



STOLL · KEENON · OGDEN
P L L C

2000 PNC PLAZA
500 WEST JEFFERSON STREET
LOUISVILLE, KY 40202-2828
MAIN: (502) 333-6000
FAX: (502) 333-6099
www.skofirm.com

DOUGLAS F. BRENT
DIRECT DIAL: 502-568-5734
douglas.brent@skofirm.com

September 18, 2009

RECEIVED

SEP 18 2009

**PUBLIC SERVICE
COMMISSION**

Mr. Jeff DeRouen
Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, KY 40601

*RE: An Investigation Into The Traffic Dispute Between Windstream Kentucky
East, LLC, Brandenburg Telephone Company And MCImetro Access
Transmission Services, LLC d/b/a Verizon Access
Case No. 2008-00203*

Dear Mr. DeRouen:

Enclosed are an original and ten copies of MCImetro Access Transmission Services LLC's Motion for Correction and Rehearing.

Please indicate receipt of this filing by placing your file stamp on the extra copy and returning to me via our runner.

Very truly yours,

STOLL KEENON OGDEN PLLC

Douglas F. Brent

DFB:

Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

SEP 18 2009

PUBLIC SERVICE
COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE TRAFFIC)
DISPUTE BETWEEN WINDSTREAM)
KENTUCKY EAST, LLC, BRANDENBURG)
TELEPHONE COMPANY AND MCIMETRO)
ACCESS TRANSMISSION SERVICES LLC)
D/B/A VERIZON ACCESS)

CASE NO. 2008-00203

MOTION FOR CORRECTION AND REHEARING

MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services (“Verizon”) respectfully moves the Commission to reconsider or clarify its ruling in its August 26, 2009 Order that the disputed traffic must be moved off the network of Windstream Kentucky East, LLC (“Windstream”). The Commission apparently reached its conclusion based on an interpretation of the Verizon-Windstream interconnection agreement that is at odds with evidence bearing on how the agreement must be interpreted, but that the Commission overlooked. For the reasons explained below, Windstream is required to transit the disputed traffic between Brandenburg Telephone Company (“Brandenburg”) and Verizon and the interconnection agreement does not justify Windstream’s position that it may refuse to do so.

1. The Commission May Reconsider an Order to Correct Errors and to Address Evidence that Has Been Overlooked

KRS 278.400 allows any party to apply for rehearing with respect to “any of the matters” determined by the Commission. Among other things, rehearing is the means for the Commission to

reconsider an order in light of alleged errors and omissions.¹ The Commission should reconsider an order when a party identifies material evidence adduced at hearing that was overlooked in the Commission's order. As discussed below, in interpreting Verizon-Windstream interconnection agreement, the Commission overlooked evidence concerning the parties' arrangement for Windstream's transmission of transit traffic to Verizon. Verizon therefore requests that the Commission modify or vacate those portions of the Order discussed herein.

2. The Order Fails to Take into Account the Evidence Demonstrating Windstream's Obligation to Transit the Traffic at Issue and Verizon's Acceptance of that Traffic.

Windstream through its transit tariff offers transit service to all local providers, such as Brandenburg, handling traffic bound for any carrier "directly interconnected" with Windstream,² such as Verizon.³ Windstream is therefore legally obligated to provide transit service for the traffic in question.⁴

In its Order, the Commission nevertheless concludes that the disputed traffic must be taken off Windstream's network because Verizon and Windstream have not made an arrangement to use their interconnection for transit traffic.⁵ The Commission apparently reached this conclusion because the parties' interconnection agreement precludes them from providing a transit function "for

¹ See, e.g., *Kentucky-American Water Co.*, Case No. 2000-00120, Order at 2-4 (February 29, 2001).

² Windstream Kentucky East P.S.C. No. 7, S11.1.2 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. (Emphasis added.)

³ See Transcript at 74: 25.

⁴ Moreover, as Verizon explained in its post-hearing brief, in *Brandenburg Telecom, LLC v. Verizon South, Inc.*, Case No. 2002-00143 (May 23, 2002), the Commission ruled that to provide dialing parity to competing providers an ILEC must transit traffic to *all telephone numbers within the same local calling area*, even if some of that traffic will terminate to a third party's network that is interconnected directly with a different ILEC's tandem in the same LATA. In the present case, the Commission said "it is reasonable to conclude that a customer's ability to "dial" on a local basis is protected regardless of the service providers involved, and so should the local calling area be preserved regardless of the service provider." Order at 16.

⁵ Order at 18.


the connection of the end users of a third party telecommunications carrier to the end users of the other Party” unless the parties have made arrangements to do so.⁶ But in making this decision the Commission overlooked the evidence demonstrating that Verizon and Windstream have made such other arrangements. As required by its transit tariff adopted in 2006, Windstream has routed Brandenburg’s transit traffic in question to Verizon and Verizon has consistently accepted that traffic without charge to Windstream. Verizon and Windstream as a matter of practice therefore have worked out arrangements for the disposition of this traffic through their interconnection. Although this practice is well established, Verizon is willing to formalize this arrangement through an amendment to its interconnection agreement if necessary. Windstream, which has undertaken the legal obligation in its transit tariff to handle this traffic, should not be heard to refuse to agree to such an amendment.

Because the Verizon-Windstream interconnection agreement permits the parties to use their interconnection for transit traffic under the circumstances presented here, Verizon respectfully submits that the Commission should modify its ruling that the disputed traffic be taken off Windstream’s network.

⁶ See Verizon-Windstream Interconnection Agreement, Attachment 4 § 2.3.

WHEREFORE, Verizon requests the Commission modify its Order to vacate those determinations that are contradicted by the record and applicable law, and to find that Windstream must continue to carry the transit traffic in question.

Respectfully submitted,


C. Kent Hatfield
Douglas F. Brent
STOLL KEENON OGDEN PLLC
2000 PNC PLAZA
500 W. Jefferson Street
Louisville, KY 40202
Telephone: (502) 568-5375
Fax: (502) 333-6099

*Counsel to MCI metro Access Transmission Services
LLC*

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the following by first-class United State mail, sufficient postage prepaid, this 18th day of September, 2009.

Bruce F. Clark
Stites & Harbison, PLLC
421 West Main Street
P.O. Box 634
Frankfort KY 40602-0634

Counsel to Windstream

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

Counsel to Brandenburg Telephone Company



Counsel to MCIMetro Access Transmission Services LLC