

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

**COPY**

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JAN - 2 2007  
GENERAL COUNSEL

In the Matter of:

Brandenburg Telephone Company; )  
Duo County Telephone Cooperative )  
Corporation, Inc.; Highland Telephone )  
Cooperative, Inc.; Mountain Rural )  
Telephone Cooperative Corporation, )  
Inc.; North Central Telephone )  
Cooperative Corporation; South )  
Central Rural Telephone Cooperative )  
Corporation, Inc.; and West Kentucky )  
Rural Telephone Cooperative )  
Corporation, Inc. )

Complainants )

v. )

Windstream Kentucky East, Inc.; )  
Windstream Kentucky West, Inc.; )

Defendants )

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DEC 28 2006  
PUBLIC SERVICE  
COMMISSION

Case No. 2006-<sup>7</sup>00004

FORMAL COMPLAINT

Brandenburg Telephone Company ("Brandenburg"), Duo County Telephone Cooperative Corporation, Inc. ("Duo County"), Highland Telephone Cooperative, Inc. ("Highland"), Mountain Rural Telephone Cooperative Corporation, Inc. ("Mountain Rural"), North Central Telephone Cooperative Corporation ("North Central"), South Central Rural Telephone Cooperative Corporation, Inc. ("South Central"), and West Kentucky Rural Telephone Cooperative Corporation, Inc. ("West Kentucky") (collectively, the "RLEC's"), by counsel, for their formal complaint against Windstream Kentucky East, Inc. ("Windstream East") and Windstream Kentucky West, Inc. ("Windstream West") (collectively, "Windstream"), pursuant to KRS 278.030, 278.040, 278.190,

278.260, 278.270, 278.280, 807 KAR 5:001 and 5:011, and the Communications Act of 1934, as amended by the Telecommunications Act of 1996, hereby state as follows.

1. The full names and addresses of the RLEC's are as follows.

a. The full name and address of Brandenburg is Brandenburg Telephone Company, 200 Telco Dr., P.O. Box 599, Brandenburg, Kentucky 40108. Brandenburg Telephone is a rural incumbent local exchange carrier authorized to provide telecommunications services in the Commonwealth of Kentucky. Brandenburg Telephone is a Kentucky corporation.

b. The full name and address of Duo County is Duo County Telephone Cooperative Corporation, Inc., P.O. Box 80, 2150 N. Main Street, Jamestown KY 42629. Duo County is a rural incumbent local exchange carrier authorized to provide telecommunications services in the Commonwealth of Kentucky. Duo County is a Kentucky corporation.

c. The full name and address of Highland is Highland Telephone Cooperative, Inc., P.O. Box 119, Sunbright TN 27872. Highland is a rural incumbent local exchange carrier authorized to provide telecommunications service in the Commonwealth of Kentucky. Highland is a foreign corporation.

d. The full name and address of Mountain Rural is Mountain Rural Telephone Cooperative Corporation, Inc., 405 Main Street, P.O. Box 399, West Liberty KY 41472. Mountain Rural is a rural incumbent local exchange carrier authorized to provide telecommunications service in the Commonwealth of Kentucky. Mountain Rural is a Kentucky corporation.

e. The full name and address of North Central is North Central Telephone Cooperative Corporation, P.O. Box 70, 872 Highway 52 Bypass East, Lafayette TN 37083. North Central is a rural incumbent local exchange carrier authorized to provide telecommunications service in the Commonwealth of Kentucky. North Central is a foreign corporation.

f. The full name and address of South Central is South Central Rural Telephone Cooperative Corporation, Inc., 1399 Happy Valley Road, Glasgow KY 42141. South Central is a rural incumbent local exchange carrier authorized to provide telecommunications service in the Commonwealth of Kentucky. South Central is a Kentucky corporation.

g. The full name and address of West Kentucky is West Kentucky Rural Telephone Cooperative Corporation, Inc., P.O. Box 649, Mayfield KY 42066. West Kentucky is a rural incumbent local exchange carrier authorized to provide telecommunications service in the Commonwealth of Kentucky. West Kentucky is a Kentucky corporation.

2. The full names and addresses of Windstream is as follows.

a. The full name and address of Windstream East is Windstream Kentucky East, Inc., 130 West New Circle Rd., Suite 170, Lexington, KY 40505. Windstream East is an incumbent local exchange carrier authorized to provide telecommunications services in the Commonwealth of Kentucky. Windstream is a foreign corporation.

b. The full name and address of Windstream West is Windstream Kentucky West, Inc., 229 Lees Valley Rd., Shepherdsville, KY 40165. Windstream West is an incumbent local exchange carrier authorized to provide telecommunications services in the Commonwealth of Kentucky. Windstream is a foreign corporation.

