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September 25, 2009

**RECEIVED**

SEP 25 2009

PUBLIC SERVICE  
COMMISSION

**VIA HAND DELIVERY**

Jeff Derouen, Executive Director  
Kentucky Public Service Commission  
211 Sower Blvd  
P.O. Box 615  
Frankfort, KY 40602-0615

**Re: *In the Matter of an Investigation in the Traffic Dispute Between Windstream Kentucky East, LLC, Brandenburg Telephone Company and MCI metro Access Transmission Services, LLC d/b/a Verizon Access***

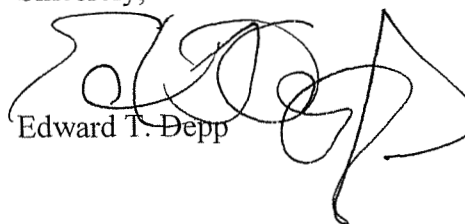
Dear Mr. Derouen:

Enclosed for filing in the above-referenced case, please find one original and eleven (11) copies of Brandenburg Telephone Company's response to an order of the Kentucky Public Service Commission dated August 26, 2009.

Please file-stamp one copy and return it to our delivery person.

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

Sincerely,

  
Edward T. Depp

ETD/lb

Enclosures

cc: All parties of record (w/encl.)  
John E. Selent, Esq. (w/encl.)

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SEP 25 2009

PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION IN THE TRAFFIC )  
DISPUTE BETWEEN WINDSTREAM )  
KENTUCKY EAST, LLC, BRANDENBURG )  
TELEPHONE COMPANY AND MCIMETEL )  
ACCESS TRANSMISSION SERVICES, L.P. )  
D/B/A VERIZON ACCESS )

10203

ORIGINAL

BRANDENBURG TELEPHONE COMPANY  
AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION DATED AUGUST 26, 2009

The Order

In its August 26, 2009 Order, the Kentucky Public Service Commission (the "Commission")  
ordered the parties to this investigation to do the following.

1. Within 30 days of the date of this Order, Verizon and  
Brandenburg, consistent with guidelines contained herein, shall file  
with the Commission an executed traffic exchange agreement that  
resolves the outstanding traffic disputes in this case.

2. If no such agreement is forthcoming, the parties shall  
jointly file, within 45 days of the date of this Order, information that  
describes, individually, each specific area of contention and fully sets  
out the positions of each party, including specific language suggested.

...

\* \* \*

[APPENDIX A]

Within 30 days of the date of this Order, Windstream shall file with  
the Commission, and serve on all parties, a detailed description of its  
alleged costs only for the disputed traffic.

Within 30 days of the date of this order, Brandenburg shall file with  
the Commission, and serve on all parties, a detailed description of  
how it believes the costs owed to Windstream (if any) should be  
allocated among the parties.

Within 30 days of the date of this Order, Verizon shall file with the Commission, and serve on all parties, a detailed description of how it believes the costs owed to Windstream (if any) should be allocated among the parties.

Within 15 days of receipt of parties' calculation of costs owed, any party may file objections and responses to the same.

*(Investigation Into Traffic Dispute Between Brandenburg Telephone Company, Windstream Kentucky East and Verizon Access, Ky. P.S.C. Case No. 2008-00203, Order at 23, Appendix A (Aug. 26, 2009) (hereafter "August 26 Order").)*

**Brandenburg Telephone Company's Response to the August 26, 2009 Order**

In compliance with the Order, Brandenburg Telephone Company ("Brandenburg Telephone"), by counsel, hereby sets forth the reasons: (1) why no traffic exchange agreement has been executed; and (2) why any costs owed to Windstream Kentucky East, LLC ("Windstream") should be borne by MCImetro Access Transmission Services, LLC d/b/a Verizon Access ("MCImetro").

**I. STATUS OF TRAFFIC EXCHANGE AGREEMENT.**

MCImetro and Brandenburg Telephone have not executed a traffic exchange agreement. As has been the case for the last four years, this failure to agree is due to MCImetro's refusal to negotiate in good faith and, now, its contempt of the Commission's Order.

Just days after the Commission's Order, Brandenburg Telephone's counsel sent a proposed traffic exchange agreement to MCImetro that was substantively identical to an agreement MCImetro executed with another Kentucky incumbent local exchange carrier ("ILEC"). In the absence of immediate execution, Brandenburg Telephone requested that MCImetro identify its "issues so that we may work quickly to resolve those issues in order to avoid the kind of arbitration, time and expense necessitated by ordering paragraph 2 [of the Order]." (*See* Letter from John E. Selent to Douglas F. Brent, Sep. 4, 2009 at 2 (Attached as Ex. A).)

At approximately the same time, MCImetro proposed the following in response to the Commission's Order:

- Complete negotiations for an agreement
- Verizon will deliver a draft agreement to Brandenburg
- Point of Interconnection for the Agreement will be the Brandenburg/Windstream Service Boundary
- Traffic exchanged will be Local, EAS, and ISP traffic
- Compensation for Local, EAS and ISP Traffic will be Reciprocal Compensation

(Email from Rick McGolerick to Randall Bradley, Sep. 4, 2009 (Attached as Ex. B).)

On September 9, 2009, MCImetro called Brandenburg Telephone and informed it that MCImetro would execute a traffic exchange agreement with the following provisions: (1) point of interconnection on Brandenburg Telephone's network; and (2) reciprocal compensation for traffic subject to the agreement. In a letter sent the same day, Brandenburg Telephone sought to clarify that MCImetro's draft agreement would pertain only to the relevant ISP traffic, and asked for a swift reply as "it appears that the only issue about which we disagree is the reciprocal compensation issue on ISP traffic." (*See* Letter from John E. Selent to Douglas F. Brent, Sept. 9, 2009, at 3 (Attached as Ex. C).)

MCImetro responded with an ultimatum: (1) negotiate a full interconnection agreement well beyond the scope of the disputed traffic, including provisions for "interconnection, access to UNEs, numbering resources and other requirements necessary for [MCImetro] to compete as a local service provider throughout Brandenburg Telephone Company's exchanges"; or (2) agree to interconnect outside Brandenburg Telephone's network, route traffic through an affiliate, and exchange ISP traffic on a bill-and-keep basis over a cross-connect at or near Windstream's tandem in Elizabethtown. (*See* Email from Douglas Brent to John Selent, Sep. 21, 2009 (attached as Exhibit D).)

This ultimatum is not a good faith negotiation pursuant to the Telecommunications Act, and it is certainly not responsive to the Commission's Order to execute a traffic exchange agreement "that resolves the outstanding traffic dispute in this case (emphasis supplied)." In this respect, it is both contemptuous of the Commission's Order, and it is a threat: use an affiliate of Brandenburg Telephone and cross-connect in Windstream's service territory or MCImetro will unilaterally expand this dispute into negotiations for a full-blown interconnection agreement, complete with terms and conditions that are (by MCImetro's own admission) utterly irrelevant to its business objectives and to this investigation.<sup>1</sup>

Only ISP traffic is in dispute. The threatened "251/252 agreement" is therefore not based in a genuine intent to "compete as a local service provider throughout Brandenburg Telephone Company's exchange" as MCImetro claims, but is instead being used as a cudgel to impose MCImetro's desired outcome. This is contrary to the Telecommunications Act's requirement that such a request for interconnection be "bona fide" -- that is, "[m]ade in good faith; without fraud or deceit." *See* definition of "bona fide," BLACK'S LAW DICTIONARY, 8th Ed., p. 186 (2004); 47 U.S.C. 251 (f)(1)(A)(i), (f)(1)(B).

Contemporaneous with this ultimatum, MCImetro filed a Motion for Correction and Rehearing to argue that Windstream is "required to transit the disputed traffic between Brandenburg Telephone" and MCImetro. (*See* Motion for Correction and Rehearing, Ky. P.S.C. Case No. 2008-00203, at 1 (Sep. 18, 2009).) Brandenburg Telephone will respond more fully to this Motion shortly, but for now it is sufficient to note that the validity of the tariff to which MCImetro cites is the subject of another matter before the Commission, Case No. 2007-00004. Windstream, the other

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<sup>1</sup> MCImetro has never, until now, asked for such a full-blown interconnection agreement. And, under the Telecommunications Act, as MCImetro well knows, such a full-blown interconnection agreement can take as long as nine months to negotiate and arbitrate, if necessary.

party to this case, admits this traffic is not transit traffic subject to the disputed tariff. (August 26 Order at 5, 11 ("Brandenburg's traffic was not what [Windstream] considered 'transit traffic'") ("Windstream initially argued that . . . the traffic was not transit traffic".)) MCImetro's Motion is nothing more than an attempt to continue to dodge its legal obligations under the Telecommunications Act and the August 26, 2009 Order and to cloak its ultimatum with an appearance of good faith.

Brandenburg Telephone is therefore unhappy to report to the Commission that its sustained and sincere attempts, now four years old, to execute a "traffic exchange agreement" with MCImetro continue to be stymied by MCImetro's contempt and its refusal to negotiate in good faith as required by the Telecommunications Act and the Commission's Order. (*See* August 26 Order at 23.)

**II. THE COSTS, IF ANY, OWED TO WINDSTREAM SHOULD BE BORNE BY MCIMETRO, ALONE.**

The Commission has inquired as to how "the costs owed to Windstream (if any) should be allocated among the parties." The August 26, 2009 Order at Appendix A. The answer is that the costs, if any, owed to Windstream should be borne by MCImetro, alone.

First, although the Commission has apparently not addressed a dispute like this before, the Telecommunications Act provides that MCImetro has a present duty to interconnect with Brandenburg Telephone. *See* 47 U.S.C. 251(a)(1). MCImetro continues to refuse to comply with that legal duty. Second, the requirements of the Telecommunications Act, combined with regulatory decisions from other states, indicate that MCImetro had a duty to identify and resolve all interconnection concerns before porting telephone numbers. MCImetro refused to comply with that legal duty.

**A. MCImetro Should Be Held Liable for the Damages, If Any, to Windstream Resulting from MCI Metro's Ongoing Refusal to Directly Interconnect with Brandenburg Telephone.**

MCImetro testifies that it has “no reason to approach Brandenburg and ask for an interconnection agreement” and that “Brandenburg does not have the ability to force us into an interconnection agreement.” (Test. of D. Price, Hearing Transcript at 94:14-95:14 (emphasis added).) This attempt to disown all responsibility has no basis in fact or law. Pursuant to the Telecommunications Act, “[e]ach telecommunications carrier has the duty . . . to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.” 47 U.S.C. 251(a)(1) (emphasis added).

Not only does MCImetro have a duty to interconnect, the Commission has previously ruled that dedicated connections are appropriate whenever the volume of traffic exchanged exceeds a DS-1 volume. *See In the Matter of Petition of Ballard Rural Tel. Coop. Corp., Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with American Cellular, Ky.* P.S.C. Case No. 2006-00215, 2007 Ky. PUC LEXIS 191, \*17 (Order of March 19, 2007). In the present case, MCImetro admits it receives twenty-eight times that amount of traffic from Brandenburg Telephone's service territory – approximately three million minutes per month – and further admits it would not be unusual to establish a direct connection to handle that volume of traffic. (*See* MCImetro Response to Brandenburg Initial Data Request No. 14; Direct Test. of K. Smith at 8:1-7 (testifying that Brandenburg Telephone and MCImetro exchange approximately three million minutes of traffic per month); Test. of D. Price, Hearing Transcript at 160:25-161:4.)

