which no response is necessary.

8. Paragraph 8 of the Complaint sets forth legal conclusions to which no response is necessary.

9. Paragraph 9 of the Complaint sets forth legal conclusions to which no response is necessary.

10. Paragraph 10 of the Complaint sets forth legal conclusions to which no response is necessary.

11. In response to paragraph 11 of the Complaint, MCImetro admits that it provides service to providers of dial-up Internet access service. MCImetro is without knowledge or

information sufficient to form a belief as to the truth of the remaining averments set forth in paragraph 11 of the Complaint and therefore denies same.

12. MCImetro is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 12 of the Complaint and therefore denies same.

13. Paragraph 13 of the Complaint consists of characterizations, conclusions and arguments to which no response is necessary. However, MCImetro disputes those characterizations, conclusions, and arguments.

14. MCImetro is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 14 of the Complaint and therefore denies same.

15. MCImetro is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 15 of the Complaint and therefore denies same.

16. MCImetro is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 16 of the Complaint and therefore denies same.

17. MCImetro admits that Brandenburg proposed a traffic exchange agreement in 2005. MCImetro is without knowledge or information sufficient to form a belief as to the truth of the remaining averments set forth in paragraph 17 of the Complaint and therefore denies same.

18. MCImetro admits the allegations of paragraph 18 of the Complaint.

19. Paragraph 19 of the Complaint consists of characterizations, conclusions and arguments to which no response is necessary. MCImetro denies that it “receive[s]” calls from Brandenburg’s end users, and further denies the remaining allegations of paragraph 19 of the Complaint.

20. MCImetro is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraphs 20 to 29 of the Complaint and therefore denies same.

21. In response to paragraph 30 of the Complaint, MCImetro admits that Brandenburg wrote to MCImetro on or about February 21, 2007.

22. In response to paragraph 31 of the Complaint, MCImetro admits that it attempted to negotiate with Brandenburg. All remaining allegations and characterizations of Paragraph 31 are denied.

23. MCImetro is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 32 of the Complaint and therefore denies same.

24. MCImetro is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 33 of the Complaint and therefore denies same.

25. In response to paragraph 34 of the Complaint, MCImetro admits it was contacted by Brandenburg during 2008 concerning a traffic exchange agreement. MCImetro is without knowledge or information sufficient to form a belief as to the truth of the remaining averments set forth in paragraph 34 of the Complaint and therefore denies same.

26. MCImetro denies the averments of paragraph 35 of the Complaint.

27. MCImetro admits it has been generally willing to negotiate a mutually-acceptable arrangement with Brandenburg.

28. MCImetro admits the averments of paragraph 37 of the Complaint. MCImetro further states that its Associate General Counsel Richard Severy wrote to Brandenburg's counsel John E. Selent on May 30, 2008, stating that "[b]ecause the terms of that earlier [South Central Rural] agreement reflect the specific circumstances of the two carriers' respective networks,

further discussions with Brandenburg are needed to specify the interconnection arrangements between our two companies.”

29. MCImetro denies the averments of paragraph 38 of the Complaint as stated. MCImetro further states that that it has had discussions with Brandenburg since May 30, 2008.

30. MCImetro denies the characterizations and allegations of Paragraph 39 of the Complaint.

31. MCImetro denies the averments of paragraph 40 of the Complaint as stated. MCImetro further states that it is willing to establish a point of interconnection on Brandenburg’s network, provided that Brandenburg agrees to comply with its legal obligation to compensate MCImetro for traffic originated on its network and terminated on MCImetro’s network. MCImetro also is willing to explore alternative arrangements.

32. Paragraph 41 of the Complaint contains legal conclusions to which no response is necessary.

33. Paragraph 42 of the Complaint contains legal conclusions to which no response is necessary.

34. Paragraph 43 of the Complaint sets forth legal conclusions to which no response is necessary.

35. Paragraph 44 of the Complaint sets forth legal conclusions to which no response is necessary.

36. Paragraph 45 of the Complaint sets forth legal conclusions to which no response is necessary.

37. Paragraph 46 of the Complaint sets forth legal conclusions to which no response is necessary.

38. Paragraph 47 of the Complaint sets forth one paragraph of a 113 paragraph FCC order which speaks for itself and to which no response is necessary.

39. Paragraph 48 of the Complaint sets forth characterizations of an FCC order and legal conclusions to which no response is necessary. MCImetro disputes the characterizations of its traffic.

40. Paragraph 49 of the Complaint sets forth legal conclusions to which no response is necessary.

41. Paragraph 50 of the Complaint consists of characterizations, conclusions and arguments to which no response is necessary.

42. In response to paragraph 51 of the Complaint, MCImetro admits that it has an interconnection agreement with Windstream. MCImetro further states that the November 14, 2005 agreement quoted by Brandenburg has subsequently been amended and that the agreement speaks for itself.

43. MCImetro admits that it has an agreement with South Central Rural Telephone Cooperative Corporation and denies the remaining allegations of Paragraphs 52 and 53.

