

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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APR 19 2002

PUBLIC SERVICE
COMMISSION

BRANDENBURG TELECOM LLC)
Plaintiff)
v.)
VERIZON SOUTH INC.)
Defendant)

Case No. 2001-00143

FORMAL COMPLAINT

Brandenburg Telecom LLC ("Brandenburg Telecom"), by counsel, for its complaint pursuant to KRS 278.260 against Verizon South Inc. ("Verizon"), states as follows.

1. The full name and address of Brandenburg Telecom is Brandenburg Telecom LLC, 502 West Dixie Avenue, Elizabethtown, Kentucky 42701. The Public Service Commission of the Commonwealth of Kentucky (the "Commission") granted Brandenburg Telecom authority to provide competitive local exchange carrier ("CLEC") services on May 14, 2001. See Letter to John E. Selent, attached hereto as Exhibit A.

2. The full name and address of Verizon is Verizon South Inc., 1255 Corporate Drive, Floor 4, SVCO4A43, Irving, Texas 75038. Verizon provides local exchange and other services within its franchised areas in Kentucky. Verizon is, and at all relevant times has been, an "incumbent local exchange carrier" ("ILEC") under the terms of the Telecommunications Act of 1996 (the "Act").

3. The facts upon which this complaint are based are set forth more fully in the body of the complaint and exhibits hereto. Briefly, Brandenburg Telecom's complaint against Verizon is for breach of the terms of the Interconnection Agreement, approved on January 15, 2002, by and between Brandenburg Telecom and Verizon (the "Agreement").

The Facts

4. Brandenburg Telecom is a new CLEC that has been attempting to compete against Verizon, the ILEC, in the Elizabethtown market for only about two (2) months.

5. Pursuant to the Agreement, Brandenburg Telecom has established a trunk group between its switch and the Verizon switch (also in Elizabethtown) for the exchange of local traffic between the two companies. Pursuant to the Agreement, Brandenburg Telecom has also established a second transit group for exchange of traffic between Brandenburg and third-party carriers who interconnect with the greater Elizabethtown market at the Elizabethtown tandem.

6. Many current Brandenburg Telecom customers, when attempting to place a local call to certain CMRS customers within the same local calling exchange (the "304 NXX customers"), are blocked at the Verizon tandem in Elizabethtown. The traffic is not transited, and the Brandenburg Telecom customer hears a vacant code, requiring the customer to place the call as a long-distance call, thereby incurring a toll charge.

7. These current Brandenburg Telecom customers, when they were still Verizon customers, however, were able to call these same 304 NXX customers *without* incurring a toll. This is because Verizon delivers calls made by its *own* customers to 304 NXX customers as local calls. However, once a customer's number is ported from Verizon to Brandenburg Telecom, the calls to the 304 NXX customers cannot be completed except as long-distance toll calls.

8. Due to specific network routing arrangements made between Verizon and the CMRS provider, these local calls from Brandenburg Telecom to 304 NXX customers must transit two tandems: *first*, the call must transit the Verizon tandem; *second*, the call must transit a BellSouth tandem. After transiting the BellSouth tandem, the call is terminated by the CMRS provider.

9. Despite transiting this traffic for its own customers, Verizon refuses to transit traffic from Brandenburg Telecom to the CMRS provider. Rather, Verizon claims that Brandenburg Telecom must establish its own trunking relationship between the Brandenburg Telecom end-office and the BellSouth tandem near Louisville, Kentucky (a toll point for Brandenburg Telecom) to complete local Elizabethtown calls to 304 NXX customers.

10. Because of their inability to place calls to the 304 NXX customers without incurring a toll charge, many new Brandenburg Telecom customers have threatened to switch back to Verizon service if this problem is not promptly resolved. In response to this emergency, Brandenburg Telecom has been forced to issue toll credits to the subscribers and compensate the toll provider for the lost revenue.

