



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

September 19, 2011

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Joint Application for All Approvals Under the Pennsylvania Public Utility Code for the Indirect Transfer of Control of Intellifiber Networks, Inc., Cavalier Telephone Mid-Atlantic, LLC, Talk America, Inc., US LEC of Pennsylvania, LLC, PAETEC Communications, Inc., LDMI Telecommunications, Inc., and McLeodUSA Telecommunications Services, LLC to Windstream Corporation;
Docket Nos. A-2011-2258734, A-2011-2258715, A-2011-2258716, A-2011-2258717, A-2011-2258718, A-2011-2258719, A-2011-2258720

Dear Ms. Chiavetta:

Enclosed for filing are the original and three copies of the Protest of Law Bureau Prosecutory Staff to the above captioned application.

If you have any further questions regarding this matter, please contact me at 717-783-3459

Sincerely,

Terrence J. Buda
Assistant Counsel

Enclosures

cc: As per Certificate of Service
Kathryn G. Sophy, Deputy Chief Counsel
Karen Oill Moury, Director of Operations

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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| | | |
|--|---|----------------------------|
| Joint Application for All Approvals | : | |
| Under the Pennsylvania Public Utility Code | : | |
| for the Indirect Transfer of Control of | : | Docket Nos: A-2011-2258734 |
| Intellifiber Networks, Inc., | : | A-2011-2258715 |
| Cavalier Telephone Mid-Atlantic, LLC, | : | A-2011-2258716 |
| Talk America, Inc., | : | A-2011-2258717 |
| US LEC of Pennsylvania , LLC, | : | A-2011-2258718 |
| PAETEC Communications, Inc., | : | A-2011-2258719 |
| LDMI Telecommunications, Inc., and | : | A-2011-2258720 |
| McLeodUSA Telecommunications | : | |
| Services, LLC to Windstream Corporation | : | |

**PROTEST OF
LAW BUREAU PROSECUTORY STAFF**

NOW COMES, Law Bureau of the Pennsylvania Public Utility Commission (Prosecutory Staff) , by and through its attorney in this matter, Terrence J. Buda, Assistant Counsel, and protests the above captioned Joint Application pursuant to 52 Pa. Code § 5.51. In support thereof, Prosecutory Staff submits the following:

I. BACKGROUND

1. On July 31, 2011, an Agreement and Plan of Merger was executed by Peach Merger Sub, Inc. (Merger Co) (a direct, wholly-owned subsidiary of Windstream Corporation created for purposes of the merger), and PAETEC Parent. Merger Co will merge with and into PAETEC Parent, with PAETEC Parent continuing as the surviving corporation (the Transaction). As a result of the Transaction, PAETEC Parent will

become the direct, wholly-owned subsidiary of Windstream Corporation (Windstream) and Windstream will be the new ultimate parent company of Intellifiber Networks, Inc., Cavalier Telephone Mid-Atlantic, LLC, Talk America, Inc., US LEC of Pennsylvania, LLC, PAETEC Communications, Inc., LDMI Telecommunications, Inc., and McLeodUSA Telecommunications Services, LLC (PA Certificated Entities).

2. On August 12, 2011, the Joint Petitioners PA Certificated Entities and Windstream filed a Joint Application at the above captioned dockets seeking approval of the proposed transfer of control of the PA Certificated Entities to Windstream through the acquisition by Windstream and requesting the issuance of individual certificates of public convenience approving the Transaction.

3. Joint Applicants state that the Transaction is expected to be seamless to customers and does not involve a transfer of operating authority, assets, or customers. Apparently, the PA Certificated Entities will continue to offer the same services, rates, terms, and conditions pursuant to their existing authorizations and that any future changes would be undertaken pursuant to regulatory processes. Prosecutory Staff believes that integration decisions such as billing policies are not currently known and will not be known until after close of the Transaction. Therefore, Prosecutory Staff further believes that the PA Certificated entities will implement the same billing policies adopted by Windstream Pennsylvania, LLC, and in the same manner that those policies were implemented in Pennsylvania.

4. On October 14, 2008, Windstream Pennsylvania, LLC (Windstream PA or the Company), a wholly-owned subsidiary of Windstream Corporation, filed tariff revisions to its General Subscriber Service Tariff. The cover page indicated that the “filing is a clean-up filing to clean up language dealing with deregulated inside wire and equipment” (Attached as Appendix A).

5. Rather than merely involving deregulated inside wire and equipment, the tariff revision was also intended to make a substantive change to its billing practice and implement Windstream PA's new full month/no proration (“no proration”) billing policy. Windstream PA would no longer pro-rate charges or provide credit for any fractional periods regardless of whether there is a change, addition, or termination in service on a date prior to the last day of the billing cycle. Under Windstream PA’s “no proration” billing policy, the Company bills customers for an entire cycle when those customers discontinue or change service mid-cycle. Stated another way, Windstream PA bills for services that are not provided when customers discontinue service mid-cycle – the customer is charged a full month regardless of whether service is discontinued or changed on the first day of the billing cycle.

6. On December 16, 2008, the Commission issued a Secretarial Letter acknowledging the effective date of the tariff revisions that were identified as “ministerial changes” (Attached as Appendix B). The Company implemented the “no proration” policy January 7, 2009.