The scope of MCImetro's duty to directly interconnect with Brandenburg Telephone is further illuminated by the Telecommunications Act. Although Brandenburg Telephone is also subject to the duty to interconnect, its duty is expressly limited to providing for interconnection “at

any technically feasible point within [its] network.” 47 U.S.C. 251(c)(2)(B). (*See also* August 26 Order at 20 ("An ILEC generally is not responsible for costs incurred outside of its network".)) MCImetro’s duty to interconnect, therefore, necessarily extends to establishing a point of interconnection within Brandenburg Telephone’s territory. This legal duty stands in stark contrast to MCImetro's attempt to force Brandenburg Telephone to establish an interconnection point within Windstream's service territory.

Brandenburg Telephone's "network" is limited to its service territory. This is evidenced by the EAS Agreement's meet-point billing arrangement and Ms. Willoughby’s testimony that "Windstream comes to their boundary; we come to our boundary; and we connect at that point." (Hearing Transcript at 179:10-15.)

Despite these straightforward legal obligations, MCImetro has refused for four years to execute an interconnection agreement with Brandenburg Telephone or to provide a direct connection for the traffic. (*See Direct Test. of A. Willoughby at 4:18-23, 6:12-22 – 7:1-7.*) In fact, when MCImetro is confronted: (1) with its legal obligation; (2) with Brandenburg Telephone’s repeated offers to execute an agreement identical to one MCImetro executed with South Central Rural Telephone Cooperative Corporation; and (3) with Windstream’s valid concerns about being an intermediary, MCImetro still inexplicably concludes that its refusal to interconnect is “completely appropriate under the circumstances.” (*Direct Test. of D. Price at 3:55-57.*)

This refusal is at the heart of this matter. Even MCImetro admits that executing an agreement identical to its South Central Agreement – or, indeed, executing any agreement – would resolve the issues before the Commission:

**Q: . . . If MCI/Verizon were to sign that Agreement today with Brandenburg Telephone Company, would it not resolve the issues, at least on a going-forward basis, as far as Windstream is concerned?**



A: I think my answer to that is any agreement between Brandenburg and Verizon would have that result.

**Q: Including the one I just asked about [the South Central Agreement]?**

A: Well, but – yes, but, in addition to that, any other agreement between our parties, between our two companies, that we could reach would have the same effect.

(Testimony of D. Price, Hearing Transcript 146:19-147:4 (emphasis added).)

This investigation has made it increasingly clear that MCImetro's failure to negotiate is due largely to the fact that it has every incentive to not establish such an agreement. MCImetro is paid by the destination ISPs no matter what, and therefore it makes no difference to MCImetro how the traffic is delivered to its network because right now that traffic is getting there for free, at no cost to MCImetro. (Test. of D. Price, Hearing Transcript at 155:15-18.) MCImetro enjoys all the benefits of receiving this traffic and delivering it to its ISPs while avoiding the associated costs, a particularly reprehensible instance of freeloading, given MCImetro's comparatively enormous size and the fact that all of the relevant traffic is destined for non-Kentucky customers.<sup>2</sup>

It is therefore clear that MCImetro's intentional refusal to meet its legal interconnection duty is the direct cause of the damages, if any, Windstream has sustained. MCImetro should therefore be responsible for the costs, if any, owed to Windstream.

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<sup>2</sup> MCImetro admits that the modem banks being called are located out-of-state. (See Post-Hearing Brief of Brandenburg Telephone at 16-18 (stating, on page 17, "Instead, MCImetro competes with Windstream in Elizabethtown, through a switch located in Louisville, by serving ISP's with modems located outside of the Commonwealth"); see also MCImetro Response to Brandenburg Initial Data Request No. 4 ("MCImetro states that dial-up traffic from Brandenburg Telephone end users to AOL is currently routed to MCImetro's interconnection point in Elizabethtown, then routed to modems outside of Kentucky").)

**B. MCImetro Should Be Held Liable for Any Damage to Windstream Resulting from Its Refusal to Perform Necessary Due Diligence Prior to Entering the Market.**

The scope of MCImetro's interconnection duties sheds light on the importance of its refusal to conduct basic due diligence before entering the Elizabethtown market. Common sense dictates that MCImetro's duty to interconnect with Brandenburg Telephone must arise prior to the harm it is intended to avoid. In other words, MCImetro's duty to interconnect arose prior to porting its telephone numbers. In a dispute factually similar to the present one, the New York Public Service Commission (the "New York Commission") ruled exactly that. *See Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements Between Telephone Companies*, Case No. 00-C-0789, Order of Dec. 22, 2000 (hereinafter *CLEC Interconnection Proceeding*) (Attached as Exhibit E).

In that proceeding, the New York Commission investigated how to address the problem of CLECs providing service without having first performed the necessary due diligence to ensure that all residents with non-toll dialing to the CLECs' new telephone numbers could continue to call those numbers on a non-toll basis. The New York Commission ruled:

**"Prior to** activating an NXX code that can be accessed on a local basis by an independent telephone company's customer, **CLECs must enter into an arrangement establishing fundamental network and service arrangements. CLECs must make arrangements for interconnection facilities to a meet-point designated as the Independent Telephone Company boundary. . .**  
. Because Independent responsibility is limited to delivering traffic to its service area borders, CLECs must either provide their own interconnection facilities or lease facilities to the meet-point."

*CLEC Interconnection Proceeding*, Order of Dec. 22, 2000, at \*6, 9 (emphases added).

Accordingly, MCImetro is responsible for the entirety of the costs, if any, awarded to Windstream

because MCImetro failed to conduct the due diligence necessary to ensure that its ported telephone numbers remained available on a non-toll basis to all customers.

As with the duty to interconnect, however, MCImetro has repeatedly denied its obligations. In contrast to legal authority (and a common sense reading of the Telecommunications Act), MCImetro testified that it has no obligation to “ferret out” agreements that could be impacted by its porting of telephone numbers:

A: . . . [W]hen we negotiated our agreement with Windstream, we did so for purposes of establishing a presence in Elizabethtown for purposes of offering services in Elizabethtown. I don’t believe it was incumbent on us in any way, shape, or form to try to ferret out every agreement that existed between Windstream and all of the other carriers in the area and what they did, and how they did it, and what the compensation was for that. That’s not our business, and we don’t offer any services in Brandenburg territory. . . .

. . .

**Q: So, in other words, what I’m saying is, then, you had no thought one way or the other about whether or not the customers at Radcliff could get to those ISPs calling those ported numbers; is that right?**

A: I believe that’s exactly right. We had no knowledge, period.

. . .

**Q: And what you’re telling me, then, is, as a utility regulated by this Public Service Commission, at least to some extent, that you have no obligation to determine the lay of the land and what will happen when you enter into the kind of agreement that you entered into with Windstream . . . to determine what effect that might have on callers, customers, in the Commonwealth of Kentucky? Is that what you’re telling me or this Commission? Is that what you’re telling these Commissioners?**

A: In a general sense, that’s absolutely right . . . .

(Test. of D. Price, Hearing Transcript at 131:20-132:5, 134:20-135:8, 136:13-24 (emphasis added).)

MCImetro’s refusal to perform this most rudimentary due diligence prior to entering the market caused this traffic dispute. Moreover, its continued unlawful refusal to negotiate a traffic

exchange agreement makes it responsible for any ongoing costs sustained by Windstream. Accordingly, MCImetro should be responsible for the costs, if any, owed to Windstream.

**C. Brandenburg Telephone Is Not Responsible for MCImetro's Disregard for Its Own Obligations.**

As stated above, MCImetro's initial refusal to research the market and its consistent and repeated refusals to execute a traffic exchange agreement with Brandenburg Telephone are the causes of this dispute. Nonetheless, given the circumstances, it is important to understand why Brandenburg Telephone should not be held liable for costs sustained by Windstream, if any.

Like MCImetro, Brandenburg Telephone has a legal duty "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." 47 U.S.C. 251(a)(1). Unlike MCImetro, however, Brandenburg Telephone's duty to interconnect only extends to providing for interconnection "at any technically feasible point within [its] network." 47 U.S.C. 251(c)(2)(B). (*See also* August 26 Order at 20 ("An ILEC generally is not responsible for costs incurred outside of its network"). For years, MCImetro has refused to interconnect with Brandenburg Telephone within its network in accordance with the Telecommunications Act. Any services provided by Windstream would be performed on Windstream's network which is, by definition, beyond a point on Brandenburg Telephone's network. Therefore, any damages sustained by Windstream because of MCImetro's continuing refusal must be borne by MCImetro.

In addition, despite MCImetro's failure to investigate and resolve connectivity issues prior to porting its telephone numbers, as described above, Brandenburg Telephone has actively worked to resolve this dispute. Brandenburg Telephone investigated its customers complaints, identified the problem, took interim steps to ensure continued service, and promptly sent a proposed interconnection agreement to MCImetro. (*See* Direct Test. of A. Willoughby at 4:8-19.) That initial proposed agreement was sent to MCImetro almost four years ago. Brandenburg Telephone has since

repeatedly attempted to negotiate with MCImetro, and even proposed an agreement substantively identical to one that MCImetro executed with another ILEC. (*See* Direct Test. of A. Willoughby at 6:12-22 – 7:1-7.)

Even then, MCImetro refused to fulfill its legal duties. Faced with MCImetro's lack of good faith negotiation – motivated in part, no doubt, by the fact that the continuation of this dispute allows MCImetro to be subsidized by Brandenburg Telephone and Windstream's respective ratepayers – Brandenburg Telephone's hands are tied. It simply does not have the ability, absent the Commission's involvement (which Brandenburg Telephone sought when it filed its formal complaint about this situation in Matter No. 2008-00239, even before the Commission commenced this investigation), to force MCImetro to fulfill its legal obligation. In light of these facts, therefore, it would be inappropriate to allocate Windstream's costs, if any, to Brandenburg Telephone when those costs were wrongfully caused and exacerbated by MCImetro's refusal to comply with its legal duties.

In any event, and importantly, it appears clear that no amounts are owed to Windstream, in light of its interconnection agreement with MCImetro. This agreement defines "transit traffic" as "Local Traffic exchanged between the Parties that originates or terminates on the network of another telecommunication service provider." *See* Interconnection Agreement Between Kentucky ALLTEL, Inc. & MCImetro Access Transmission Services, LLC, § 4.1 (filed with Commission) (*available at* [http://162.114.3.165/PSCICA/2003/2003-00071/2003-00071\\_022503.pdf](http://162.114.3.165/PSCICA/2003/2003-00071/2003-00071_022503.pdf)). However, it does not expressly provide for any compensation for Non-Party originated traffic. *See Id.* §§ 4.1.1-4.1.3. Traffic originated by a non-party provider therefore falls into the Agreement's catch-all compensation provisions, and "will be classified and treated as Meet-Point Billing Traffic." *See* § 4.2. That is, this is traffic for which Windstream and MCImetro have agreed that no compensation is

due to either carrier. To Brandenburg Telephone, Windstream's demands for damages appear to be nothing more than an effort by Windstream to "backdoor" its way out of the consequences of its business decision to exchange with MCImetro the very traffic at issue in this case (ISP traffic) on a bill-and-keep, that is, no compensation, basis.

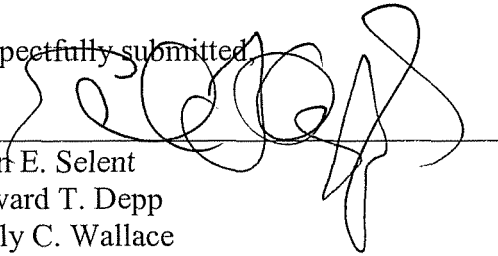
**III. CONCLUSION.**

Due to MCImetro's continued refusal to negotiate in good faith, Brandenburg Telephone has been unable to execute a traffic exchange agreement as ordered by this Commission.