11. Therefore, because Brandenburg Telecom customers are unable to complete all of their local calls and because Verizon's actions threaten to destroy Brandenburg Telecom's competitive enterprise by frustrating Brandenburg Telecom customers with a level of service lesser than that which Verizon provides to its own customers, this issue constitutes a service-affecting issue.

12. On March 29, 2002, counsel to Brandenburg Telecom sent a letter to Verizon seeking prompt resolution of this service-affecting issue. See Exhibit B, attached hereto.

13. On April 2, 2002, Verizon responded, acknowledging receipt of the letter. Verizon's response also indicated that the letter was "being reviewed and [would] be distributed to the appropriate Verizon Group(s) who will contact [Dinsmore & Shohl] with [Verizon's] response." See Exhibit C, attached hereto.

14. Nearly two weeks later, without having heard back further from Verizon regarding this service-affecting issue, counsel to Brandenburg Telecom called Verizon and

advised that if Verizon did not address the issue immediately, it would be necessary to file this complaint on Friday, April 12, 2002. See Confirming Letter, attached hereto as Exhibit D.

15. Verizon responded by telephone and scheduled a teleconference for Tuesday April 16, 2002, between the appropriate network experts at both companies. It was hoped that this issue could be resolved at that time.

16. That meeting did not produce a satisfactory resolution. During that teleconference, Verizon merely claimed that it was not responsible for transiting the Brandenburg Telecom traffic in question without offering any legitimate contractual or legal support for its position. Instead, Verizon maintained its position that Brandenburg Telecom must establish its own separate transit group with BellSouth at the BellSouth tandem near Louisville to route the traffic to the 304 NXX customers.

17. During that call, Verizon admitted that it was technically feasible for it to transit the traffic to the 304 NXX customers — as it does for its own customers — in order to make the call a local call.

18. Brandenburg Telecom also acknowledged that it would have data sufficient to enable it to compensate Verizon for any "third-party charges" Verizon would incur in transiting the traffic.

19. Nevertheless, despite Verizon's own admission that it would be technically feasible to transit this traffic and despite the fact that Brandenburg Telecom has acknowledged its intention to fully reimburse Verizon for the third-party charges Verizon would incur in transiting the traffic, Verizon maintained its position that Brandenburg Telecom should be forced to incur the expense of additional trunking, thereby duplicating the inefficiencies of the Verizon service configuration with the CMRS provider serving the 304 NXX customers.

20. In any event, Verizon has not offered any reason — financial or technical — that would impact its ability to transit the Brandenburg Telecom traffic in the same manner it transits traffic for its own customers.

Tandem Transit Traffic

21. Section 12.1 of the Interconnection Attachment to the Agreement defines tandem transit traffic as:

Telephone Exchange Service traffic that originates on [Brandenburg Telecom's] network, and is transported through a Verizon Tandem to the Central Office of a CLEC, ILEC other than Verizon, [CMRS] carrier, or other LEC, that subtends the relevant Verizon Tandem to which [Brandenburg Telecom] delivers such traffic.

Id.

22. Pursuant to this language from the Agreement, the Brandenburg Telecom traffic to the 304 NXX customers should clearly be transported through a Verizon tandem to the central office of the CMRS carrier behind the relevant Verizon tandem. There is no contractual or other restriction requiring that the Brandenburg Telecom traffic must proceed directly from the Verizon tandem to the CMRS carrier's central office without ever encountering another tandem along the call's route.

23. Furthermore, in its orders in Case No. 2001-224, the Commission expressly recognized the fact that tandem transit traffic need not proceed from the Verizon tandem *directly* to the terminating carrier. Pursuant to the December 10, 2001, Order in that case, Verizon argued for the right to and was permitted to "charge Brandenburg [Telecom] the costs it incurs in carrying Brandenburg [Telecom] traffic across its tandem, all of which are based on published rates available for inspection." *Id.* at 4.