44. MCImetro is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 54 of the Complaint and therefore denies same. MCImetro denies that it refuses to execute an appropriate traffic exchange agreement.

45. MCImetro denies the allegations of Paragraph 55 of the Complaint.

46. MCImetro denies the allegations of Paragraph 56 of the Complaint.

47. Paragraph 57 of the Complaint consists of allegations, characterizations, legal conclusions and arguments concerning the conduct of Defendant Windstream to which no response from MCImetro is necessary.

48. MCImetro denies the allegations of Paragraph 58 of the Complaint.

49. MCImetro is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 59 of the Complaint concerning Windstream and therefore denies same. MCImetro denies the remaining averments in paragraph 59.

50. MCImetro denies the allegations of paragraph 60 of the Complaint.

51. Paragraph 61 consists of Brandenburg's threat to disrupt service for its own local customers (who have no other choice for local service in Radcliff Kentucky) on or after July 3, 2008 unless MCImetro capitulates to its demands. This paragraph requires no response from MCImetro.

COUNTERCLAIM

Rates due MCImetro under K.P.S.C. Tariff No. 1, Section 9.1

1. MCImetro's Kentucky tariff No. 1 includes Local Traffic Termination Service ("LTTS").

2. LTTS is a service which provides for local traffic that originates on a carrier customer's network to be terminated to the subscribers of MCImetro.

3. This tariff was duly filed and became effective September 1, 2005. A copy of this tariff section is attached as Exhibit 1.

4. The rates, terms and conditions of this tariff apply when the carrier (in this case, Brandenburg): (i) originates traffic which is then terminated by MCImetro; and (ii) the carrier and MCImetro have not entered into an agreement that governs the exchange of "Non-Access Minutes of Use."

5. There is no agreement that governs the exchange of "Non-Access Minutes of Use" between Brandenburg and MCImetro.

6. MCImetro provides local service in Elizabethtown, Kentucky and has established points of interconnection at five Elizabethtown end offices of Windstream as well as at a tandem office also operated by Windstream.

7. MCImetro is one of at least three local carriers serving Elizabethtown.

8. Through its own tariff and rate design, Brandenburg has enabled its Radcliff customers to call various NPA-NXXs at no additional charge.

9. The referenced NPA-NXXs, identified specifically in Brandenburg's local tariff, include NXXs with numbers assigned to MCImetro subscribers.

10. As Brandenburg has acknowledged, its customers often dial numbers that belong to MCImetro's customers who are within the local calling area defined by Brandenburg.

11. For calls originated by Brandenburg's Radcliff subscribers and terminated by MCImetro to its subscribers, Brandenburg is an MCImetro customer under the LTTS tariff.

12. As an MCImetro customer under the tariff, Brandenburg is bound by the tariff's terms.

13. MCImetro has billed Brandenburg for usage under this tariff and under the corresponding section of MCImetro's Tariff FCC No. 1.

14. Brandenburg has not paid for the services rendered under these tariffs.

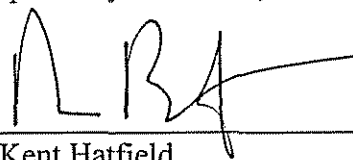
15. As of June 10, 2008, there are more than \$48,000.00 in unpaid charges for services provided by MCImetro to Brandenburg.

16. In comparable disputes, Brandenburg has requested that the Commission compel other carriers to pay charges billed under Brandenburg's own access tariffs. *See, e.g., Brandenburg Telephone Co. v. Global Crossing*, Case No. 2006-00341, *Order* (July 10, 2007) (denying motion to dismiss).

WHEREFORE, MCImetro respectfully requests that the Commission:

- A. Dismiss Brandenburg's complaint with prejudice;
- B. Order Brandenburg to satisfy or answer MCImetro's Counterclaim; and
- C. Grant MCImetro all further relief to which it may be entitled.

Respectfully submitted,




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Douglas F. Brent
STOLL KEENON OGDEN, PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202-2828
Telephone: (502) 333-6000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Answer and Counterclaim has been served by first class mail on those persons whose names appear below this 15th day of July, 2008.

John E. Selent
Edward T. Depp
Holly C. Wallace
DINSMORE & SHOHL, LLP
1400 PNC Plaza
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Louisville, KY 40202

Bruce F. Clark
STITES & HARBISON, PLLC
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P.O. Box 634
Frankfort, KY 40602-0634



Douglas F. Brent

ACCESS SERVICES

9. Local Traffic Termination Service (LTTS) (Cont.)

9.1 SERVICE DESCRIPTION

Local Traffic Termination Service (LTTS) provides for local traffic that originates on the Customer's network to be terminated to customers of the Company.

9.1.1 Pursuant to Federal Communications Commission orders FCC 01-131 (adopted April 18, 2001) and FCC 04-241 (adopted October 8, 2004), a Carrier is a Customer of LTTS for all of the Carrier's Terminating Non-Access Minutes of Use that fall under a 3:1 ratio of Terminating to Originating Non-Access Minutes of Use, except as provided for in sections 9.1.2 and 9.1.3.