Furthermore, any costs owed to Windstream were caused by MCImetro's refusal to conduct the legally required due diligence before entering the market and its continued refusal, in contempt of the August 16<sup>th</sup> Order, to negotiate an appropriate traffic exchange agreement. Brandenburg Telephone therefore respectfully requests the Commission order that the costs, if any, owed to Windstream be borne exclusively by MCImetro.

Importantly, the Interconnection Agreement between Windstream and MCImetro resolves the issue of what compensation is due to Windstream: none, by agreement of Windstream and MCImetro.

Respectfully submitted,



John E. Selent  
Edward T. Depp  
Holly C. Wallace  
**DINSMORE & SHOHL LLP**  
1400 PNC Plaza  
500 West Jefferson St.  
Louisville, Kentucky 40202  
Tel: (502) 540-2300  
Fax: (502) 585-2207

*Counsel to Brandenburg Telephone Company*

**CERTIFICATE OF SERVICE**

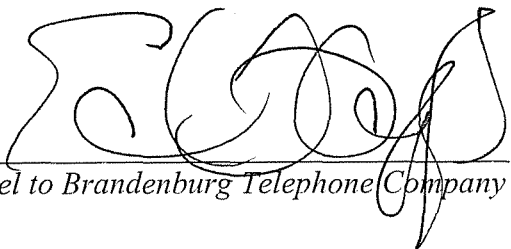
I hereby certify a true and accurate copy of the foregoing was served, by first-class United States mail, sufficient postage prepaid, on the following individuals this 25<sup>th</sup> day of September, 2009.

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

*Counsel to Windstream*

C. Kent Hatfield, Esq.  
Douglas F. Brent, Esq.  
Stoll Keenon Ogden, PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202

*Counsel to MCI metro*

  
\_\_\_\_\_  
*Counsel to Brandenburg Telephone Company*

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30256-100





**Dinsmore & Shohl** LLP  
ATTORNEYS

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

September 4, 2009

**VIA HAND DELIVERY**

Douglas F. Brent, Esq.  
Stoll Keenon Ogden PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, KY 40202-2874

**Re: *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,***  
**Commission Case No. 2008-00203**

Dear Doug:

As you know, we are legal counsel to Brandenburg Telephone Company in the above-referenced case.

As you also know, on August 26, 2009, the Public Service Commission of the Commonwealth of Kentucky in this matter, issued an order which provides in pertinent part as follows:

1. Within 30 days of the date of this Order, Verizon and Brandenburg, consistent with guidelines contained herein, shall file with the Commission an executed traffic exchange agreement that resolves the outstanding traffic disputes in this case.
2. If no such agreement is executed, the parties shall jointly file, within 45 days of the date of this Order, information that describes, individually, each specific area of contention and fully sets out the positions of each party, including specific language suggested. The Commission will review the supplied information and establish the relative duties and responsibilities of the parties.

Douglas F. Brent, Esq.  
September 4, 2009  
Page 2

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In compliance with ordering paragraph 1, and in order to avoid the necessity and expense necessarily associated with ordering paragraph 2, I have enclosed with this letter a copy of the Traffic Exchange Agreement, which I believe is substantively identical to the South Central agreement we previously and sometime ago proposed to Verizon, in order to resolve these traffic issues.

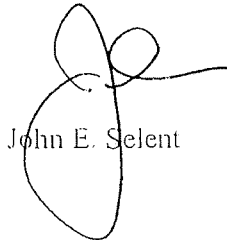
Please let me know if Verizon is willing to execute the enclosed Agreement. And, if not, what are Verizon's issues so that we may work quickly to resolve those issues in order to avoid the kind of arbitration, time and expense necessitated by ordering paragraph 2.

Thank you so much. If you have any questions or concerns, please call me

In any event, I look forward to talking with you.

Very truly yours,

DINSMORE & SHOHL LLP



John E. Selent

JES/bmt  
Enclosure

cc/Bruce F. Clark, Esq. (w/enclosure)

Douglas F. Brent, Esq.  
September 4, 2009  
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bcc: Allison T. Willoughby  
Randall Bradley  
Eileen Bodamer

150081\_1  
30256-100

AGREEMENT

for

FACILITIES-BASED NETWORK INTERCONNECTION  
FOR EXCHANGE OF  
INFORMATION SERVICE PROVIDER TRAFFIC

Effective as of \_\_\_\_\_, 2009

Between

MCI Access Transmission Services, LLC

and

Brandenburg Telephone Company

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AGREEMENT FOR FACILITIES-BASED NETWORK INTERCONNECTION  
FOR EXCHANGE OF  
INFORMATION SERVICE PROVIDER TRAFFIC

Pursuant to this Agreement for Facilities-Based Network Interconnection for Exchange of Information Service Provider Traffic ("Agreement"), Brandenburg Telephone Company ("Brandenburg") a Kentucky corporation with offices at 200 Telco Drive, PO Box 599, Brandenburg, Kentucky 40108-0599 and MCImetro Access Transmission Services LLC ("CLEC"), a Delaware limited liability company with offices at 22001 Loudoun County Parkway, Ashburn, Virginia 20147 will extend certain network arrangements to one another as specified below.

Recitals

WHEREAS, Brandenburg and CLEC are local exchange carriers authorized to provide Telecommunications Services in the State of Kentucky;

WHEREAS, the Parties desire to interconnect their respective network facilities to provide for the exchange of ISP Traffic originated by a Brandenburg Customer to a CLEC ISP Customer.

WHEREAS, the Parties are entering into this Agreement to set forth the respective obligations, terms and conditions under which they will interconnect their networks and provide services as set forth herein.

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Brandenburg and CLEC PCS hereby agree as follows:

1.0 DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified below in this Section 1.0. Any term used in this Agreement that is not specifically defined shall have the meaning ascribed to such term in the Communications Act of 1934, as amended. If no specific meaning exists for a specific term used in this Agreement, then normal usage in the telecommunications industry shall apply.

1.1 "Act" means the Communications Act of 1934, as amended.

1.2 "Affiliate" is as defined in the Act.

1.3 "Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:

(a) "End Office Switches" which are used to terminate lines from individual stations for the purpose of interconnection to each other and to trunks; and

(b) "Tandem Office Switches" which are used to connect and switch trunk circuits between and among other Central Office Switches. A Central Office Switch may also be employed as a combination End Office/Tandem Office Switch.

- 1.4 "Commission" means the Kentucky Public Service Commission.
- 1.5 "Common Channel Interoffice Signaling" or "CCIS" means the signaling system, developed for use between switching systems with stored-program control, in which all of the signaling information for one or more groups of trunks is transmitted over a dedicated high-speed data link rather than on a per-trunk basis. Unless otherwise agreed by the Parties, the CCIS used by the Parties shall be Signaling System Seven ("SS7") protocol.
- 1.6 "Customer" means a residential or business user of Telecommunications Services that is provided by either of the Parties.
- 1.7 "DS1" is a digital signal rate of 1.544 Mbps (MEGA Bits Per Second).
- 1.8 "DS3" is a digital signal rate of 44.736 Mbps.
- 1.9 "FCC" means the Federal Communications Commission.
- 1.10 "Information Service" is as defined in the Act.
- 1.11 "Information Service Provider" or "ISP" is any entity, including but not limited to an Internet service provider that provides information services.
- 1.12 "ISP Traffic" means the one-way origination and exchange of traffic between Brandenburg and CLEC that occurs when an Brandenburg Customer originates a call to a CLEC ISP Customer.
- 1.13 "Interconnection" means the linking of the CLEC and Brandenburg networks for the exchange of traffic.
- 1.14 "Local Exchange Carrier" or "LEC" is as defined in the Act.
- 1.15 "Local Service Exchange Area" is a specific geographic service area to which NPA-NXXs are assigned and a Party offers Telecommunications Services to its Customers.
- 1.16 "Point of Connection," or "POC" means the mutually agreed upon point of demarcation, within the incumbent service area of ITC, where the Parties connect their networks for the exchange of ISP Traffic
- 1.17 "NPA-NXX" means a numbering plan area code (NPA) and valid three-digit code within that area code which appears as the first three digits of a seven digit telephone number (NXX) with the exception of the special 500, 600, 700, 800, and 900 codes and other similar special codes which may come into common usage in the future.
- 1.18 "Party" means either Brandenburg or CLEC, and "Parties" means Brandenburg and CLEC.
- 1.19 "Telecommunications" is as defined in the Act.
- 1.20 "Telecommunications Carrier" is as defined in the Act.

1.21 "Telecommunications Service" is as defined in the Act.

## 2.0 INTERPRETATION AND CONSTRUCTION

2.1 All references to Sections, Exhibits, Appendices, and Schedules shall be deemed to be references to Sections of, and Exhibits, Appendices, and Schedules to, this Agreement unless the context shall otherwise require. Unless the context shall otherwise require, any reference to any agreement, other instrument (including CLEC, Brandenburg or other third party offerings, guides or practices), statute, regulation, rule or tariff is for convenience of reference only and is not intended to be a part of or to affect the meaning of such referenced materials as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

2.2 This Agreement is limited to the provision of delivery of services defined herein. Other services may be purchased by CLEC pursuant to applicable tariff. In such case, the terms of the applicable tariff will apply.

## 3.0 SCOPE

3.1 This Agreement sets forth the terms and conditions under which the Parties agree to interconnect their networks and exchange ISP Traffic.

3.2 This Agreement applies only to the exchange of ISP Traffic between Brandenburg and CLEC when a Brandenburg Customer originates a call to an ISP Customer served by CLEC.

3.3 This Agreement applies only to the exchange of ISP Traffic over the Parties' network facilities (which may include facilities leased from third-parties) that are interconnected at a POC located at either the boundary of, or within, an Brandenburg Local Service Exchange Area identified in Appendix 1.

3.4 Both Parties agree to exchange only ISP Traffic within the scope of this Agreement at the POC location(s) as specified in Appendix 1.

3.5 This Agreement is not applicable to traffic originated, terminated, or carried on third party networks not Parties to this Agreement or any traffic originated or terminated by users of Commercial Mobile Radio Services. Neither Party shall provide an intermediary or transit traffic function for the other Party's connection of its Customers to the end users of a third party Telecommunications Carrier without the consent of all parties and without the establishment of mutually agreeable terms and conditions governing the provision of the intermediary function. Neither Party shall provide an intermediary or transit function for the connection of the end users of a third party Telecommunications Carrier to the Customers of the other Party without the consent of all parties and without the establishment of mutually agreeable terms and conditions governing the provision of the intermediary function. This Agreement does not obligate either Party to utilize any intermediary or transit traffic functions of the other Party.

3.6 Nothing in this Agreement is intended to affect the obligations of the Parties with respect to the exchange of traffic not the subject of this Agreement.



## 4.0 SERVICE AGREEMENT

### 4.1 Methods of Interconnection

4.1.1 The Parties agree to interconnect their respective networks at the POC(s) identified in Appendix 1. With respect to each POC that is established, Brandenburg shall deliver to such POC all ISP Traffic subject to this Agreement that originates within the Brandenburg exchanges defined in Appendix 1.

4.1.2 CLEC agrees to deploy NPA/NXXs within Local Service Exchange Areas consistent with the LERG, Commission approved extended area service ("EAS") designations and industry standards. Brandenburg Local Service Exchange Areas and the Local Service Exchange Areas of other LECs with which the end users in the originating Brandenburg location have non-optional, unlimited, flat-rated EAS calling are set forth in Brandenburg's applicable intrastate local service tariff.