24. Verizon now refuses to do this very thing and attempts to unilaterally alter the Commission's resolution of this issue, to Brandenburg Telecom's detriment.¹

Breach of the Agreement; Verizon's Unjustified Refusal to Transit this Traffic

25 Pursuant to Section 12.6 of the Interconnection Attachment to the Agreement, Verizon may refuse to provide tandem transit traffic service for tandem transit traffic only under the following circumstance

Verizon will not provide Tandem Transit Traffic Service for Tandem Transit Traffic to be delivered to a CLEC, ILEC, CMRS carrier, or other LEC, if the volume of Tandem Transit Traffic to be delivered to that carrier exceeds one (1) DS1 level volume of calls.

Id.

26. The traffic to be delivered to the CMRS provider in question does not exceed one (1) DS1 level volume of calls.

27. There is no other legitimate basis for Verizon's refusal transit the Brandenburg Telecom traffic in question.

28. Therefore, Verizon has breached the Agreement by refusing to transit the Brandenburg Telecom traffic in question.

29. Verizon is, accordingly, liable to the Brandenburg Telecom customers for the toll charges they have incurred in placing calls to the 304 NXX customers (within the local calling exchange) as toll-incurring long distance calls.

¹ Incidentally, even if the Commission were to find that there has been no breach of the Agreement, Verizon should be estopped from arguing that it cannot pass-through to Brandenburg Telecom any tandem transit charges that BellSouth assesses against Verizon for completing calls to the 304 NXX customers. Verizon argued for this very right to pass-through this type of charge; the Commission even agreed with Verizon on this argument. See December 10, 2001, order in Case No. 2001-224. Having won the right to pass-through tandem transit charges, Verizon should not now be permitted to argue that it cannot or should not pass-through these charges. Accordingly, with Verizon having won this very issue and Brandenburg Telecom having relied upon the Commission's order with respect to this issue, Verizon should be estopped from arguing that it cannot transit traffic to the 304 NXX customers and simply pass-through any charges Verizon incurs in doing so.

30. Verizon must, furthermore, begin immediately transiting Brandenburg Telecom's traffic to the 304 NXX customers.

Brandenburg Telecom is not required to establish more than one point-of-interconnection ("POI") within the LATA.

31. Implicit in Verizon's suggested resolution of this service-affecting issue is an insistence that Brandenburg Telecom perhaps even establish an additional POI within the LATA. Moreover, the additional POI that Verizon would propose that Brandenburg Telecom establish is at the BellSouth tandem near Louisville, a toll point for Brandenburg Telecom.

32. On more than one occasion, the Commission has expressly rejected this position. "Brandenburg [Telecom] has the right to establish a minimum of one point of interconnection per LATA." *See* Order of the Commission in Case No. 2001-224, dated November 15, 2001, at 16; *citing The Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1934, as amended by the Telecommunications Act of 1996* (Order dated March 14, 2001) at 134, as modified on April 23, 2001, at 1 and 2 (hereinafter "Level 3").

33. Pursuant to the Commission's orders in Case No. 2001-224 (the arbitration between Verizon and Brandenburg Telecom), Brandenburg Telecom is not required to establish more than one POI per LATA unless "the amount of traffic passing through a Verizon access tandem switch reaches a DS-3 level." *Id.*

34. The amount of traffic passing through the Verizon access tandem switch has not reached a DS-3 level.

35. Therefore, Verizon's continued implicit insistence that Brandenburg Telecom should establish an additional POI within the LATA (at the BellSouth tandem near Louisville) must fail. The Commission has directly rejected Verizon's implicit position in the past. *See*

Level 3. The Commission directly rejected this position on multiple occasions in the Brandenburg Telecom - Verizon arbitration. See Orders in Case No. 2001-224. And Verizon has no basis to believe that the Commission would rule any differently now, just three (3) months after the arbitration has ended.

36. Verizon's blatant refusal to abide by the Commission's orders constitutes nothing more than an unrestrained attempt to abuse its monopoly power in an attempt to forestall competition in the Elizabethtown market.

WHEREFORE, Brandenburg Telecom respectfully requests that the Commission take the following actions.

