

April 13, 2010

HAND DELIVERED

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

Mark R. Overstreet
(502) 209-1219
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COMMISSION

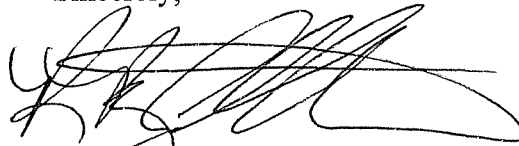
RE: P.S.C. Case No. 2008-00203

Dear Mr. Derouen:

Enclosed please find the original and ten copies of Kerry Smith's Supplemental Rebuttal Testimony in the above matter. The original of Mr. Smith's verification will be filed later this week or early next week.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Mark R. Overstreet
R. Benjamin Crittenden

cc: Douglas F. Brent
John E. Selent

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

APR 13 2010

PUBLIC SERVICE
COMMISSION

In the Matter of:

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

Case No. 2008-00203

SUPPLEMENTAL REBUTTAL TESTIMONY

OF

KERRY SMITH

ON BEHALF OF WINDSTREAM KENTUCKY EAST, LLC

Filed April 13, 2010

SUPPLEMENTAL REBUTTAL TESTIMONY OF KERRY SMITH

Q. Please state your name and business address.

A. My name is Kerry Smith, and I am Staff Manager of Wholesale Services and am submitting supplemental rebuttal testimony on behalf of Windstream Kentucky East, LLC (“Windstream East”). My business address is 4001 Rodney Parham Drive, Little Rock, Arkansas 72212.

Q. Are you the same witness that testified in this matter previously on behalf of Windstream East?

A. Yes. I have previously testified in this proceeding on behalf of Windstream East.

Q. Have you reviewed the supplemental testimony filed by the other parties in this proceeding?

A. Yes, I reviewed the supplemental testimony and also the data request responses filed by Brandenburg Telephone Company ("Brandenburg") and MCImetro Access Transmission Services, LLC d/b/a Verizon ("Verizon").

Q. What is your general response to those parties’ supplemental testimony and discovery responses?

A. The filings by Brandenburg and Verizon continue to demonstrate clearly that this proceeding involves an intercarrier dispute between only those two carriers and that Verizon and Brandenburg have acted to avoid all responsibility for their traffic by pushing their obligations onto Windstream East and holding us in the middle of their traffic dispute. Pursuant to their most recent data request responses, Verizon and Brandenburg continue to openly recognize that the traffic has nothing to do with any Windstream East customer (see, e.g., Verizon's answer to Windstream East's request for

admission No. 1 and Brandenburg's answer to Windstream East's request for admission No. 2). Yet, they continue to merely point the finger at each other without taking any responsibility for their traffic. Their recent filings suggest that they now may be intending to argue that Windstream East must provide all of the basis or claims on which Brandenburg and Verizon should be ordered by the Commission to pay for their traffic that they have exchanged indirectly through Windstream East's network.

Q. Do you agree with their suggestion that it is Windstream East's sole responsibility to set forth the basis on which Brandenburg and Verizon should be ordered to compensate Windstream East?

A. Absolutely not. I am not an attorney and understand that the legal positions will be set forth by the parties' attorneys again in briefs. Nevertheless, it is my understanding that the Commission already believed it had reason to exercise jurisdiction over these claims and that the Commission did so particularly in response to Verizon's emergency request which initiated this proceeding and which set forth Verizon's belief that the Commission had jurisdiction over these issues. Moreover, any suggestion by Brandenburg or Verizon that it should be allowed to skirt responsibility for the traffic at issue in this proceeding is unacceptable. The record demonstrates clearly that Brandenburg intentionally disguised the traffic in order to misroute the traffic over unrecorded EAS trunks and through Windstream East's Elizabethtown end office. (See, *e.g.*, Brandenburg's testimony at the hearing that the traffic Brandenburg sent to Windstream East over the Brandenburg-Windstream East EAS facilities was not recorded so that Windstream East did not know about the traffic Brandenburg was sending to Verizon through those facilities. Transcript p. 183, lines 8-23.) Likewise, the record shows that Verizon initially erroneously

represented to the Commission that this matter concerned an intercarrier dispute between only Brandenburg and Windstream East and that Windstream East was obligated to allow the routing of the traffic. The actions of Brandenburg and Verizon should not be tolerated.