4.1.3 The Parties agree that the ISP Traffic subject to this Agreement is limited to ISP Traffic from an Brandenburg Customer to a CLEC NPA/NXX assigned to either an Brandenburg Local Service Exchange Area or to the Local Service Exchange Area of another LEC with which end users in the originating Brandenburg location have non-optional, unlimited, flat rated EAS calling. Brandenburg agrees to provide its Customers local dialing/non-toll calling treatment regarding calls to such CLEC NPA/NXXs.

4.1.4 The Parties will cooperate fully in identifying ISP traffic originated by Brandenburg Customers to ISP Customers served by CLEC to insure compliance with this Agreement.

### 4.2 Treatment of One-Way Originated ISP Traffic

Brandenburg asserts that the network treatment of traffic directed to ISPs is unresolved and the subject of industry wide controversy. Brandenburg further asserts that the long-term resolution of issues related to the exchange of traffic involving an ISP will affect both Parties and may necessitate modification to this Agreement. In recognition of these factors, Brandenburg agrees to exchange ISP Traffic in the manner described in this Agreement subject to amendment upon written agreement of the Parties.

### 4.3 Signaling

The Parties shall interconnect their SS7 Common Channel Signaling ("CCS") networks either directly or through third parties. The Parties shall exchange all appropriate CCS messages including Transaction Capability User Part ("TCAP") messages that are necessary to provide call management features if such functionality is deployed in both Parties' networks on an interexchange basis. The Parties shall set message screening parameters so as to accept messages from any switching systems destined to any signaling point in the CCS network with which the Parties have a legitimate signaling relation. The Parties further agree to exchange and load point code information in a reasonable and timely manner in accordance with standard industry practices. Neither Party will bill the other Party for exchange of any CCS messages.

#### 4.4 Network Maintenance and Trunk Provisioning

4.4.1 Each Party shall make available to the other at the POC(s), trunks over which the Parties can exchange ISP Traffic. All interconnecting facilities will be at a DS1 level, multiple DS1 level, or DS3 level and will conform to industry standards. Where ISP Traffic volumes are not established, one-way trunk groups will be initially established based on forecasts jointly developed by the Parties. All one-way trunk facilities will be engineered to a P.01 grade of service.

4.4.2 Each Party is individually responsible to provide facilities within its network to the POC(s) which are necessary for routing and transporting ISP Traffic in a mutually acceptable manner that neither destroys nor degrades the normal quality of service each Party provides to its respective Customers.

4.4.3 The Parties will work cooperatively to install and maintain a reliable network. The Parties will exchange relevant information to maintain reliability. In addition, the Parties will work cooperatively to apply sound network management principles to alleviate or to prevent congestion and to avoid interference with, or impairment to, the services provided pursuant to this Agreement. The Parties agree to work cooperatively to forecast trunk requirements. When necessary, the Parties agree to provide additional trunking needed to maintain the above stated blocking objective.

#### 5.0 COMPENSATION ARRANGEMENTS

5.1 Neither Party has any obligation to provide compensation to the other regarding the origination or termination of ISP Traffic pursuant to this Agreement

5.2 Except to the extent CLEC utilizes Brandenburg facilities as provided in Subsection 5.3, no recurring or non-recurring charges shall apply with respect to any of the terms of this Agreement.

5.3 Notwithstanding Subsection 5.2, to the extent CLEC utilizes Brandenburg to provide leased facilities on the CLEC side of a POC, CLEC shall purchase such facilities as special access from Brandenburg subject to the rates, terms, and conditions contained in Brandenburg's applicable Intrastate access tariffs. Notwithstanding any provision in an Brandenburg applicable intrastate access tariff to the contrary, Brandenburg shall not charge CLEC any non-recurring or recurring charge of any type that is premised upon a per minute of use identification, calculation or quantification. Neither Party shall charge the other for the installation or use of trunks or facilities on the Party's side of the POC used for the exchange of traffic pursuant to this Agreement.

#### 6.0 NOTICE OF CHANGES

If a Party makes a change in its network which will materially affect the interoperability of its network with the other Party, the Party making the change shall provide at least ninety (90) days advance written notice of such change to the other Party.

## 7.0 GENERAL RESPONSIBILITIES OF THE PARTIES

7.1 The Parties shall jointly develop a schedule for promptly implementing all requirements of this Agreement ("Implementation Schedule"). Both Brandenburg and CLEC shall use commercially reasonable efforts to comply with the Implementation Schedule.

7.2 The Parties shall exchange good-faith, non-binding technical descriptions and forecasts of the volume of expected ISP Traffic to be exchanged, in sufficient detail necessary to establish the interconnections required to assure traffic termination.

7.3 Thirty (30) days after the Effective Date and each six months during the term of this Agreement, CLEC will provide Brandenburg with a rolling, six (6) calendar month, non-binding forecast of its trunking requirements for the services provided under this Agreement in the form and in such detail as agreed by the Parties. The Parties agree that each forecast provided under this Section shall be deemed "Proprietary Information".

7.4 Each Party is individually responsible to provide facilities within its network which are necessary for routing and transporting ISP Traffic from the other Party's network and for delivering of such traffic to the other Party's network in a mutually acceptable format and to terminate the ISP Traffic it receives in that mutually acceptable format to the proper address on its network. Such facility shall be designed based upon the description provided under Section 4.0 above.

7.5 Neither Party shall use any service related to or use any of the services provided in this Agreement in any manner that prevents other persons from using their service or destroys the normal quality of service to other carriers or to either Party's Customers, and subject to notice and a reasonable opportunity of the offending Party to cure any violation, either Party may discontinue or refuse service if the other Party violates this provision.

7.6 The characteristics and methods of operation of any circuits, facilities or equipment of one Party connected with the services, facilities or equipment of the other Party shall not interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring carriers involved in its services; or cause damage to the other Party's plant, impair the privacy of any communications carried over the facilities or create hazards to the employees of the other Party, its affiliated companies, or its connecting and concurring carriers or the public.

7.7 Interruptions in service are provided for as follows:

7.7.1 If such characteristics or methods of operation are not in accordance with the preceding paragraph, either Party will notify the other Party that temporary discontinuance of the circuit, facility or equipment may be required; however, when prior notice is not practicable, either Party may forthwith temporarily discontinue the use of a circuit, facility or equipment if such action is reasonable under the circumstances. In such case of temporary discontinuance, either Party will notify the other Party immediately by telephone and provide the other Party with the opportunity to correct the condition that gave rise to the temporary discontinuance. No allowance for interruption will be applicable.

7.7.2 Credit for all other service interruptions will be provided pursuant to applicable tariffs governing interrupted circuit or service.

7.8 The physical connection of facilities and exchange of traffic may be temporarily discontinued by either Party upon 30 days' written notice to the other Party for repeated or willful violation of or refusal to comply with any of the provisions of this Agreement.

7.9 Each Party is solely responsible for the services it provides to its Customers.

7.10 Each Party is responsible for administering NXX codes assigned to it.

7.11 Each Party is responsible for obtaining Local Exchange Routing Guide ("LERG") listings of CLLI codes assigned to its switches.

7.12 Each Party shall use the LERG published by Bellcore or its successor for obtaining routing information and shall provide all required information to Bellcore or its successors for maintaining the LERG in a timely manner.

7.13 Each Party shall be responsible for programming and updating their separate networks to recognize and route traffic to valid NXX codes including those assigned to the other Party. Neither Party shall impose any fees or charges on the other Party for such activities.

## 8.0 EFFECTIVE DATE, TERM, AND TERMINATION

8.1 This Agreement shall become effective as of last date of signature of this Agreement, subject to Commission approval of this Agreement.

8.2 The initial term of this Agreement shall be one (1) year from the effective date and shall then automatically renew on a year-to-year basis. Upon expiration of the initial term, either Party may terminate this Agreement by providing written notice of termination to the other Party, with such written notice to be provided at least ninety (90) days in advance of the date of termination.

8.2 The arrangements pursuant to this Agreement shall immediately terminate upon the suspension, revocation or termination by other means of either Party's authority to provide services.

8.3 Either Party may terminate this Agreement in whole or in part in the event of a default by the other Party provided however, that the non-defaulting Party notifies the defaulting Party in writing of the alleged default and that the defaulting Party does not cure the alleged default within thirty (30) calendar days of receipt of written notice thereof. Default is defined to include:

- (a) A Party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or

(b) A Party's refusal or failure in any material respect properly to perform its obligations under this Agreement, or the violation of any of the material terms and conditions of this Agreement.

## 9.0 CANCELLATION CHARGES

Except as otherwise provided in any applicable tariff referenced herein, no cancellation charges shall apply.

## 10.0 INDEMNIFICATION

10.1 Each Party agrees to release, indemnify, defend and hold harmless the other Party from and against all losses, claims, demands, damages, expenses, suits or other actions, or any liability whatsoever related to the subject matter of this Agreement, including, but not limited to, costs and attorneys' fees (collectively, a "Loss"), (a) whether suffered, made, instituted, or asserted by any other party or person, relating to personal injury to or death of any person, *defamation, or for loss, damage to, or destruction of real and/or personal property, whether or not owned by others, arising during the term of this Agreement and to the extent proximately caused by the acts or omissions of the indemnifying Party, regardless of the form of action, or* (b) suffered, made, instituted, or asserted by its own Customer(s) against the other Party arising out of the other Party's provision of services to the indemnifying Party under this Agreement. Notwithstanding the foregoing indemnification, nothing in this Section 10.0 shall affect or limit any claims, remedies, or other actions the indemnifying Party may have against the indemnified Party under this Agreement, any other contract, or any applicable Tariff(s), regulations or laws for the indemnified Party's provision of said services.

10.2 The indemnification provided herein shall be conditioned upon:

- (a) The indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party relating to the indemnification.
- (b) The indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnified Party may engage separate legal counsel only at its sole cost and expense.
- (c) In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party, which consent shall not be unreasonably withheld.
- (d) The indemnified Party shall, in all cases, assert any and all provisions in its Tariffs or Customer contracts that limit liability to third parties as a bar to any recovery by the third party claimant in excess of such limitation of liability.
- (e) The indemnified Party shall offer the indemnifying Party all reasonable cooperation and assistance in the defense of any such action.

## 11.0 LIMITATION OF LIABILITY

11.1 Except in the instance of harm resulting from an intentional or grossly negligent action of one Party, the Parties agree to limit liability in accordance with this Section 11. The liability of either Party to the other Party for damages arising out of failure to comply with a direction to install, restore or terminate facilities; or out of failures, mistakes, omissions, interruptions, delays, errors, or defects occurring in the course of furnishing any services, arrangements, or facilities hereunder shall not exceed an amount equal to the pro rata monthly charge for the period in which such failures, mistakes, omissions, interruptions, delays, errors or defects occur. Recovery of said amount shall be the injured Party's sole and exclusive remedy against the providing Party for such failures, mistakes, omissions, interruptions, delays, errors or defects.

11.2 Neither Party shall be liable to the other in connection with the provision or use of services offered under this Agreement for indirect, incidental, consequential, reliance or special damages, including (without limitation) damages for lost profits (collectively, "Consequential Damages"), regardless of the form of action, whether in contract, warranty, strict liability, or tort, including, without limitation, negligence of any kind, even if the other Party has been advised of the possibility of such damages; provided, that the foregoing shall not limit a Party's obligation under Section 10.

11.3 The Parties agree that neither Party shall be liable to the Customers of the other Party in connection with its provision of services to the other Party under this Agreement. Nothing in this Agreement shall be deemed to create a third party beneficiary relationship between the Party providing the service and the Customers of the Party purchasing the service. In the event of a dispute involving both Parties with a Customer of one Party, both Parties shall assert the applicability of any limitation on liability to Customers that may be contained in either Party's applicable tariff(s) or Customer contracts.