3. The facts supporting this complaint are set forth more fully below; but briefly, this complaint concerns Windstream's procedurally deficient filing of an unfair, unjust, and unreasonable transit tariff that will have adverse effects upon the RLEC's and their end-user subscribers.

## APPLICABLE LAW

4. Pursuant to KRS 278.040, the Public Service Commission of the Commonwealth of Kentucky ("Commission") has jurisdiction "over the regulation of rates and service of utilities" within the Commonwealth. *Id.*

5. Pursuant to KRS 278.190(1), "[w]henever any utility files with the commission any schedule stating new rates, the commission may, upon its own motion, or upon complaint as provided in KRS 278.260, and upon reasonable notice, hold a hearing concerning the reasonableness of the new rates." *Id.*

6. Pursuant to KRS 278.190(2), the Commission may "at any time before the schedule becomes effective, suspend the operation of the schedule and defer the use of the rate, charge, classification, or service...." *Id.*

7. In order for any new rates to become effective, the party seeking to implement such rates must comply with 807 KAR 5:011 ("Tariffs"), which provides:

### Section 6. Change or Withdrawal of Rate Schedules Administrative Regulations.

...

(3) New tariffs stating changes in any provision of any effective tariff may be issued and put into effect by either of the two (2) following methods:

(a) By order of the commission upon formal application by the utility, and after hearing, as provided by Section 7 of this administrative regulation.

(b) By issuing and filing on at least twenty (20) days' notice to the commission and the public a complete new tariff (or revised sheet of an existing tariff) stating all the provisions and schedules proposed to become effective as provided by Sections 7 and 9 of this administrative regulation.

*Id.* (emphasis added).<sup>1</sup>

8. 807 KAR 5:011, Section 9(2), subsequently provides:

... the twenty (20) days' statutory notice to the commission will not commence to run and will not be computed until such information and notice is filed if the commission determines that there was a substantial omission, which was prejudicial to full consideration by the commission or to an intervenor.

*Id.*

9. In addition, 807 KAR 5:011, Section 3, identifies various matters of form pursuant to which carriers must file tariffs. Among these items is a requirement that the second and all subsequent pages of any tariff shall contain the "signature of the officer of the utility authorized to issue tariffs." *Id.*

10. Finally, KRS 278.260 (particularly when read in concert with KRS 278.190, above) vests the Commission with jurisdiction over complaints claiming:

that any rate in which the complainant is directly interested is unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory....

*Id.*

### STATEMENT OF THE FACTS

11. On Friday, December 1, 2006, Windstream East issued and filed revisions to its *general customer services tariff*. A copy of that tariff revision is attached hereto as Exhibit 1. Upon information and belief, on the same day, Windstream West issued and filed revisions to its general

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<sup>1</sup> The RLEC's note that Windstream appears to have filed the Tariffs as nonbasic services pursuant to KRS 278.544 (formerly part of HB337). Because transit traffic service is a carrier-to-carrier service, however, and not a nonbasic service as that term is defined in KRS 278.541, the new reduced-notice tariff filing provisions of KRS 278.544 are not applicable. *Id.* Accordingly, standard tariff filing notice provisions (as set forth above) apply to the Tariffs in question.

customer services tariff in a form that is substantially similar to Exhibit 1, hereto. (Collectively, those tariffs will be referred to as the "Tariffs.")

12. Among other formal deficiencies with respect to the Tariffs, the Tariffs were not signed by a Windstream officer authorized to issue tariffs. The Tariffs, furthermore, inappropriately purported to become effective on December 1, 2006, the same day they were apparently issued and filed with the Commission.

13. The Tariffs purported to set forth terms and conditions for a service termed "Transit Traffic Service." (See Section S11.1 of Exhibit 1.) While the nature of this carrier service is vaguely described in Windstream's end-user tariff, it appears to relate to local traffic that Windstream receives from one carrier and terminates to another carrier.

14. The per minute of use charge imposed by Windstream for Tandem Transit Traffic Service is \$0.0030.

15. The per minute of use charge imposed by Windstream for End Office Transit Traffic Service is \$0.0045.

16. Windstream filed the Tariffs without providing any notice to the Commission, the RLEC's, or the public and without complying with applicable Kentucky law.

