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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE TRAFFIC)
DISPUTE BETWEEN WINDSTREAM)
KENTUCKY EAST, LLC, BRANDENBURG)
TELEPHONE COMPANY AND MCIMETRO) Case No. 2008-00203
ACCESS TRANSMISSION SERVICES, LLC)
D/B/A/ VERIZON ACCESS)

**RESPONSE OF WINDSTREAM KENTUCKY EAST, LLC
TO VERIZON'S MOTION FOR CORRECTION AND REHEARING**

In response to Verizon's Motion for Correction and Rehearing ("Verizon's Motion") filed with the Commission on September 18, 2009, Windstream Kentucky East, LLC ("Windstream East") hereby files the following:

1. Verizon's Motion requests rehearing in this matter because Verizon disagrees with the Commission's finding that the traffic between Brandenburg's and Verizon's end users must be moved away from Windstream East's network. In support of this Motion, Verizon asserts incorrectly that Windstream East's transit tariff requires Windstream East to handle Internet ("ISP") traffic bound for any carrier "directly interconnected" with Windstream East and that, as Verizon and Windstream East have an interconnection agreement (executed in 2005), the transit tariff requires Windstream East to handle the traffic. Verizon's Motion claims that the Commission erred in finding that Windstream East and Verizon had not made arrangements to use their interconnection for transit traffic and that "other arrangements" were made between Verizon and Windstream East (per Windstream East's 2006 transit tariff) through Windstream East's actions in routing Brandenburg's transit traffic to Verizon without charge – so that "as a

matter of practice” other arrangements have been made. Verizon's assertions in its latest Motion are as misguided now as they were the first time Verizon raised them in its post-hearing brief. (Verizon Brief, p. 7.)

2. Verizon's contention that Windstream East somehow has consented to the delivery of this traffic through its network for free (either through the transit tariff or some other arrangement) belies the overwhelming evidence in this matter.¹ The undisputed evidence in this matter confirmed that **none** of the traffic at issue concerns any Windstream end user. Rather, the disputed traffic is comprised strictly of ISP calls from Brandenburg's end users to Verizon's end users. It is simply illogical, given the evidence in this matter, for Verizon to suggest that Windstream East has agreed to allow this use of its network at no charge to Verizon or Brandenburg.

3. The evidence is also undisputed that Brandenburg and Verizon have been engaged in long standing negotiations for an interconnection agreement to govern the exchange of their traffic but failed to resolve those negotiations or otherwise file for arbitration. Instead, as shown very clearly through the prefiled written testimony and at the hearing, Brandenburg and Verizon have chosen to avoid their interconnection disputes by misusing Windstream East's network. Additionally, the record reflects that Brandenburg failed to perform the required local number portability ("LNP") queries on the traffic in question for an extended period of time – a failure which concealed that the traffic in question was exchanged between Brandenburg and Verizon and had nothing to do with Windstream East.

¹ Indeed, under Verizon's misguided theory that Windstream East's transit tariff applies to the misrouted traffic in this matter, then Windstream East is still entitled to the same compensation that it has filed on record in this proceeding. Although the traffic is misrouted through Windstream East's network, Windstream East demonstrated that it used the transit traffic rates as a proxy to develop the compensation it is owed in this proceeding.

4. Windstream East demonstrated that the traffic is unauthorized, and that its transit tariff does not sanction or permit unauthorized traffic routed contrary to LERG protocols. Windstream East's actions in this matter, including its attempt to cease the misuse of its system, have demonstrated very clearly that the traffic is not authorized under its transit tariff and that "no alternative arrangements" have been made for this traffic. This is because Windstream East has not consented and does not consent to the use of its network in this manner by Verizon and Brandenburg. Specifically, Windstream East's witness explained why the transit traffic tariff did not apply and why the traffic in question was unauthorized according to LERG protocols:

TRANSIT TRAFFIC DISTINCTION

Q. Is the traffic exchanged indirectly between Brandenburg and Verizon transit traffic?

A. No. As I described above, transit traffic would include traffic exchanged indirectly through Windstream's network for delivery by Brandenburg to a carrier homed behind Windstream's network. Verizon is not homed behind Windstream's network and instead clearly designates itself in the LERG as being homed behind AT&T's Louisville tandem. This misrouting contradicts industry standard LERG routing protocols, which prescribe a call path for this traffic to AT&T's Louisville tandem and not to Windstream's Elizabethtown end office or tandem. Therefore, although the traffic cannot be considered valid transit traffic, because Brandenburg and Verizon nevertheless are using Windstream's network in a manner similar to that of a transit scenario (albeit incorrectly through an end office and not a tandem), Windstream used as a proxy rate in this instance the end office transit rate set forth in its Transit Tariff filed with the Commission.

Q. Did Windstream at one time believe the traffic at issue to be transit traffic?

A. Yes. For a long period of time, Windstream believed that Brandenburg was among a group of ILECs that were relying upon Windstream's network to provide transit service but were at the same time declining to pay Windstream for providing such service. Through Windstream's pursuit of payment from those ILECs for transit services and its efforts to work with those ILECs to reroute

traffic away from Windstream's end offices, Windstream undertook a more detailed traffic analysis. It was through these pursuits that Windstream came to understand that Brandenburg was not similarly situated to those ILECs and instead had taken steps to misroute traffic to Windstream contrary to LERG protocols. Interestingly, I should note that contrary to Brandenburg's claims in this case that imply that Windstream consented to such use of its network, Windstream at no time has stated – either in this proceeding or in the transit tariff matter – that Windstream agreed to allow its network to be used by Brandenburg without any compensation. In fact, the primary purpose behind Windstream's filing of the Transit Tariff was to seek compensation from the ILECs including Brandenburg at the time that Windstream believed all of the traffic to be transit traffic.