## 12.0 COMPLIANCE WITH LAWS AND REGULATIONS

12.1 Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement. Each Party shall promptly notify the other Party in writing of any governmental action that suspends, cancels, withdraws, limits, or otherwise materially affects its ability to perform its obligations hereunder.

12.2 The Parties understand and agree that this Agreement will be filed with the Commission. The Parties reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the Commission rejects this Agreement, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the Agreement. Further, this Agreement is subject to change, modification, or cancellation as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction. Notwithstanding these mutual commitments, the Parties nevertheless enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory, or other public forum addressing any matters, including matters related specifically to this Agreement or other types of arrangements prescribed in this Agreement.

### 13.0 DISCLAIMER OF REPRESENTATION AND WARRANTIES

EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES UNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NEITHER PARTY ASSUMES ANY RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY THE OTHER PARTY WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD-PARTY.

### 14.0 MISCELLANEOUS

#### 14.1 Authorization

14.1.1 Brandenburg is a corporation duly organized, validly existing and in good standing under the laws of the State of Kentucky and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to necessary regulatory approval.

14.1.2 CLEC is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has a full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to necessary regulatory approval.

#### 14.2 Disclaimer of Agency; No Third Party Beneficiaries; Independent Contractor

Neither this Agreement, nor any actions taken by either Party, in compliance with this Agreement shall be deemed to create an agency or joint venture relationship between the Parties, or any relationship. Neither this Agreement, nor any actions taken by either Party in compliance with this Agreement, shall create an agency, or any other type of relationship or third party liability between the Parties or between either Party and the Customers of the other Party. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder. Nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

#### 14.3 Force Majeure

Neither Party shall be responsible for delays or failures in performance resulting from acts or occurrences beyond the reasonable control of such Party, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation: adverse weather conditions, fire,

explosion, power failure, acts of God, war, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation, strikes, slowdowns, picketing or boycotts; or delays caused by the other Party or by other service or equipment vendors; or any other circumstances beyond the Party's reasonable control. In such event, the affected Party shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day basis to the extent of such interferences (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its best efforts to avoid or remove the cause(s) of non-performance and both Parties shall proceed to perform with dispatch once the cause(s) are removed or cease.

#### 14.4 Treatment of Proprietary and Confidential Information

14.4.1 Both Parties agree that it may be necessary to provide each other during the term of this Agreement with certain confidential information, including, but not limited to, technical and business plans, technical information, proposals, specifications, drawings, procedures, Customer account data, call detail records and like information (hereinafter collectively referred to as "Proprietary Information"). Proprietary Information shall remain the property of the disclosing Party. Both Parties agree that all Proprietary Information shall be in writing or other tangible form and clearly marked with a confidential, private or proprietary legend and that the Proprietary Information will be returned to the owner within a reasonable time upon request of the disclosing Party. Both Parties agree that the Proprietary Information shall be utilized by the non-disclosing Party only to the extent necessary to fulfill the terms of this Agreement or upon such terms and conditions as may be agreed upon between the Parties in writing, and for no other purpose. Both Parties agree to receive such Proprietary Information and not to disclose such Proprietary Information. Both Parties agree to protect the Proprietary Information received from distribution, disclosure or dissemination to anyone except employees and duly authorized agents of the Parties with a need to know such Proprietary Information and which employees and agents agree to be bound by the terms of this Section. Both Parties will use the same standard of care to protect Proprietary Information received as they would use to protect their own confidential and proprietary information.

14.4.2 Notwithstanding the foregoing, both Parties agree that there will be no obligation to protect any portion of the Proprietary Information that is either: 1) made publicly available by the owner of the Proprietary Information or lawfully disclosed by a non-party to this Agreement; 2) lawfully obtained from any source other than the owner of the Proprietary Information; 3) publicly known through no wrongful act of the receiving Party; 4) previously known to the receiving Party without an obligation to keep it confidential; 5) required to be disclosed by any governmental authority or applicable law; or 6) approved for release by written authorization of the disclosing Party.

#### 14.5 Choice of Law

The construction, interpretation, enforcement and performance of this Agreement shall be in accordance with the laws of the State of Kentucky without regard to its conflict of laws principles.



#### 14.6 Taxes

Neither Party is aware of any additional taxes that would be applicable to either Party as a result of the execution of this Agreement. In the event that any taxes are assessed on either Party related to this Agreement, each Party agrees to be responsible for any such taxes assessed on it.

#### 14.7 Assignability

Either Party may assign this Agreement or any of its rights or obligations hereunder to its parent, other Affiliate, or a third party acquiring all or substantially all of the assets of the assigning Party, and no consent of the other Party shall be required provided that the assigning Party notifies the other Party at least 120 days in advance of assignment. Any other assignment, however, shall require the consent of the other Party, which consent shall not be unreasonably withheld upon the provision of at least 120 days advance notice by the assigning Party and reasonable evidence by the proposed assignee that it has the resources, ability and authority to provide satisfactory performance under this Agreement. Any assignment or delegation in violation of this subsection 14.7 shall be void and ineffective. This Agreement shall be binding on and inure to the benefit of the Parties and their respective legal successors and permitted assignee.

#### 14.8 Billing and Payment; Disputed Amounts

14.8.1 Because of the mutual consideration related to the subject matter of this Agreement, the Parties agree that no charges shall apply to the ISP Traffic exchanged pursuant to the terms of this Agreement. Other charges, if any, may be set forth pursuant to Appendix 1. In the event that charges are applicable pursuant to Appendix 1, the following terms and conditions set forth in this Section 14.8 shall apply.

14.8.2 Intentionally left blank.

14.8.3 Although it is the intent of both Parties that any invoice will be a timely and accurate statements of submitted charges, Brandenburg's failure to present statements to CLEC in a timely manner shall not constitute a breach or default, or a waiver of the right to payment of the incurred charges by Brandenburg, and CLEC shall not be entitled to dispute Brandenburg's statement(s) based on Brandenburg's failure to submit them in a timely fashion, provided however that Brandenburg shall not bill the other Party for unbilled charges incurred more than two years prior to the date of billing.

14.8.4 If any portion of an amount due to Brandenburg is subject to a bona fide dispute between the Parties, CLEC shall within thirty (30) days of its receipt of the invoice containing such disputed amount give notice to Brandenburg of the amount it disputes ("Disputed Amount") and include in such notice the specific details and reasons for disputing each item. CLEC shall pay when due all undisputed amounts to Brandenburg.

14.8.5 If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within sixty (60) days after delivery to Brandenburg notice of the Disputed Amounts, each Party shall appoint a designated representative that has authority to settle the dispute and that is at a higher level of

management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one Party to the other Party shall be honored.

14.8.6 If the Parties are unable to resolve issues related to the Disputed Amounts within thirty (30) days after the Parties' appointment of designated representatives pursuant to subsection 14.8.5, then either Party may file a complaint with the Commission to resolve such issues or proceed with any other remedy pursuant to law or equity.

14.8.7 The Parties agree that all negotiations pursuant to this subsection 14.8 shall remain confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

14.8.8 Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under applicable law.

#### 14.9 Dispute Resolution

Any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed, in the first instance, by good faith negotiation between the Parties. Should such negotiations fail to resolve the dispute in a reasonable time, the Parties, by mutual agreement, can agree to arbitrate the dispute according to terms mutually agreeable to the Parties. In any event, should negotiations fail to resolve the dispute, either Party may initiate an appropriate action in any regulatory or judicial forum of competent jurisdiction.

#### 14.10 Notices

Notices given by one Party to the other Party under this Agreement shall be in writing and shall be (i) delivered personally, (ii) delivered by express delivery service, or (iii) mailed, certified mail or first class U.S. mail postage prepaid, return receipt requested to the following addresses of the Parties:

To CLEC:

MCImetro Access Transmission Services, LLC  
Director, National Carrier Contracts & Initiatives  
Attention: Peter Reynolds  
22001 Loudoun County Parkway  
G2-3-614  
Ashburn, VA 20147  
Telephone: (703) 886-1918

Copy To:

MCImetro Access Transmission Services, LLC  
Network and Technology Law

22001 Loudoun County Parkway  
E1-3-605  
Ashburn, VA 20147

To Brandenburg:

Brandenburg Telephone Company  
Attn: Allison T. Willoughby  
200 Telco Drive  
PO Box 599  
Brandenburg, Kentucky 40103-0599

or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of (i) the date of actual receipt, (ii) the next business day when notice is sent via express mail or personal delivery, or (iii) three (3) days after mailing in the case of first class or certified U.S. mail.

#### 14.11 Joint Work Product

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

#### 14.12 No License

14.12.1 Nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trademark, trade name, trade secret or any other proprietary or intellectual property now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual property right of the other Party except in accordance with the terms of a separate license agreement between the Parties granting such rights.

14.12.2 Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other Party or its Customers based on or arising from any claim, demand, or proceeding by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision of any facilities by either Party under this Agreement, alone or in combination with that of the other Party, constitutes direct, vicarious or contributory infringement or inducement to infringe, misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any Party or third party. Each Party, however, shall offer to the other reasonable cooperation and assistance in the defense of any such claim.

14.12.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY THE PARTIES OF THE OTHER'S FACILITIES, ARRANGEMENTS, OR SERVICES PROVIDED UNDER THIS AGREEMENT SHALL NOT GIVE RISE TO A

CLAIM BY ANY THIRD PARTY OF INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT OF SUCH THIRD PARTY.

#### 14.13 Survival

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

#### 14.14 Entire Agreement

This Agreement and any Appendix, which is incorporated herein by this reference, sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained herein and merges all prior discussions between them, and neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

#### 14.15 Non-Waiver

Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

#### 14.16 Publicity and Use of Trademarks or Service Marks

Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.

#### 14.17 Severability

If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be unenforceable, the rest of the Agreement shall remain in full force and effect and shall not be affected unless removal of that provision results, in the opinion of either Party, in a material change to this Agreement. If a material change as described in this paragraph occurs as a result of action by a court or regulatory agency, the Parties shall negotiate in good faith for replacement language. If replacement language cannot be agreed upon within sixty (60) days, the Parties may terminate this Agreement by mutual agreement of both Parties without penalty or liability for such termination or arbitrate only such replacement language pursuant to the terms set forth in Section 14.9.

#### 14.18 Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

14.19 Modification, Amendment, Supplement, or Waiver

No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties. A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of this \_\_\_\_ day of \_\_\_\_\_, 2009.

MCImetro Access Transmission Services LLC

Brandenburg Telephone Company

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix 1

### A. Extended Area Service Traffic Covered by this Agreement includes

1. Radcliff-Elizabethtown EAS traffic includes calls that originate in Radcliff (from Brandenburg NPA-NXX of 270-219,270-272,270-351,270-352) and terminate in Elizabethtown (to MCI Metro NPA-NXX of 270-xxx)

2. Vine Grove-Elizabethtown EAS traffic includes calls that originate in Vine Grove (from Brandenburg NPA-NXX of 270-877) and terminate in Elizabethtown (to MCI Metro NPA-NXX of 270-xxx).

### B. POC identification

For ISP Traffic originated by Brandenburg Customers and delivered to CLEC ISP Customers the Parties will interconnect the RDCLKYXADS0 tandem which identifies the Brandenburg Kentucky tandem at 316 Lincoln Trl, Radcliff, KY, 40160 with V & H coordinates of 06621 and 02757

### C. Schedule of Charges

1. The Parties agree that no charges shall apply for the delivery of ISP Traffic pursuant to the terms of this Agreement.