Q. Can you please elaborate on what you mean when you refer to such intolerable actions by Brandenburg and Verizon?

A. Yes. In addition to the extensive record in this proceeding already, the parties' latest round of data requests reinforce very succinctly the irresponsible and arguably fraudulent manner in which Brandenburg and Verizon have conducted themselves. In particular, emails provided by Verizon setting forth the actual emails between Brandenburg and Verizon as early as 2005, 2006, and 2007 (attached to my testimony as Exhibit 1) demonstrate without doubt that Brandenburg and Verizon cooperated to conceal this traffic from Windstream East while they continued bickering about which of them should be responsible for the traffic.

Q. Can you please explain the emails to which you are referring?

A. There is one email in particular from a representative of Verizon to Randall Bradley of Brandenburg dated February 21, 2007. In that email, Verizon stated as follows:

Randall – I just left you a voicemail regarding the email below. *During our discussions regarding an EAS agreement that started back in September 2005 we indicated that it was our understanding that traffic was being routed incorrectly to the Windstream/AllTel tandem and it should be going to the Bell South Tandem.* Can you provide what steps Brandenburg is taking to resolve the issue in order to meet Windstream's deadline of Friday, February 23rd? (Emphasis supplied.)

Thus, there can be no question that Brandenburg knew as early as 2005 that this traffic was flowing from its end users to customers of Verizon, that the traffic was improperly

routed through Windstream East's network, and that Brandenburg had a responsibility to work out a proper agreement with Verizon for the exchange of this traffic. Indeed, these facts are consistent with the live testimony of Brandenburg's own witness who readily acknowledged at the hearing that the routing of this traffic over Windstream East's network is not "proper pursuant to current industry standards, the LERG routing protocols" (Transcript p. 167, lines 13-17) and that Brandenburg began doing some LNP queries in 2005 and then recognized there was an issue with these calls from Brandenburg to Verizon which should have been routed through Louisville (*Id.* pp. 169-170). It is astounding that, given this particular email and its clear implications, Brandenburg has denied any responsibility for the traffic it misrouted through Windstream East's network and Verizon erroneously represented to the Commission during the parties' initial conference call on June 5, 2008 that this issue involved an intercarrier dispute between Brandenburg and Windstream East.

Q. What is the Windstream February 23, 2007 deadline the Brandenburg and Verizon representative are discussing in this email?

A. That date refers to the situation I have described previously where a Windstream East translations engineer was working with various ILECs in Kentucky to have those ILECs cease routing their transit traffic to Windstream East's end offices. It was through that separate investigation of the transit traffic that Windstream East subsequently learned in 2008 the nature and extent of the misrouted Brandenburg/Verizon traffic at issue in this proceeding. Nevertheless, the 2007 email between Brandenburg and Verizon proves without question that Brandenburg and Verizon were acting to conceal this traffic from Windstream East.

Q. Was Windstream East copied on or notified of this email exchange between Brandenburg and Verizon?

A. Although Windstream East's name is clearly mentioned in the email, neither Brandenburg nor Verizon included Windstream East on the email or otherwise notified Windstream East about the traffic discussions between Brandenburg and Verizon that have been shown by the email to have been ongoing since 2005. In fact, Brandenburg's witness recognized at the hearing that Brandenburg did not provide any notice to Windstream East in 2005 regarding this traffic and that Brandenburg merely assumed that maybe Verizon would take care of the issue. (Transcript p. 184, lines 5-12.) Brandenburg's live testimony is particularly interesting in light of this email exchange which readily proves that Brandenburg had every reason to believe that Verizon was not notifying Windstream East and that this traffic dispute between Brandenburg and Verizon was not just "working itself out" so to speak.

Q. Can you please address the additional emails attached in Exhibit 1?

A. Yes. Windstream East also has learned of a series of emails between Randall Bradley at Brandenburg and Rick McGolerick at Verizon occurring between September 8, 2005 and January 23, 2006. In particular, the email from Verizon to Brandenburg in September of 2005 – again which significantly did not include Windstream East – shows that Brandenburg acknowledged at that time that it needed to obtain an EAS agreement with Verizon to provide for the exchange of this traffic. About four months later on January 20, 2006, Verizon responded to Brandenburg asking for a status on the EAS agreement and noting complaints about “blocking that has been going on since September.”