(Smith Direct Test., pp. 9-10.)

5. Windstream East's witness further addressed this issue at the hearing:

Q. And that leads into my next question. If this is not transit traffic, what exactly is it, if you can draw the distinction between or determine this as disputed traffic versus transit traffic?

A. Transit traffic would be traffic that is routed from one party through another party's network to a third party behind that middle company's network. In this case, the company that originates the traffic is sending traffic through Windstream's network to a company that does not home behind Windstream's network.

Q. When you say "does not home behind," could you explain that in a little greater detail?

A. In the LERG, which, you know, is a standard that all carriers use to route traffic, in that, the term "homed" is what tandem have they chosen to have all of their traffic delivered and, in this case MCI has chosen not Windstream's network but another carrier, AT&T, at the Louisville tandem as their tandem homing arrangement.

Q. Okay, and so, if it's not transit traffic, what exactly is it, then?

A. In our opinion, it's misrouted traffic. It's not transit because we're not on the call path of this calling scenario.

(Transcript, pp. 13-14, adding that the traffic is "being misrouted" and is not per a tariff at p. 24.)

6. The testimony by Windstream East (the party that maintains the transit tariff in issue) directly refutes the misguided assumption by Verizon's witness that "Windstream has apparently agreed to an alternative to the default routing arrangement specified in the LERG, and is acting as a tandem provider for traffic originated by Brandenburg." (Price Direct at 9-10.) Further, Verizon's witness did not offer testimony explaining why Windstream East's actions in unknowingly accepting the traffic would constitute "other arrangements." It is unreasonable for Verizon to even hint that any such alternative arrangements have been made merely because the traffic is flowing from Brandenburg to Verizon through Windstream East's network contrary to LERG protocols. This is because: (1) Brandenburg's actions in refusing to perform the LNP queries concealed the nature of this traffic for an extended period of time; and (2) soon after learning the true nature of the traffic in 2008, Windstream East took immediate action to cease the misuse of its network. To suggest that the misrouting was agreed to by Windstream East as an "alternative arrangement" simply ignores the evidence presented in this proceeding.²

7. Verizon's Motion further conveniently overlooks the clear language in its interconnection agreement with Windstream East that confirms this traffic is not authorized. Specifically, Attachment 4, Section 1.1 states as follows:

In each [Windstream East] Exchange Area where the Parties interconnect their networks, the Parties will utilize the interconnection method as specified below unless otherwise mutually agreed to in writing by the Parties. Neither Party shall deliver to the other Party traffic originated on the network of any third party telecommunications carrier ("Transit Traffic") and neither Party shall be required to accept such Transit Traffic from the other Party.

² Verizon does not address that, to the extent there could have existed such an implied arrangement, it would have been deemed terminated at the time that Windstream East ceased the flowing of the traffic in 2008. It is illogical to argue that there was any "meeting of the minds" sufficient to support such an implied contract analysis.

Thus, the agreement addresses transit traffic and provides that Verizon and Windstream East will not exchange any transit traffic.³ The record reflects that the traffic in question arises solely from calls from Brandenburg's end users to Verizon's end users and is not traffic between end users of Windstream East and Verizon and that the reason the routing to Verizon occurred was due to Brandenburg's failure to perform the required LNP queries. Further, to the extent that Verizon suggests that Windstream East's transit tariff somehow amended the interconnection agreement provisions between Verizon and Windstream East, the transit tariff is clear that it applies only in the absence of an agreement.⁴ Here, Verizon and Windstream East have an interconnection agreement which provides for no transit traffic to be exchanged between them – particularly transit traffic routed contrary to LERG protocols.

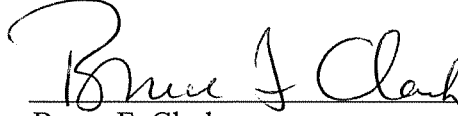
8. Verizon's Motion clearly is intended to accomplish one goal – force Windstream East to continue enduring the misrouting of Brandenburg and Verizon's traffic through its network so that those two parties can continue to avoid their longstanding interconnection dispute and financial responsibility for their own traffic. Indeed, it is illogical at best, given all of the evidence in this matter, for Verizon to suggest (as it did in its Motion) that the Commission erred in ordering the traffic to be moved away from Windstream East's network. The evidence supports the Commission's decision and overwhelmingly demonstrated: (a) that the traffic is not authorized by any tariff, and (b) that Windstream East did not agree to this misrouting either through its transit tariff, interconnection agreement with Verizon, or some other unidentified implied arrangement.

³ Windstream East does not consider the unauthorized traffic at issue in this proceeding to be transit traffic and uses that term here only for argument sake to illustrate the flaws in Verizon's argument.

⁴ The interconnection agreement also requires amendments to the document to be in writing between the parties, and there exists no such written amendment. Specifically, General Terms and Conditions Section 18.1 provides, "Except as otherwise provided in this Agreement, no amendment of any provision of this Agreement will be effective unless the same is in writing and signed by an authorized representative of each Party."

WHEREFORE, the Commission should dismiss Verizon's Motion; uphold its decision to order Brandenburg and Verizon to make alternative arrangements for the routing of their traffic; and grant all the rate relief to which Windstream East is entitled.

Respectfully submitted,



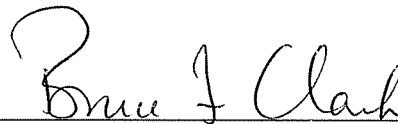
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served by first class mail on those persons whose names appear below this 28th day of September, 2009.

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