2. Transport facilities may be purchased from applicable Brandenburg intrastate access tariff.



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**From:** McGolerick, Rick [mailto:rick.mcgolerick@verizonbusiness.com]  
**Sent:** Friday, September 04, 2009 9:40 AM  
**To:** Randall Bradley  
**Cc:** Turner, Mark (MarkETurner)  
**Subject:** Kentucky Public Service Commission order in Case No. 2008-00203  
**Importance:** High

Randall - Pursuant to the Kentucky Public Service Commission order in Case No. 2008-00203 regarding the traffic dispute between Brandenburg Telephone Company, Windstream Kentucky East and Verizon Access, Verizon is offering the following regarding an agreement:

- Complete negotiations for an agreement
- Verizon will deliver a draft agreement to Brandenburg
- Point of Interconnection for the Agreement will be the Brandenburg/Windstream Service Boundary
- Traffic exchanged will be Local, EAS, and ISP traffic
- Compensation for Local, EAS and ISP Traffic will be Reciprocal Compensation

Please let me know if this is agreeable to Brandenburg

Rick McGolerick  
**Verizon Services Operations**  
**Proj/Prog Mgmt Contracts**  
703-886-4032

---





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

September 9, 2009

**VIA HAND DELIVERY**

Douglas F. Brent, Esq.  
Stoll Keenon Ogden PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, KY 40202-2874

**Re: *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,***  
**Commission Case No. 2008-00203**

Dear Doug:

As you are aware, the Commission's Order entered in this matter on August 26, 2009, provides, in pertinent part, as follows:

1. Within 30 days of the date of this Order, Verizon and Brandenburg, consistent with guidelines contained herein, shall file with the commission an executed traffic exchange agreement that resolves the outstanding traffic disputes in this case.

2. If no such agreement is executed, the parties shall jointly file, within 45 days of the date of this Order, information that describes, individually, each specific area of contention and fully sets out the positions of each party, including specific language suggested. The Commission will review the supplied information and establish the relative duties and responsibilities of the parties.

In compliance with these provisions of this Order of September 4, 2009, I sent you a letter in which I advised you as follows:

In compliance with ordering paragraph 1, and in order to avoid the necessity and expense necessarily associated with ordering paragraph 2, I have enclosed with this letter a copy of the Traffic Exchange Agreement, which I believe is substantively identical to the South Central agreement we previously and sometime ago proposed to Verizon, in order to resolve these traffic issues.

Please let me know if Verizon is willing to execute the enclosed Agreement. And, if not, what are Verizon's issues so that we may work quickly to resolve those issues in order to avoid the kind of arbitration, time and expense necessitated by ordering paragraph 2.

At or about the same time, we received the following e-mail from Rick McGolerick of Verizon, which provided in its entirety as follows:

Randall - Pursuant to the Kentucky Public Service Commission order in Case No. 2008-00203 regarding the traffic dispute between Brandenburg Telephone Company, Windstream Kentucky East and Verizon Access, Verizon is offering the following regarding an agreement:

- Complete negotiations for an agreement
- Verizon will deliver a draft agreement to Brandenburg
- Point of Interconnection for the Agreement will be the Brandenburg/Windstream Service Boundary
- Traffic exchanged will be Local, EAS, and ISP traffic
- Compensation for Local, EAS and ISP Traffic will be Reciprocal Compensation

Please let me know if this is agreeable to Brandenburg.

Rick McGolerick  
**Verizon Services Operations**  
**Proj/Prog Mgmt Contracts**  
703-886-4032

Today, I have been advised by Brandenburg Telephone Company that Verizon has called to say that it is willing to enter into a Traffic Exchange Agreement which would provide (1) that the point of interconnection would be on Brandenburg Telephone Company's network, and (2) that Brandenburg Telephone Company would pay reciprocal compensation to Verizon for the traffic which is the subject of that agreement.

On the basis of the communications I have summarized above, it appears to me as follows.

First, Verizon is not seeking an interconnection agreement with respect to the traffic identified in the e-mail from Mr. McGolerick and is only seeking an agreement to address the kinds of traffic (ISP traffic) which is the subject of the Commission's August 26<sup>th</sup> Order in this matter. If my understanding in this regard is inaccurate, please advise me immediately. (And, if my understanding in this regarding is inaccurate, we will treat Mr. McGolerick's e-mail as a request for interconnection with respect to all of the traffic identified in that e-mail which is not the kind of traffic which is the subject of the Commission's August 26<sup>th</sup> Order, that is, ISP traffic, in accordance with the applicable provisions of the Telecommunications Act of 1996, and applicable provisions of KRS Chapter 278.)

Second, Brandenburg Telephone Company is willing to agree that the point of interconnection shall be on its network.

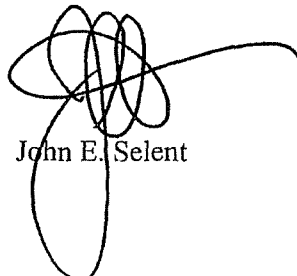
Third, Brandenburg Telephone Company is not willing to agree to pay reciprocal compensation on the traffic which, in accordance with the Commission's August 26<sup>th</sup> Order, will be the subject of this Traffic Exchange Agreement, that is, ISP traffic, and which agreement the Commission has directed us to negotiate and execute. Reciprocal compensation is not required for this type of non-local ISP traffic in any event.

Finally, please advise me whether the other terms of the Traffic Exchange Agreement which I most recently forwarded to you on September 4<sup>th</sup>, and which, as I indicated, is substantively identical to the agreement Verizon executed with South Central Rural Telephone Cooperative Corporation some time ago are acceptable to Verizon. If this is the case, it appears that the only issue about which we disagree is the reciprocal compensation issue on ISP traffic. If this is not the case, please advise me of what terms of that agreement are unacceptable to Verizon so that we can try to resolve them.

I look forward to your response to this letter.

Very truly yours,

DINSMORE & SHOHL LLP



John E. Selent

JES/bmt  
Enclosure

Douglas F. Brent, Esq.  
September 9, 2009  
Page 4

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cc/Bruce F. Clark, Esq.

Douglas F. Brent, Esq.  
September 9, 2009  
Page 5

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bcc: Allison T. Willoughby  
Randall Bradley  
Eileen Bodamer

150226\_1  
30256-100



## Selent, John

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**From:** Brent, Douglas [Douglas.Brent@skofirm.com]  
**Sent:** Monday, September 21, 2009 11:52 AM  
**To:** Selent, John  
**Cc:** Soundararajan, Srinivasan (Sandy)  
**Subject:** MCImetro proposal to Brandenburg Telephone Co.

John,

we spoke on September 10 or 11 and I said I would get you a broad proposal in writing to summarize the discussion we had on the phone. Sorry for the delay, and the proposal below is revised slightly; please review these alternative proposals. Thanks.

1. MCIIm will obtain facilities to meet Brandenburg Telephone Company at its local calling area boundary i.e. where Brandenburg meets Windstream. A 251/252 agreement will be negotiated to implement all obligations and duties under those sections e.g., interconnection, access to UNES, numbering resources and other requirements necessary for MCIIm to compete as a local service provider throughout Brandenburg Telephone Company's exchanges.

or

2. MCIIm and Brandenburg each have affiliates with in-place facilities in Elizabethtown. (See Windstream's Response to MCIIm DR No. 6) To avoid additional facilities expense MCIIm and Brandenburg will cross-connect at a mutually-agreed location at or near EZTWKYXA, the Windstream tandem in Elizabethtown. To emphasize, the goal here is to prevent stranded facilities and unnecessary third party expense. Moving the traffic from the EAS group with Windstream will free up capacity on that group. (At hearing Brandenburg's counsel suggested that half the traffic on the EAS group is MCIIm traffic. See transcript, p. 138.; see also p. 196, testimony of Allison Willoughby) MCIIm will secure any facilities required from Windstream to effect the cross-connect. The traffic exchange agreement will include bill and keep for all traffic, including ISP traffic.

Douglas F. Brent  
Stoll Keenon Ogden PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, KY 40202  
502 333 6000  
502 568 5734 direct  
douglas.brent@skofirm.com  
www.skofirm.com <<http://www.skofirm.com/>>





STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on October 11, 2000

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman  
Thomas J. Dunleavy  
James D. Bennett  
Leonard A. Weiss  
Neal N. Galvin

CASE 00-C-0789 - Proceeding on Motion of the Commission  
Pursuant to Section 97(2) of the Public  
Service Law to Institute an Omnibus  
Proceeding to Investigate the Interconnection  
Arrangements Between Telephone Companies

ORDER ESTABLISHING REQUIREMENTS FOR  
THE EXCHANGE OF LOCAL TRAFFIC

(Issued and Effective December 22, 2000)

BY THE COMMISSION:

This proceeding was initiated to resolve a dispute by carriers regarding treatment of competitive local exchange carrier (CLEC) telephone numbers assigned to a central office (NXX) code<sup>1</sup> within an established local calling area, but used by customers located beyond the local calling area of the designated NXX code.

BACKGROUND

Department Staff (staff) investigated complaints by customers of independent telephone companies (Independents)

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<sup>1</sup> In a seven digit local phone number, the first three digits identify the specific telephone company central office which serves that number.

regarding calls that failed to reach their destination or were unexpectedly billed at toll rates. Staff found that in nearly all of the situations examined, the calls in question had been made to an Internet service provider (ISP) served from a CLEC network. In all instances, both the CLEC switch and the ISP customer for whom the calls were destined were located outside the Independent's local service area. The CLEC used an NXX code within the Independent's established local calling area to provide locally-rated calling to customers located outside the geographic area associated with the assigned NXX code.

Calls failed to reach their destination because no provision had been made for physical interconnection between CLECs and Independents. Toll charges were imposed when the Independent's only available transmission path for routing the call was the toll network. In all cases, Staff found that no interconnection arrangements/agreements had been made between the CLECs and the Independents to handle these calls, unlike the situation between Independents and Verizon New York, Inc. (Verizon) where transport arrangements are in place to handle calls to a customer outside the geographic area associated with the assigned NXX.

After Staff-facilitated negotiations between the Independents and CLECs reached impasse, this proceeding was begun and on May 16, 2000 a Notice Inviting Comments was issued. The Notice sought comments regarding these questions:

- (1) How to treat calls from telephone exchanges to CLEC phone numbers within that company's local calling area?
- (2) Whether there were any unique costs incurred by originating carriers who transported calls to a requesting CLEC?
- (3) Whether there were any unique costs incurred when a third party transported calls between the originating carrier and the requesting CLEC and

if there were, how such costs should be compensated?

- (4) What generic principles should be established as guidance for interconnection agreements and inter-carrier compensation?

Comments<sup>2</sup> and reply comments<sup>3</sup> were filed. A Petition for Clarification or Rehearing was also filed by the Independents' Small Company Group (Small Companies).<sup>4</sup> AT&T Communications of New York and ACC Corp. responded. A summary of comments submitted appears in Appendix D.

#### DISCUSSION

##### Rating of Calls

According to the Small Companies, a customer should not be considered "within" a local calling area if that customer is actually located in a different geographic area. Instead, the Small Companies recommended that CLECs be required to assign telephone numbers in a manner that makes it technically feasible to identify, switch, and deliver calls according to whether a call is inter-exchange or local. CLECs maintained that the calls at issue in this proceeding should be considered local.

No Commission or FCC rules or policies prohibit a CLEC from activating a telephone number in an exchange where it has no physical presence. A CLEC may obtain an NXX or central office code in any existing rate center in order to establish a presence or a "footprint." These number assignments are then listed in the Local Exchange Routing Guide (Routing Guide),

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<sup>2</sup> Parties who filed comments are listed in Appendix A.

<sup>3</sup> Parties who filed reply comments are listed in Appendix B.

<sup>4</sup> The member Independents comprising the Small Company Group are listed in Appendix C.

recognized by the industry as the source for instructions on how to route calls, and other industry databases.