17. Moreover, the Transit Traffic Service tariffed by Windstream is unjust and unreasonable in that: (i) such services are not generally appropriate for a tariff filing, but rather should be negotiated between parties seeking and offering such services; (ii) even if such services are appropriately tariffed, Windstream has provided no cost support to justify the proposed rates; (iii) even if such services are appropriately tariffed, the service description and rate classifications are vague and ambiguous; (iv) even if such services are appropriately tariffed, the Tariffs appear to

permit Windstream to "double dip" on charges against the RLEC's; and (v) even if such services are appropriately tariffed, the proposed rates and terms are unnecessarily onerous upon the RLEC's.

18. Because the Tariffs apply, on their face, to the RLEC's, the RLEC's will suffer significant financial and operation injury if the Commission permits the Tariffs to become effective.

19. Windstream should not be permitted to establish the transit rights and obligations of other telecommunications carriers (such as the RLEC's) by fiat. The issue of transit traffic service is a volatile and controversial topic in the telecommunications industry, and it follows that establishment of terms and conditions of carrier-to-carrier services such as this are more apropos to the contract negotiation process than simple tariff filing. Even if tariff filing were appropriate, the entities that would be affected by Windstream's unilateral actions should have the right to review and comment upon the legality and propriety of the proposed tariff provisions prior to the Tariffs becoming effective.

**WHEREFORE**, the RLEC's respectfully request that the Commission take the following actions.

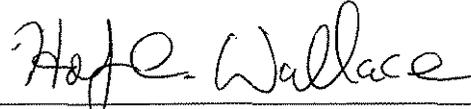
1. Find that Windstream's Tariffs were not validly filed pursuant to applicable Kentucky law and reject the filing of the Tariffs;

2. Order that carrier-to-carrier transit traffic arrangements shall be negotiated, formalized in an agreement, and filed for review and approval with the Commission; or, in the alternative;

3. Suspend Windstream's Tariffs, effective immediately, pursuant to KRS 278.190 and 278.260, and conduct a hearing whether the proposed services and rates are fair, just, and reasonable within the meaning of KRS Chapter 278; and

4. Grant the RLEC's any and all other legal and equitable relief to which they may be entitled.

Respectfully submitted,



John E. Selent

Edward T. Depp

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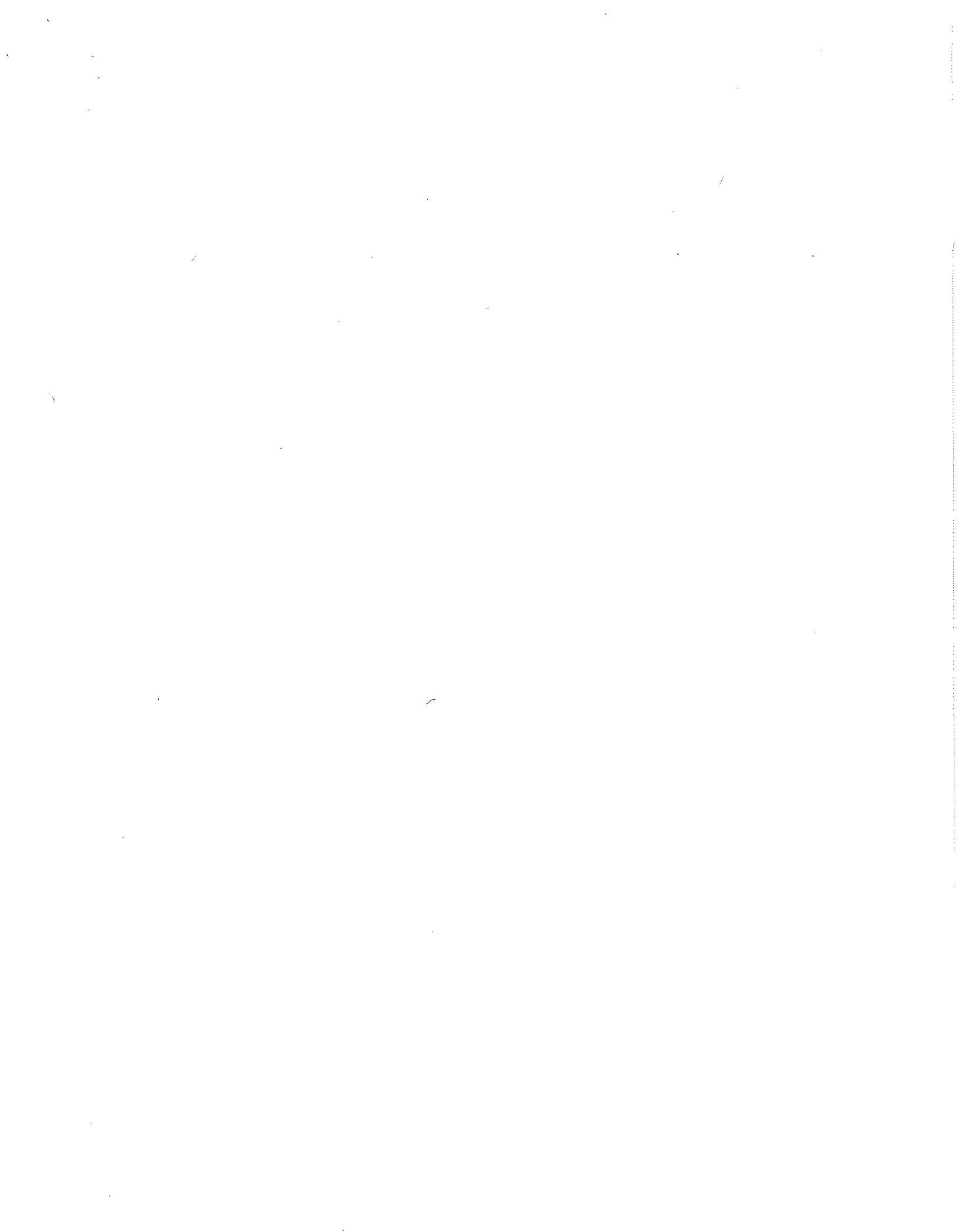
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**COUNSEL TO THE RLEC'S**