(a) Order Verizon to immediately begin transiting all Brandenburg Telecom traffic that is destined for telephone numbers within the same local calling exchange, including Brandenburg Telecom traffic destined for 304 NXX customers;


(b) Order Verizon to reimburse Brandenburg Telecom for credits issued to customers who incurred toll charges for calls to 304 NXX customers and for payments made to the toll providers as compensation for lost revenue;

(c) Order Verizon to pay Brandenburg Telecom's attorney's fees incurred in bringing and resolving this complaint;

(d) Order Verizon to pay Brandenburg Telecom's expert consultant's fees incurred in bringing and resolving this complaint; and

(e) Order Verizon to provide Brandenburg Telecom with all other appropriate relief to which it may be entitled.

Respectfully submitted,



John E. Selent
Edward T. Depp
DINSMORE & SHOHL, L.L.P.
2000 Meidinger Tower
Louisville, Kentucky 40202
(502)540-2300 (tel.)

**COUNSEL TO BRANDENBURG
TELECOM LLC**

CERTIFICATE OF SERVICE

It is hereby certified that the undersigned sent a true and accurate copy of the foregoing via Federal Express to the following individuals this 18th day of April, 2002.

Director - Contract Performance & Administration
Verizon Wholesale Markets
600 Hidden Ridge
HQEWMNOTICES
Irving, TX 75038

Vice President & Assoc. General Counsel
Verizon Wholesale Markets
1320 N. Courthouse Road
8th Floor
Arlington, VA 22201



**COUNSEL TO BRANDENBURG
TELECOM LLC**



Paul E. Patton, Governor

**Ronald E. McCloud, Secretary
Public Protection and
Regulation Cabinet**

**Thomas M. Dorman
Executive Director
Public Service Commission**

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May 14, 2001

**Martin J. Huelsmann
Chairman**

**Edward J. Holmes
Vice Chairman**

**Gary W. Gillis
Commissioner**

Mr. John E. Selent
Dinsmore & Shohl, LLP
2000 Moidinger Tower
462 South Fourth Ave.
Louisville, Kentucky 40202

RE: Initial tariff filing (#62-0541) of Brandenburg Telecom LLC to operate as a local exchange reseller

Dear Mr. Selent:

The above referenced filing has been received and reviewed by Commission Staff. An accepted copy is enclosed for your files.

Sincerely,

Sam Reid Jr.
Public Utility Rate Analyst

Enclosure



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

March 29, 2002

FILE COPY

VIA FEDERAL EXPRESS

Director-Contract Performance & Administration
Verizon Wholesale Markets
600 Hidden Ridge
HQEWMNOTICES
Irving, TX 75038

Re: Interconnection Agreement with Brandenburg Telecom LLC; Tandem Transit
Traffic Service Affecting Issue

Dear Director - Contract Performance & Administration:

We are legal counsel to Brandenburg Telecom LLC ("Brandenburg Telecom"). We shall serve as Brandenburg Telecom's point of contact for resolution of this dispute.

The purpose of this letter is to demand a prompt resolution of a service-affecting issue that has arisen in the deployment of interconnection arrangements between Brandenburg Telecom and Verizon. It has come to our attention that Verizon is refusing to relay tandem transit traffic from Brandenburg Telecom end-user customers to certain CMRS end-user customers within the Elizabethtown local exchange. This practice is unfounded under the interconnection agreement between Brandenburg Telecom and Verizon (the "Agreement") as well as under applicable law, and it must cease at once. We demand that Verizon immediately begin transiting all Brandenburg Telecom traffic across its tandem.

I.

The Scenario

The particular scenario that has arisen is as follows. A Brandenburg Telecom end-user customer attempts to place a local call to a CMRS end-user customer within the same local calling exchange. In this specific case, due to arrangements determined by Verizon and the CMRS provider for the call to be completed, the call must transit two tandems: *first*, the call must transit the Verizon tandem; *second*, the call must transit a BellSouth tandem. After transiting the BellSouth tandem, the call is terminated by the CMRS provider. The problem arises because Verizon refuses to transit this traffic, and callers are getting a reorder tone.