Currently, Independents rate customer calls to Verizon NXX numbers that are within the Independent's defined local calling area as local calls, even if the called party is outside the geographic area. Treating similar calls to a CLEC NXX code within the Independent's established local calling area as toll calls would be problematic. Therefore, calls to an NXX code within an established local calling area, but used by customers located outside the local calling area of the designated NXX code, will be considered local for rating purposes. This treatment assumes that the CLEC has established the appropriate fundamental network and service arrangements with all incumbent carriers consistent with the requirements of this Order.

Foreign exchange service also allows customers to obtain local service in an exchange where the customer has no physical presence. Independents do not treat calls destined for foreign exchange service any differently than calls terminating within the physical boundaries of the rate center. This is precisely the service CLECs offer their ISP customers, i.e., telephone numbers that can be called on a local basis in exchanges where the ISP has no physical presence, and this approach of rating those calls as local is consistent with the way Independents treat foreign exchange service calls.

Rating these calls as local, however, will not by itself ensure completed calls and proper billing. A fundamental network and service arrangement with Independents is an essential element in accomplishing that goal. Therefore, CLECs will be required to enter into an agreement establishing fundamental network and service arrangements prior to activating a code that can be accessed on a local basis by an Independent's

customer.<sup>5</sup> The FCC's Numbering Resource Optimization Order (NRO Order)<sup>6</sup> requires code applicants to provide the North American Numbering Plan Administrator (NANPA) with appropriate evidence that it will be ready to provide service within 60 days of the activation date. Responsibility for defining the readiness of facilities has been delegated by the FCC to the state commissions<sup>7</sup> and a pre-existing network and service arrangement will be an element of facilities readiness. Staff will advise NANPA that no NXX codes should be issued until the requesting CLEC has documented that it has interconnection agreements in place with all incumbent carriers within the local calling area where the code is sought. This requirement also applies to carriers seeking thousand-blocks in areas where pooling has begun.

Unique Routing Costs Incurred By Independent Companies

Independent companies connect to other incumbent carriers such as Verizon via two methods: (1) local trunks between their central office and the adjacent incumbent's central office, or (2) toll trunks to Verizon's tandem. In either case, the Independent's responsibility is limited to bringing its facilities to its boundary with the adjacent

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<sup>5</sup> The Central Office Code (NXX) Assignment Guidelines note that interconnection arrangements need to be in place prior to the activation of a code. Carriers may apply for a code six months prior to activation and may ask for an activation date no sooner than within sixty-six days of the request.

<sup>6</sup> Numbering Resource and Optimization Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7545 (March 2000).

<sup>7</sup> Id., para.97; Common Carrier Bureau Responses to Questions in the Numbering Resource Optimization Proceeding, CC Docket No. 99-200 (July 2000)

incumbent. The incumbent's responsibility is to provide connecting facilities within its territory to the boundary.

If the CLEC has facilities built out to the Independent's end office or has a meet-point somewhere in the Independent's territory, costs associated with completing calls from Independent exchanges to CLEC numbers within the Independent's local calling area should be, based on comments received, inconsequential. Nonetheless, Independents argued that the costs of originating and transporting these calls should be subject to access charges assessed to the carrier to which the call is delivered. The Independents were concerned that facilities could become overloaded and additional costs would be incurred to reinforce the network. However, no facts were provided to substantiate these concerns.

CLECs share in the obligation to allow efficient interconnection to the Independents. As previously noted, Independents are currently responsible for bringing meet-point facilities to their borders only, the long-standing arrangement in place today for trunks used in the provision of local calling between the Independents and Verizon. Because Independent responsibility is limited to delivering traffic to its service area borders, CLECs must either provide their own interconnection facilities or lease facilities to the meet-point. With this obligation placed on CLECs, no unique costs would be incurred by the Independents in transporting calls to CLECs.

#### Third-Party Carriage of Independent-CLEC Calls

All parties agreed that a need exists for third-party transport of low volume calls between Independents and CLECs. CLECs stated that it would be inefficient for them to physically interconnect with Independents for the exchange of relatively

small amounts of traffic and proposed instead that calls between an Independent and a CLEC should be carried initially by an incumbent local exchange carrier (ILEC). Verizon, recognizing that it would most often be the third party involved in transporting such calls<sup>8</sup>, offered to provide existing services for the exchange of Independent-CLEC traffic in return for reasonable compensation. Tandem switching rates are available in Verizon's 914 tariff but rates for traffic carried via shared common transport and using tandem switching are not tariffed and need to be developed. Verizon will be directed to file a tariff for delivery of traffic from the Independent's meet point to the Verizon tandem. Interested parties will have an opportunity to comment on the proposed rates.

If call volumes between an Independent and a CLEC go beyond the small volume level, the CLEC should be responsible for establishing direct trunking. The DS-1 or T-1 level (24 voice grade channels) recommended by both Verizon and Time-Warner is a reasonable standard for triggering dedicated transport since it represents a standard unit of network capacity, is an efficient network design, and is generally acceptable to most parties. Parties may, of course, decide a different level is appropriate in a negotiated agreement. Rates for dedicated transport facilities are available in Verizon's 900 tariff.

Fiber Tech proposed that Independents offer a service similar to Verizon's Competitive Alternative Transport Terminal which allows competitive fiber providers a means to interconnect with CLECs collocated in a central office. While recognizing

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<sup>8</sup> Other Independents could also be involved in transporting these calls.



the competitive benefits offered by competitive fiber providers, Fiber Tech's proposal is beyond the scope of this proceeding.

Inter-Carrier Compensation

The Independents and Verizon currently have a "bill and keep"<sup>9</sup> arrangement for the exchange of local traffic. The calls at issue closely resemble those that are currently handled in local calling arrangements between the Independents and Verizon and, therefore, it is appropriate to handle these calls on the same "bill and keep" basis. In addition, since the CLEC is not located within the same geographic territory as the Independent and is not directly competing with the Independent for local customers, treatment of the call as local for the purpose of reciprocal compensation does not appear warranted. It should also be recognized that if a third-party ILEC (e.g., Verizon) transports a call between the originating and terminating carriers, it should have no responsibility to pay for its completion.

Procedural Matters

The Small Company Group petitioned for clarification or in the alternative, rehearing, of the May 5 Order based on (1) potential displacement of long-standing legal requirements and regulatory policies; (2) possible prejudgment of issues; (3) a potential due process violation absent rehearing and modification of the May 5 Order; and (4) potential violations of Commission and federal policy based on the statement in the May 5 Order "that carriers are reminded of their legal obligation to complete customer calls regardless of disputes over intercarrier

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<sup>9</sup> "Bill and keep" is a compensation method whereby each carrier is responsible for its own costs and recovers those costs from its end users.

compensation or call rating designations, and to bill such calls appropriately."

AT&T and ACC opposed the petition, arguing that there was no potential violation of Commission, federal, or public policy, and that the Commission's reminder of a carrier's legal obligation to compete calls was consistent with law.

The May 5 Order instituting this proceeding posited issues for comment which arose from previous discussions with Small Companies, AT&T, and ACC. A Notice Inviting Comment was issued on May 16, 2000 and parties were given the opportunity to submit initial and reply comments.

Clarification and/or rehearing is appropriate when ordered action is ambiguous or based on an error of fact or law. The Small Companies' petition was based not on Commission ordered action, but potential or possible action. At the time the Small Companies' petition was interposed, no action had been ordered. The statement regarding a common carrier's obligation to complete calls was merely a reminder of pre-existing duties. The Small Companies have failed to demonstrate any action that is ambiguous or erroneous. Therefore, the Small Companies' petition for clarification and/or rehearing was premature and is denied.

The Commission orders:

1. Prior to activating an NXX code that can be accessed on a local basis by an independent telephone company's customer, CLECs must enter into an arrangement establishing fundamental network and service arrangements. CLECs must make arrangements for interconnection facilities to a meet-point designated as the Independent Telephone Company boundary. Independent Telephone Companies are responsible for delivering traffic to their own service area borders.

2. Calls to an NXX code that is within an established local calling area and that is used by customers located beyond the local calling area shall be rated as local for the purpose of customer billing.

3. Verizon New York, Inc. shall file with the Secretary (5 copies) a tariff for shared transport, as discussed in this Order, within 30 days of issuance of this Order and also serve the proposed tariff on parties on the service list for this case.

4. Parties will have 20 days from Verizon New York, Inc.'s filing to submit comments. Comments shall be served on parties on the service list for this case.

5. The Petition for clarification and/or rehearing is denied.

6. This proceeding is continued.

By the Commission,

(SIGNED)

JANET HAND DEIXLER  
Secretary

APPENDIX A

INITIAL COMMENTS

ACC Corp. (ACC)

AT&T Communications of New York, Inc. (AT&T)

Adelphia Business Solutions, Inc. (Adelphia)

Verizon-New York (Verizon, formerly Bell Atlantic)

CTSI, Inc. (CTSI)

Fiber Technologies, LLC (Fiber Tech)

Focal Communications Corp. of New York, Inc. (Focal)

Mid-Hudson Communications, Inc. (Mid-Hudson)

Northland Networks, Ltd. (Northland)

RCN Telecom Services of New York, Inc. (RCN)

Small Company Group (Small Companies)

TC Systems, Inc. (TC)

Time-Warner Telecom, Inc. (Time Warner)

WorldCom, Inc. (WorldCom)

APPENDIX B

REPLY COMMENTS

ACC Corp. (ACC)  
AT&T Communications of New York, Inc. (AT&T)  
Adelphia Business Solutions, Inc. (Adelphia)  
Bell Atlantic-New York (BA-NY or Bell Atlantic)  
CTSI, Inc. (CTSI)  
Cablevision Lightpath, Inc.  
Fiber Technologies, LLC (Fiber Tech)  
Focal Communications Corp. of New York, Inc. (Focal)  
Frontier Telephone of Rochester, Inc.  
Mid-Hudson Communications, Inc. (Mid-Hudson)  
Northland Networks, Ltd. (Northland)  
RCN Telecom Service of New York, Inc. (RCN)  
Small Company Group (Small Companies)  
TC Systems, Inc. (TC)  
Time-Warner Telecom, Inc. (Time-Warner)  
WorldCom, Inc. (WorldCom)

APPENDIX C

SMALL COMPANY GROUP

Armstrong Telephone Company  
Berkshire Telephone Company  
Cassadaga Telephone Corporation  
Champlain Telephone Company  
Chautauqua & Erie Telephone Corporation  
Chazy & Westport Telephone Corporation  
Citizens Telephone Company of Hammond  
Crown Point Telephone Corporation  
Delhi Telephone Company  
Dunkirk & Fredonia Telephone Company  
Edwards Telephone Company  
Empire Telephone Corporation  
Fishers Island Telephone Company  
Germantown Telephone Company  
Hancock Telephone Company  
Margaretville Telephone Company  
Middleburgh Telephone Company  
Newport Telephone Company  
Nicholville Telephone Company  
Ontario Telephone Company  
Oriskany Falls Telephone Corporation  
Pattersonville Telephone Company  
Port Byron Telephone Company  
State Telephone Company  
TDS Telecom of Deposit  
Township Telephone Company  
Trumansburg Home Telephone Company  
Vernon Telephone Company

## SUMMARY OF COMMENTS RECEIVED

1. Treatment of calls between telephone company exchanges to CLEC numbers assigned to NXX code within that company's local calling area.

The positions of the parties are generally divided between the incumbents (small companies and Verizon) and the CLECs.