**GENERAL CUSTOMER SERVICES TARIFF**

**WINDSTREAM KENTUCKY EAST, INC.**

**P.S.C. KY. No. 7  
First Revised Index Page 9  
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**ISSUED: December 1, 2006  
BY: Vice President  
Lexington, Kentucky**

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**S11. TELECOMMUNICATIONS SERVICE PROVIDER SERVICES**

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## GENERAL CUSTOMER SERVICES TARIFF

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### S11. TELECOMMUNICATIONS SERVICE PROVIDER SERVICES

#### S11.1 Transit Traffic Service

##### S11.1.1 Terms and Definitions

- A. Telecommunications Service Provider -a provider of local and/or access telecommunications service who is legally certified to provide service within the of Kentucky, or is licensed by the Federal Communications Commission (FCC) to provide Commercial Mobile Radio Service (CMRS). For purposes of this tariff, this definition includes, but is not limited to, CMRS providers, Competitive Local Exchange Carriers (CLECs) and Independent Telephone Companies (ICOs).
- B. Transit Traffic – Local Traffic originating on one Telecommunications Service Provider’s network that is delivered by Company to a different Telecommunications Service Provider’s network for termination.
- C. Transit Traffic Service – Company’s provision of the functions to allow a Telecommunications Service Provider to send and receive Transit Traffic.
- D. Local Traffic – for purposes of this tariff;
  1. For wireline-to-wireline traffic, Local Traffic is any intraLATA circuit switched call transiting Company’s network that originates from and terminates to carriers other than Company, and for which Company does not collect toll charges or access charges, either directly or indirectly, as the intraLATA toll provider for the end user. This traffic includes ICO-to-ICO traffic, CLEC-to-ICO traffic, ICO-to-CLEC traffic, and CLEC-to-CLEC traffic; or
  2. For wireless-to-wireless traffic, wireline-to-wireless traffic, and wireless-to-wireline traffic, Local Traffic is any circuit switched call originating from and terminating to carriers other than Company and transiting Company’s network that originates and terminates within the same Major Trading Area (MTA), subject to Company’s LATA restrictions. An MTA is the largest FCC-authorized wireless license territory which serves as the definition of local service area for CMRS traffic as defined in 47 C.F.R. 24.202(a). This traffic includes, but is not limited to, CMRS-to-CMRS, CMRS-to-ICO, ICO-to-CMRS, CLEC-to-CMRS and CMRS-to-CLEC calls.