Q. What is the significance of these particular emails between Brandenburg and Verizon in late 2005 and early 2006?

A. To begin, these emails demonstrate without doubt that Brandenburg and Verizon each knew that they needed to negotiate an agreement to provide for the proper exchange of their traffic and that they did not notify Windstream East about the traffic they were continuing to route through Windstream East's network. More importantly, these particular emails also demonstrate that when Brandenburg began doing some of the LNP queries in 2005 (as Brandenburg's witness herself acknowledged at the hearing - Transcript pp. 169-170), some of the calls from Brandenburg customers to Verizon's Internet customers were failing and were not completing presumably because Brandenburg's switch was not routing the calls to Louisville per the proper routing protocols. The emails show that these calls between Brandenburg and Verizon were "blocked" or were not completing for over four months. Yet, neither Brandenburg nor Verizon filed any complaint with the Commission at that time. Nevertheless, when Windstream East learned of the misrouted traffic in 2008 and acted immediately to remove its network from the call path for this misrouted traffic, Verizon – already knowing full well the nature and extent of the misrouted traffic – filed a complaint with the Commission within 3 days seeking emergency relief against Windstream East. Verizon demanded at that time that Windstream East be held in the middle of what Verizon misrepresented to the Commission was an intercarrier dispute between Brandenburg and Windstream East. The 2005/2006 emails between Brandenburg and Verizon, however, suggest that the "emergency" situation that Verizon argued to the Commission in 2008 may not in fact have been an emergency after all given that Verizon

had failed to take any such "emergency" action after the four months in 2005/2006 that the calls were not completing. Rather, it appears to us that, once Verizon and Brandenburg realized that Windstream East had discovered what they were doing in 2008, Verizon acted swiftly asking the Commission to take action to require Windstream East to remain in the middle of this traffic dispute. In other words, swift action may have been needed at that time to allow Brandenburg and Verizon to continue having a "free ride" through Windstream East's network. Further, as implicated by the emails, Verizon knew exactly the nature and extent of this traffic in 2008 when Verizon nevertheless misrepresented to the Commission that this was an intercarrier dispute involving Brandenburg and Windstream East. The actions by Brandenburg and Verizon in this proceeding to deny their responsibility to make appropriate arrangements to route their traffic and to compensate Windstream East are belied by the record including most notably the emails discussed above.

Q. Do you have additional responses to the supplemental testimony filed by Brandenburg and Verizon?

A. While there are numerous erroneous representations in their supplemental testimony, I believe the emails I have described above demonstrate most succinctly the errors in Verizon's and Brandenburg's continued assertions that they should not be held accountable to compensate Windstream East. We continue to believe that Brandenburg's actions in concealing this traffic make Brandenburg the party primarily responsible for compensating Windstream East and that any reimbursement issues between Brandenburg and Verizon should be handled separately. However, we believe also that the foregoing emails shed additional light on Verizon's erroneous representations to the Commission

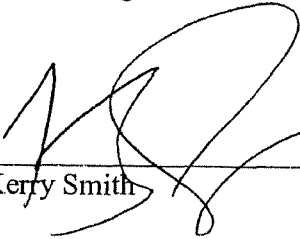
which led directly to Windstream East incurring substantial out-of-pocket legal fees and costs – which are ongoing as of this filing and estimated to be well over \$50,000 – as a result of being held in the middle of this dispute, which is obviously a dispute between Brandenburg and Verizon and not between Brandenburg and Windstream East as Verizon initially misled the Commission. While I understand that the attorneys will address legal issues surrounding the basis for which the Commission should order one or both of these parties to fully compensate Windstream East, I should note that the facts demonstrate clearly that Brandenburg and Verizon cooperated, through their actions and inactions, to disguise this traffic to allow it to continue to be misrouted through Windstream East's network without Windstream East's knowledge. The facts provide ample support that Windstream East should be fully compensated in the total amount of \$1,660,677.00 (includes usage through April 5, 2010) plus applicable legal fees and costs for this misuse of its network.

Q. Does this conclude your supplemental rebuttal testimony?

A. Yes, at this time.

AFFIDAVIT

Kerry Smith, upon first being duly sworn, hereby makes oath that if the foregoing questions were propounded to him at a hearing before the Public Service Commission of Kentucky, he would give the answers recorded following each of said questions and that said answers are true.



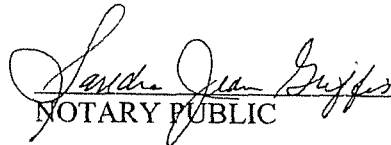
Kerry Smith

STATE OF ARKANSAS)
)
COUNTY OF PULASKI)

Subscribed and sworn to before me, a Notary Public, by Kerry Smith, this 13th day of April, 2010.