9.1.1.1 **Terminating Non-Access Minutes of Use** are non-Access minutes of use delivered by the Carrier to the Company for termination to customers of the Company, including all minutes of use for which the calling and called party number are assigned in the Local Exchange Routing Guide (LERG) to the same Mandatory Local Calling Area.

9.1.1.2 **Originating Non-Access Minutes of Use** are non-access minutes of use delivered by the Company to the Carrier for termination to end users of the Carrier, including all minutes of use for which the calling and called party number are assigned in the LERG to the same Mandatory Local Calling Area.

9.1.1.3 **Mandatory Local Calling Area** means the geographic area, as determined by the Commission, that comprises the local calling area for end-user calling purposes. The Mandatory Local Calling Area includes mandatory EAS exchanges, but excludes non-mandatory or optional EAS areas.

9.1.2 The rates, terms, and conditions of this section do not apply if the Carrier and the Company have entered into an agreement that governs the exchange of Non-Access Minutes of Use including an interconnection agreement approved by the Commission pursuant to section 252 of the Federal Telecommunications Act.

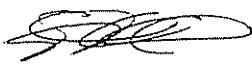
9.1.3 The rates, terms, and conditions of this section do not apply if the Carrier is a Commercial Mobile Radio Service (CMRS) provider licensed by the Federal Communications Commission.

All material on this page is new.

Issue Date : 8/2/05

Erik Sanchez
Tariff Specialist

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE
8/1/2005
PURSUANT TO 807 KAR 5:011
SECTION 9 (1) Effective Date: 9/1/05

By 
Executive Director

ACCESS SERVICES

9 Local Traffic Termination Service (LTTS) (Cont.)

9.2 REGULATIONS

9.2.1 Application of Rates

The LTTS rate is assessed on a per-minute of use basis. Rates and charges are set forth in Section 9.3.

9.2.2 Measuring Minutes of Use

9.2.2.1 If Company lacks sufficient call detail (i.e., no calling party number (CPN)) to determine the jurisdiction for minutes from Carrier per Sections 9.1.1.1 and 9.1.1.2, above, then Company will determine the jurisdiction of such minutes in direct proportion to the jurisdiction of the minutes for which it does have CPN. In the event that no minutes are received with call detail sufficient to determine jurisdiction, then the Company shall determine jurisdiction according to the rules set forth in Section 2.3.3.1 of this tariff.

9.2.2.2 The Company will measure LTTS minutes of use as follows.

Step 1: The Company's switch will measure Originating Non-Access Minutes of Use during the billing period. In the event that that customers of the Company or customers of the Carrier are served on a wholesale local switching basis, the Company will use the appropriate Daily Usage Feeds from the ILEC providing the wholesale local switching in order to determine the Originating Non-Access Minutes of Use associated with the wholesale local switching customers. The minutes: recorded by the Company's switch; from the ILEC's DUF records; and, determined in accordance with Section 9.2.2.1 will be summed to determine the total Originating Non-Access Minutes of Use. The total number of minutes for each end office will be rounded up to the nearest minute each month.

Step 2: The Company's switch will measure Terminating Non-Access Minutes of Use during the billing period. In the event that that the customer of the Company or the customer of the Carrier is served on a wholesale local switching basis, the Company will use the appropriate Daily Usage Feeds from the ILEC providing the wholesale local switching in order to determine the Originating Non-Access Minutes of Use associated with the wholesale local switching customers. The minutes: recorded by the Company's switch; from the ILEC's DUF records; and, determined in accordance with Section 9.2.2.1 will be summed to determine the total Terminating Non-Access Minutes of Use. The total number of minutes for each end office will be rounded up to the nearest minute each month.

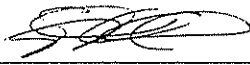
Step 3: Multiply the quantity measured in Step 1 by 3.

Step 4. Obtain LTTS MOU by choosing the lesser of the quantities determined in Step 2 and Step 3. Any Step 2 minutes in excess of the Step 3 minutes will be billed under Company's FCC Tariff.

All material on this page is new.

Issue Date : 8/2/05

Erik Sanchez
Tariff Specialist

PUBLIC SERVICE COMMISSION OF KENTUCKY EFFECTIVE 9/1/2005	
PURSUANT TO K.P.S.C. 5.011 SECTION 9 (1)	
By	
	Executive Director

ACCESS SERVICES

9. Local Traffic Termination Service (LTTS) (Cont.)

9.3 LTTS RATES AND CHARGES

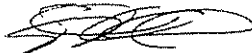
Per LTTS MOU: \$0.002180/minute

All material on this page is new.

Issue Date : 8/2/05

Erik Sanchez
Tariff Specialist

Effective Date: 9/1/05
PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE
9/1/2005
PURSUANT TO 807 KAR 5:011
SECTION 9 (1)

By 
Executive Director