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**S11. TELECOMMUNICATIONS SERVICE PROVIDER SERVICES**

**S11.1 Transit Traffic Service (Continued)**

**S11.1.2 Rules and Regulations**

- A. This tariff provides the rates, terms and conditions for Company's provision of Transit Traffic Service. Pursuant to this tariff, charges for Transit Traffic Service in this tariff shall apply only to those Telecommunications Service Providers that do not have an interconnection agreement with Company providing for payment for Transit Traffic Service for any particular type of Transit Traffic as described in B. following. Charges for Transit Traffic Service in this tariff shall not be applied to any carrier who has an expired interconnection agreement providing for payment for Transit Traffic Service if the carrier is engaged in ongoing negotiation or arbitration for a new interconnection and the former agreement provides for continuing application during that period.
- B. If Transit Traffic is specifically addressed in a separate agreement between Company and the originating Telecommunications Service Provider, then the rates, terms and conditions contained in that separate agreement will apply in lieu of this tariff. If such separate agreement is limited to certain types of traffic or carriers, then the separate agreement will apply to those traffic types or carriers, and this tariff will continue to apply to any traffic types and carriers not covered under the separate agreement.
- C. Company offers Transit Traffic Service only for Transit Traffic that is intended to terminate to a Telecommunications Service Provider whose network is directly interconnected with Company's network. Where Company accepts Transit Traffic from a Telecommunications Service Provider, Company is not liable or responsible for payment to the terminating carrier. Such payment is the sole responsibility of the originating Telecommunications Service Provider. By utilizing Company's Transit Traffic Service for the delivery of Transit Traffic, the originating Telecommunications Service Provider is committing to establishing a traffic exchange agreement or other appropriate agreement to address compensation between the originating Telecommunication Service Provider and the terminating carrier(s).
- D. Notwithstanding anything in C. preceding to the contrary, in the event that the terminating Telecommunications Service Provider imposes on Company any charges or costs for the delivery of Transit Traffic, the originating Telecommunications Service Provider utilizing Company's Transit Traffic Services pursuant to this tariff shall reimburse Company for such charges or costs.

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S11. TELECOMMUNICATIONS SERVICE PROVIDER SERVICES

S11.1 Transit Traffic Service (Continued)

S11.1.2 Rules and Regulations (Continued)

- E. Company, as the tandem switching provider for Transit Traffic, will generate and deliver to the terminating Telecommunications Service Provider industry standard call detail records, where available, for its use in billing the originating Telecommunications Service Provider for the termination of Transit Traffic. Notwithstanding the foregoing, unavailability of such call detail records does not relieve the originating Telecommunications Service Provider of its obligation to pay the charges for Transit Traffic Service as specified in this tariff, nor does it create any liability to the terminating Telecommunications Service Provider on the part of Company.
- F. Telecommunications Service Providers originating Transit Traffic may elect one of two options for measuring Transit Traffic minutes of use for which charges are due.
  - 1. The originating Telecommunications Service Provider shall utilize its originating switch recordings to compensate Company based upon actual Transit Traffic minutes of use ("Actual Measurements"). Telecommunications Service Providers electing to utilize Actual Measurements shall provide a monthly report to Company reflecting actual Transit Traffic minutes of use, along with payment on a per minute of use basis at the applicable rate set forth in Section S11.1.3 below, within sixty days of the date of usage.
  - 2. In lieu of Actual Measurements, the originating Telecommunications Service Provider shall provide to Company a percent local usage factor (PLU) estimating the percentage of total minutes of use delivered to Company that constitutes Transit Traffic ("Estimated Measurements"). The PLU must be provided to Company in writing within 30 days of the effective date hereof, or within 30 days of delivering Transit Traffic to Company. In the event the originating Telecommunications Service Provider fails to provide a PLU to Company during this timeframe, Company will assign a PLU to be used until a PLU is provided. To the extent a PLU is provided after the default PLU has taken effect, the PLU provided by the Telecommunications Service Provider shall be applied on a prospective basis only. The PLU shall be updated annually, or sooner in the event of a change in Local Traffic volume.

GENERAL CUSTOMER SERVICES TARIFF

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S11. TELECOMMUNICATIONS SERVICE PROVIDER SERVICES

S11.1 Transit Traffic Service (Continued)

S11.1.2 Rules and Regulations (Continued)

- G. Company reserves the right to contest the accuracy of both the Actual Measurements and Estimated Measurements provided by Telecommunications Service Providers and may conduct audits or internal studies for verification.
- H. In the event a dispute arises regarding Actual Measurements or Estimated Measurements, Company will continue to bill based upon information provided by the Telecommunications Service Provider or utilizing the assigned PLU until the dispute is resolved.
- I. If Company and the Telecommunications Service Provider are unable to successfully negotiate a resolution to the dispute within 30 days of notice of the existence of a dispute, the aggrieved Party shall seek dispute resolution with the appropriate governing regulatory body.
- J. Once the dispute is resolved, the parties shall utilize the resulting Actual Measurements or Estimated Measurements on a going forward basis. The parties shall negotiate a true up of any billing inaccuracies occasioned by application of such Measurement on a retroactive basis.
- K. Charges shall be billed to the originating Telecommunications Service Provider and shall be payable under the terms of A2.4 of the General Subscriber Services Tariff.

S11.1.3 Rates and Charges

	<u>Charge</u>
Tandem Transit Traffic Service, per MOU	\$0.0030
End Office Transit Traffic Service, per MOU	0.0045