Accordingly, to complete this otherwise local call, the Brandenburg Telecom customer is required to place the call as long-distance, unjustifiably incurring a toll charge.

II.

This traffic is tandem transit traffic.

This type of call constitutes tandem transit traffic. Pursuant to the terms of the Agreement, tandem transit traffic is defined as follows.

Telephone Exchange Service traffic that originates on [Brandenburg Telecom's] network, and is transported through a Verizon Tandem to the Central Office of a CLEC, ILEC other than Verizon, [CMRS] carrier, or other LEC, that subtends the relevant Verizon Tandem to which [Brandenburg Telecom] delivers such traffic.

Section 12.1 of the Interconnection Attachment to the Agreement.

In this scenario, the call clearly is transported through a Verizon tandem to the central office of the CMRS carrier subtending the relevant Verizon tandem. Section 12.1 does not specify, however, that the traffic must proceed directly from the Verizon tandem to the CMRS carrier's central office without ever encountering another tandem along the call's route. If Verizon had intended that construction, it would have been easy for Verizon to simply add the word, "directly" to the language such that, in order to qualify as tandem transit traffic, the traffic must be "transported through a Verizon Tandem *directly* to the Central Office. . ." (emphasis added). As noted, however, Section 12.1 does not so provide.

Furthermore, in its orders in Case No. 2001-224, the Kentucky Public Service Commission (the "Commission") recognizes the fact that tandem transit traffic need not proceed from the Verizon tandem *directly* to the terminating carrier. "The Order permits Verizon to charge Brandenburg [Telecom] the costs it incurs in carrying Brandenburg [Telecom] traffic across its tandem, all of which are based on published rates available for inspection." Order of the Commission in Case No. 2001-224, dated December 10, 2001, at 4. Accordingly, Verizon may pass-through, to Brandenburg Telecom, any published rates that BellSouth may charge Verizon for traffic transiting its tandem. Verizon may not, however, (having now won the battle to pass-through published third-party charges) refuse to relay Brandenburg Telecom's tandem transit traffic and pass-through the applicable, published charges Verizon incurs in the process. This very issue was arbitrated; the Commission resolved it satisfactorily to Verizon; and Verizon cannot unilaterally decide to alter the Commission's resolution of this issue.

III.

Verizon may not refuse to provide tandem transit traffic service for this traffic.

Verizon also has no valid grounds for refusing to provide tandem transit traffic service for this tandem transit traffic. Pursuant to the Agreement:

Verizon will not provide Tandem Transit Traffic Service for Tandem Transit Traffic to be delivered to a CLEC, ILEC, CMRS carrier, or other LEC, if the volume of Tandem Transit Traffic to be delivered to that carrier exceeds one (1) DS1 level volume of calls.

Section 12.6 of the Interconnection Attachment to the Agreement. The traffic to be delivered to the CMRS provider in question does not exceed one (1) DS1 level volume of calls. Verizon cannot, therefore, refuse to transit this traffic on that basis.

The Agreement provides no other grounds for refusing to provide tandem transit traffic service to Brandenburg Telecom. Likewise, there is no basis in law for such a refusal. In fact, the Commission's arbitration order forbids such a refusal to provide tandem transit traffic service.

IV.

Brandenburg Telecom is not required to establish another POI within the LATA.

Finally, Verizon has suggested that, to avoid this scenario, Brandenburg Telecom should establish an additional point of interconnection ("POI") at the BellSouth tandem near Louisville, Kentucky (a toll point for Brandenburg Telecom), to route traffic that will be terminated by the CMRS provider involved in this scenario. However, "Brandenburg [Telecom] has the right to establish a minimum of one point of interconnection per LATA." Order of the Commission, dated November 15, 2001, at 16, citing *The Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1934, as amended by the Telecommunications Act of 1996* (Order dated March 14, 2001) at 134, as modified on April 23, 2001, at 1 and 2. Furthermore, Brandenburg Telecom is not required to establish more than one POI per LATA unless "the amount of traffic passing through a Verizon access tandem switch reaches a DS-3 level." *Id.*

The amount of traffic passing through the Verizon access tandem switch has not reached a DS-3 level. Therefore, in light of the Commission's orders in these two cases — one of which Verizon was party to — Verizon has no reasonable grounds upon which it can demand that Brandenburg Telecom establish *more* than one POI per LATA. Brandenburg Telecom would have to incur great expense to comply with Verizon's demand; moreover, it is a great expense and inefficiency that the Commission clearly does not require CLEC's to bear.