The Small Companies argue that assigning a number associated with one geographic area to a customer located in a different geographic area does not mean that the customer should be considered "within" the local calling area associated with the number. As such, the Small Companies request that the Commission require all LECs to divulge their NPA-NXX code assignment practices and the manner in which telephone numbers are assigned to actual customers premises and LEC-designated rate centers. These arbitrary number assignment practices are not in keeping with the point-to-point nature of calls, according to the Small Companies. The Small Companies state that CLECs fail to recognize the rights of its members and that other carriers cannot be forced to concede to these arbitrary practices. The Small Companies recommend that CLECs be required to deploy numbers in a manner that makes it technically feasible to identify, switch, and deliver calls according to whether a call is interexchange or local. Absent these practices, Small Companies state that calls to these numbers must be treated as interexchange/toll and subject to proper intrastate access changes. Finally, the Small Companies note that a continuation of the current practices will harm independent company customers.

Verizon posits that if a CLEC wants to have the call rated as a local call, the CLEC should either extend its

facilities into the local calling area or pay for transport of the call from the local area to its switch.<sup>1</sup>

CLEC respondents agree that the calls at issue in this proceeding should be considered local. Focal believes customer confusion would be encountered if these calls were treated as anything other than local. Likewise, Mid-Hudson and Northland, filing jointly, argue that independent customers, CLEC customers, and CLECs would all suffer severe and irreparable harm if the calls were not treated as local. AT&T states that there is no basis for discriminating between local and toll calls since independent companies make no distinction in routing and rating calls to incumbent customers (e.g., Verizon), some of which terminate to customers physically located outside of the local calling area, through the use of foreign exchange and remote call forwarding services.<sup>2</sup> Time-Warner concludes that the calls at issue are local; therefore, carriers should honor rate center assignments with their end-users. Worldcom states the physical location of the called party has no relevance on how a call is rated and billed. Worldcom also states that the location of calling and called parties is irrelevant and notes a California Commission ruling that determined the rating of calls is based on the NXX prefix of calling and called parties even if called party is located in different exchange.<sup>3</sup> RCN, CTSI, and Adelphia, filing jointly, state that there is no economic, technical or policy reason for different treatment to calls to the same rate center. RCN/CTSI/Adelphia note a Michigan PSC order rejecting the argument that an ISP did not have a physical presence in the exchange, that this was not a prerequisite under the tariff, and

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<sup>1</sup> A CLEC's switch may also be located some distance away from the exchange where the code is assigned.

<sup>2</sup> The Small Companies and Verizon have argued that foreign exchange calls are interexchange in nature and not an appropriate example.

<sup>3</sup> Order Instituting Rulemaking on the Commission's own Motion, Decision No. 99-09-029, Interim Opinion at 31-32 (California Public Utility Commission September 2, 1999).



that rating and routing need not be the same.<sup>1,2</sup> They also argue for FX service, claiming it is a time-honored service which allows businesses to expand their presence.

## 2. Unique Costs incurred by Independent companies

Almost all parties (with the exceptions of Verizon and the Small Companies) deem the costs associated with completing calls from independent exchanges to CLEC numbers within that company's local calling area to be inconsequential. This includes those calls that must be completed to an end user located outside of that local exchange.

However, Small Companies assert that these types of calls are interexchange calls, and that the costs of originating and transporting these calls should be subject to access charges which, in turn, should be assessed to the carrier to which the call is delivered. The Small Companies state that these calls are toll calls that will be converted to lower-priced local calls by not assessing an additional charge for these types of calls. The Small Companies argue that their local facilities may become overloaded as the demand for these types of calls increase, and that independent companies will incur additional costs to reinforce its system. The Small Companies argue that, while a CLEC can request interconnection, a CLEC cannot declare or demand that other carriers accommodate the CLEC's practices.

Verizon states that third party costs would occur if it were to carry traffic between an independent and a CLEC, and that Verizon would expect full recovery of any costs. Verizon argues that it should be compensated for the use of its network.

Time-Warner states that it is possible that some additional costs may be incurred by independent companies

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<sup>1</sup> In the Matter of the Complaint of Glenda Bierman against Centurytel of Michigan, Inc d/b/a/ CenturyTel, April 12, 1999.

<sup>2</sup> In reply comments, the Small Companies notes an order issued by the Maine Commission which reclaimed a CLEC's NXX codes that did not have facilities nor was serving customers in the exchange where the codes were assigned.

depending on 1) call volumes, 2) location of the interconnection points and 3) current capacity of the system. However, Time-Warner also states if the CLEC has built out to the independent's end office or has a meet-point somewhere in the Independent Carrier's territory, there should be few recurring costs.

WorldCom claims that each carrier has its own costs for originating telecommunications, and that generally the recovery of costs associated with originating calls are the responsibility of the originating carrier. RCN/CTSI/Adelphia believe that no additional costs would be incurred if traffic were routed the same way for both Verizon and CLEC customers.

Focal states that some costs to build out the network may be necessary, but that these costs should not be extraordinary. Mid-Hudson/Northland note that it makes no difference to the independent whether its customers dial the "phantom NXX" or any other NXX; the costs for handling each call are the same. All calls from the independent to the CLEC NXX code can be delivered in the same manner at the same cost to the independent. Accordingly, the charge to the caller should be the same.

### 3. Third-party carriage of independent-CLEC calls

AT&T, Focal, Mid-Hudson/Northland, RCN/CTSI/Adelphia, Time Warner, and Worldcom basically agree that it would be inefficient for them to physically interconnect with independents for the exchange of relatively small amounts of traffic immediately. Calls between an independent and a CLEC should, therefore, be initially carried by a third-party ILEC, most often Verizon. The parties offer comments on shared and dedicated transport, the costs incurred and reimbursement of the third-party carrier for those costs.

Verizon, recognizing that it would most often be the third party involved in such calls<sup>1</sup>, offers to provide existing services and to develop new services for the exchange of

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<sup>1</sup> Other larger independents could be involved in these calls.

independent-CLEC traffic. Fiber Tech states that it intends to enter the market as a competitive fiber provider. AT&T holds that an Incumbent local exchange carrier (ILEC) must provide shared transport as an Unbundled Network Element (UNE) on its network between its meet point with a CLEC and its meet point on an independent-ILEC EAS trunk group<sup>1</sup>. Focal states that ILECs should act as aggregators of traffic and be prohibited from limiting use of interconnected trunks to independents. Mid-Hudson/Northland want ILECs to offer both shared and dedicated transport. RCN/CTSI/Adelphia feel that independent-CLEC traffic flow will be minimal and exchanged via ILEC facilities. Time-Warner and WorldCom both indicate it is more efficient for the ILEC to transit relatively low volumes of independent-CLEC traffic. The Small Companies state that calls terminating beyond the local calling area are actually interexchange and that "legitimate" local calling arrangements involving third-party carriers should remain subject to negotiation among the parties.

Some parties recommend or suggest that limits be placed on shared transport. Verizon and Time-Warner expect that dedicated facilities are appropriate for traffic requiring one DS-1 (T-1)<sup>2</sup>. Focal recommends that 200,000 minutes of use per month for two consecutive months should require a CLEC to establish its own direct trunk group connection with an independent. Focal also states that CLECs will evaluate whether or not to build direct trunks if ILECs are allowed to increase their shared transport rates for legitimate costs such as tandem additions. RCN/CTSI/Adelphia want the independent-CLEC traffic threshold triggering a direct connection to be set by the parties.

Verizon states that rates for the type of shared common transport used for independent-CLEC calls are not tariffed and

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<sup>1</sup> Verizon replies that EAS routes have been constructed to carry traffic between independent and ILEC end offices and do not extend to tandems.

<sup>2</sup> Verizon New York's rates for dedicated transport are available in its P.S.C. 900 Tariff.

would have to be developed<sup>1</sup>. Focal states that the compensation level should be at the ILEC's existing transit rates, adjustable for additional costs incurred to meet traffic requirements. AT&T, citing the FCC's UNE Remand Order<sup>2</sup>, maintains that shared transport is a UNE and should be provided at total element long run incremental cost (TELRIC). Mid-Hudson/Northland recognize the need for tandem switching costs but do not address common transport. RCN/CTSI/Adelphia would compensate the ILEC at agreed-upon or Commission-approved rates provided the ILEC has demonstrated it has incurred incremental costs carrying independent-CLEC traffic. Time-Warner would compensate an ILEC with a network capable of exchanging traffic with an independent at that ILEC's established rate. If the independent does not subtend the ILEC's tandem, Time-Warner would have the Commission establish a default point of interconnection from which the CLEC could purchase transport from either the independent or ILEC for no greater than the ILEC's UNE price for interoffice transport. WorldCom would compensate the ILEC at its TELRIC-based transit charge. Cablevision urges that ILECs not be allowed to impose interexchange access fees or toll charges. The Small Companies would have the ILEC charge either for interexchange access or at a negotiated EAS rate.

AT&T, Focal, Time-Warner would have the CLEC pay the ILEC for transporting calls to it. Mid-Hudson/Northland would have the originating carrier pay the ILEC to deliver a call to the receiving carrier's point of interconnection with the ILEC. WorldCom would also have the originating carrier pay the ILEC's TELRIC-based charge. RCN/CTSI/Adelphia do not specify who should pay the ILEC, indicating only that, in the absence of an agreement, cost recovery over a de minimus amount should be in accordance with Commission guidelines. Verizon expects the party requesting dedicated transport to pay for it. Verizon stresses

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<sup>1</sup> Verizon New York's rates for tandem switching that do not include common transport are available in its P.S.C. 914 Tariff.

<sup>2</sup> CC Docket No. 96-98, FCC 99-238, Third Report and Order released November 5, 1999.

that it is not the originating carrier for independent-CLEC traffic and should not have to pay reciprocal compensation for its termination.

#### 4. Intercarrier compensation

In its Notice Inviting Comments, the Commission asked what generic principles regarding compensation should be established as guidance for interconnection agreements between carriers. The independent companies and Verizon currently have a "bill and keep" arrangement for exchange of local traffic. CLECs and Verizon, on the other hand, have reciprocal compensation agreements in which each carrier pays the other to complete calls.

The Small Companies state that their member companies are willing to discuss terms and conditions for local calling if customers are physically located in neighboring exchanges but opine that most traffic discussed in this proceeding is not "local". The Small Companies also note that bilateral agreements between Verizon and CLECs cannot be forced on small company group members.<sup>1</sup> Rather, the calls in question are interexchange in nature and access charges should apply to these calls. Verizon is concerned that agreements should specify who is responsible for new and additional transport facilities and services in third-party circumstances. AT&T and Focal state that the Commission must make sure that compensation is not discriminatory for calls terminating in same exchange. Similarly, Worldcom and Mid-Hudson/Northland note that the provisions of the 1996 Telecom Act are the governing policy, which dictates that each party should pay to terminate calls; therefore, the traffic should be treated no differently than Verizon to CLEC traffic. Mid-Hudson/Northland also note that CLECs, to date, have refrained from collecting reciprocal compensation from independents even though CLECs are entitled to it under S251 (b) (5) of Act. Time-

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<sup>1</sup> Verizon's interconnection agreements with CLECs allow for meet-point billing at Verizon's tandem within a LATA.

Warner is most concerned that disputes over compensation should not interfere with call completion. Several parties address the level of traffic and the need for compensation.

RCN/CTSI/Adelphia state that bill and keep should be used if traffic is balanced; otherwise, each carrier should bill the other for terminating traffic. However, if traffic is negligible, no payment should be required. Focal suggests that interconnection agreements not be require until the traffic reaches a threshold level, which it recommends to be 200,000 minutes per month for two consecutive months. Focal also notes that the independent company and CLEC should determine a technically feasible point of interconnection. Cablevision states that outcome of this proceeding should not limit CLEC's ability to design and operate an efficient network.