My Commission Expires: September 1, 2011





NOTARY PUBLIC

Exhibit 1

Sample, Janet

From: McGolerick, Rick (Rick) [JMCEAEX-
_O=MCI_OU=EXCHANGE_CN=RECIPIENTS_CN=RICK+2EMCGOLERICK@vzcorp.com]
Sent: Wednesday, February 21, 2007 1:40 PM
To: Randall Bradley
Cc: Turner, Mark (Mark E Turner); Olson, Lee M (lee); Monroe, John
Subject: RE: [Fwd: Brandenburg LNP Query]

Importance: High

Randall – I just left you a voicemail regarding the email below. During our discussions regarding an EAS agreement that started back in September 2005 we indicated that it was our understanding that traffic was being routed incorrectly to the Windstream/AllTel tandem and it should be going to the Bell South Tandem. Can you provide what steps Brandenburg is taking to resolve the issue in order to meet Windstream's deadline of Friday, February 23rd?

Please give me a call today to discuss, thanks.

Rick McGolerick
National Carrier Contracts and Initiatives
(703) 749-7338

veri onbusiness

—Original Message—

From: Randall Bradley [mailto:rbradley@bbtel.com]
Sent: Wednesday, February 21, 2007 10:55 AM
To: McGolerick, Rick (Rick)
Subject: FW: [Fwd: Brandenburg LNP Query]

—Original Message—

From: George Lewis [mailto:gtlewis@bbtel.com]
Sent: Wednesday, February 21, 2007 8:14 AM
To: Randall Bradley
Subject: [Fwd: Brandenburg LNP Query]

—Original Message—

Subject: Brandenburg LNP Query
Date: Thu, 15 Feb 2007 12:24:44 -0500
From: Williams, Steven G <Steven.G.Williams@windstream.com>
To: <troynevitt@bbtel.com>, <gtlewis@bbtel.com>
CC: Gilmer, Ted A <Ted.A.Gilmer@windstream.com>, Fuller, Anthony
<Anthony.Fuller@windstream.com>

During a four day audit of traffic in the Elizabeth office, we discovered that Brandenburg Telephone is sending thousands of calls over its ICO trunk groups for calls that do not terminate to Windstream. This is mainly due to the fact that Brandenburg Telephone is not completing LNP queries. Your CLEC originated traffic appears to have already completed the LNP query.

Windstream's Elizabethtown end office completed approximately 12,000 LNP queries, and transited over 868,528 MOU (Minutes Of Use) for calls originated from Brandenburg Telephone.

Since the traffic is IntraLATA and your switch is capable, Brandenburg Telephone must complete its own LNP dips, and as the industry standard, route the call based on the LRN.

3/30/2010

Brandenburg Telephone needs to complete this work before Friday, February 23, 2007. On Monday, February 26, Windstream will implement the necessary translations changes on the Brandenburg Telephone trunk groups to correct this problem and allow only traffic that has completed the LNP query to terminating to the Windstream Elizabethtown office.

Please contact me if you would like to discuss.

Thanks,

Steven Williams

Staff Manager - Translations Engineering

Windstream Communication

704-845-7258

steven.g.williams@windstream.com



The information contained in this message, including attachments, may contain privileged or confidential information that is intended to be delivered only to the person identified above. If you are not the intended recipient, or the person responsible for delivering this message to the intended recipient, Windstream requests that you immediately notify the sender and asks that you do not read the message or its attachments, and that you delete them without copying or sending them to anyone else.

Sample, Janet

From: Randall Bradley [rbradley@bbtel.com]
Sent: Monday, January 23, 2006 3:27 PM
To: McGolerick, Rick (Rick)
Cc: Turner, Mark (MarkETurner)
Subject: RE: EAS Agreement and BLOCKING
Rick,

I have a draft of our response back to concerning the EAS agreement. I'm awaiting one person's review of the draft before I can get it to you. I'll send it over to you as soon as this review is completed. Thanks.

-----Original Message-----

From: Rick McGolerick [mailto:rick.mcgolerick@verizonbusiness.com]
Sent: Friday, January 20, 2006 2:11 PM
To: 'Randall Bradley'
Cc: Mark Turner
Subject: RE: EAS Agreement and BLOCKING
Importance: High

Randall – Following up our call yesterday. When can we expect a response regarding the EAS agreement? More importantly though, our customer is still receiving complaints regarding blocking that has been going on since September. We need an interim solution while the agreement is being worked out. Can you please respond ASAP? Thanks.

-----Original Message-----

From: Randall Bradley [mailto:rbradley@bbtel.com]
Sent: Thursday, September 08, 2005 9:31 AM
To: rick.mcgolerick@mcl.com
Subject: EAS Agreement

Rick,

Attached is our standard EAS agreement that we have with several providers. After review, please give me a call if you have any questions. Thanks.

Randall Bradley
270-422-2121
270-422-4448 Fax

Brandenburg Telephone Co.
200 Telco Drive
Brandenburg, KY 40108

3/30/2010