V.

Conclusion.

Thus, Brandenburg Telecom demands that Verizon immediately begin relaying *all* tandem transit traffic that does not exceed a DS1 volume of calls to the terminating carrier, regardless of whether doing so requires further transiting. We note again that *this is a service-affecting issue requiring prompt resolution*. If Verizon disagrees with our analysis of the situation, we request that Verizon respond with a similarly detailed analysis of its position,

Director-Contract Performance & Administration
March 29, 2002
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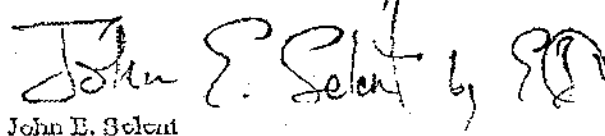
referencing all applicable provisions of the Agreement and/or the Commission's arbitration order.

Again, we look forward to hearing from you very soon. If we have not heard from you by Wednesday, April 3, 2002, we will consult with our client regarding the further legal options available to it.

Thank you, and we look forward to hearing from you by April 3, 2002.

Very truly yours,

DINSMORE & SHOHL LLP

A handwritten signature in black ink that reads "John E. Selent" followed by a stylized flourish or initials.

John E. Selent

JES/etd

cc: Vice President and Associate General Counsel, Verizon Wholesale Markets
Ms. Allison T. Willoughby
Ms. Eileen M. Bodamer
Edward T. Depp, Esq.



April 2, 2002

Mr. John E. Selent
DINSMORE & SHOHL LLP
2000 Meidinger Tower
462 South Fourth Avenue
Louisville, KY 40202

Re: Interconnection Agreement with Brandenburg Telecom LLC; Tandem Transit Traffic
Service Affecting Issue

Dear Mr. Selent:

This letter is sent to acknowledge the receipt of your letter dated March 29, 2002, regarding, Interconnection Agreement with Brandenburg Telecom LLC; Tandem Transit Traffic Service Affecting Issue. Your letter is being reviewed and will be distributed to the the appropriate Verizon Group(s) who will contact you with our response.

Sincerely,

A handwritten signature in cursive script that reads "Sandra Ross".

Sandra Ross
Contract Performance & Administration

Cc: Pat Riley-Verizon

**DINSMORE
& SHOHL LLP**
Attorneys at Law

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JOHN E. SELENT
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April 10, 2002

VIA FACSIMILE: 972-719-1519

Director-Contract Performance
& Administration
Verizon Wholesale Markets
600 Hidden Ridge
HOEWMNOTICES
Irving, TX 75038

Re: Brandenburg Telecom LLC; Tandem Transit Traffic Service Affecting Issue

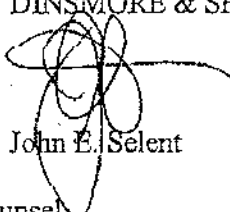
Dear Director:

This letter shall confirm to Verizon that if we do not, by 4:00 p.m. EDT, Thursday, April 11, 2002, hear from the appropriate Verizon personnel with authorization to resolve the service affecting issue addressed in our March 29, 2002 letter, we will immediately take our dispute to the Public Service Commission of the Commonwealth of Kentucky.

Accordingly, we must hear from you tomorrow.

Very truly yours,

DINSMORE & SHOHL LLP


John E. Selent

IES:gd

cc: Vice President & Assoc. General Counsel
Verizon Wholesale Markets
1320 N. Courthouse Road
8th Floor
Arlington, VA 22201

Ms. Allison T. Willoughby

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25868-1