II. PROSECUTORY STAFF'S STANDING TO PROTEST

7. The Law Bureau remains a multifunction legal staff. Section 308(b) of the Public Utility Code provides that the Law Bureau multifunction legal staff shall consist of "a prosecutor function, an advisory function, a representational function, and an enforcement function."

8. Moreover, Section 308(b) circumscribes the scope of Commission proceedings in which the Law Bureau may participate in a prosecutory role, as follows:

No member of the Law Bureau shall participate in any prosecutory function in any manner before the commission unless directed by the commission to do so in a proceeding involving transportation, safety, eminent domain, siting, service issues having no impact on rates or ability to pay. . . .

9. The Law Bureau, consistent with Section 308(b), and acting under delegated authority, has initiated this protest pursuant to *Delegation of Prosecutory Authority to the Bureaus with Enforcement Responsibilities*, Docket No. M-00940594 (Order entered September 2, 1994). Accordingly, Prosecutory Staff has a direct and immediate interest in the Application and billing issues that may be raised, and has standing to bring the present Protest.

III. BASIS OF PROTEST

10. Prosecutory Staff believes that Windstream PA's "no proration" billing policy will impact acquired consumers if the Joint Application is approved. If the Company's past actions are repeated, PA Certificated entities will implement the same billing policies adopted by Windstream PA, and in the same manner that those

policies were implemented in Pennsylvania.

11. Joint Petitioners bear the burden of proof as to all issues relating to its Application. 66 Pa. C.S. § 332(a). Therefore, Joint Petitioners must prove all necessary elements required by the Commission by substantial evidence or its Application must be denied.

12. Prosecutory Staff believes that it is not in the public interest to approve the Application. 66 Pa. C.S. § 1103. When Windstream PA implemented the “no proration” billing policy, the Commission did not receive notice that the Company was changing its billing policy, and Prosecutory Staff believes that the substantive aspects of the policy violate the Public Utility Code and Commission regulations.

13. The “no proration” billing policy is not a practice fully and clearly identified in a tariff provision. The tariff provision relied upon by the Company as authority for implementing this billing practice predates the actual implementation of the policy on January 7, 2009, by at least 2 1/2 years. Prior to January 7, 2009, Windstream PA’s General Regulation Tariff identified as S2.3.1 was not interpreted to prohibit proration (Attached as Appendix C).

14. Based on the length of time this tariff language has been in effect, it could not be intended that this provision authorized the Company’s “no proration” policy. Although the tariff does state that service is furnished for a minimum contract term of one month, the language has been in effect since July 17, 2006, and, in fact, years before that as an Alltel tariff that addresses the beginning of service. Given the section that it is

located in, “Contracts for Service”, and the reference in the first sentence to “application for service,” this tariff provision could not have reasonably been intended to provide notice to the Commission and authorize and provide notice of Windstream PA’s implementation of its “no proration” policy. The tariff provision addressed the beginning of service, the initial month of service, and the rule that customers must apply for service for a minimum contract term of one month, not that Windstream PA would no longer prorate charges or provide credit for any fractional periods.

15. The Company's reinterpretation of a tariff provision filed years before to authorize a new billing practice is insufficient tariff notice to the Commission. The Company’s change in billing policy to implement the no proration practice has not been properly raised before the Commission with a clear and straightforward tariff revision. It must be anticipated that the Joint Petitioners will undertake the same unlawful action once the Application is approved.

16. The Company's new billing policy was not set forth in the October 14, 2008 tariff filing. Consequently, the Commission and staff never had an opportunity to review this billing practice. Even more alarming is that Windstream PA’s tariff language still describes proration as the billing methodology for mid-cycle service changes. The tariff authority for proration is identified as General Service Tariff: S2.3.3 and was cancelled by Revised Page No. 13 (Attached as Appendix D). The revision effective November 14, 2008 only deletes the word “discontinued” (Attached as Appendix E). Therefore, S2.3.3 is still titled “Charges for Fractional Months” and still describes fractional billing for service that is “established or changed.” The tariff

language has, for the most part, stayed the same and declares that the Company still prorates monthly bills. Again, Commission staff had no notice about the implementation of this billing policy on the part of the Company since Windstream PA has changed the policy but not changed the tariff language. Based on the filing, which is not consistent with the implemented “no proration” policy, there was no reason for staff to suspend or further investigate (*See Appendix B*).

17. Prosecutory Staff believes that Windstream PA’s “no proration” billing policy also violates certain provisions of the Public Utility Code. In particular, Windstream PA's practice of billing customers for undelivered services is unreasonable and unlawful in violation of 66 Pa. C.S. §§ 1303 and 1501.

18. In addition, the Public Utility Code requires every rate demanded by a public utility to be just and reasonable. 66 Pa. C.S. § 1301. Billing for a service that was not provided is neither just nor reasonable. If Windstream PA claims its billing practice evens out because some people receive service that is not billed, that that practice keeps Windstream whole does not result in keeping each and every customer whole.

19. The Commission approved just and reasonable rates to be applied on a prorated basis. If Windstream fails to adhere to its tariff, it is in violation of a Commission order and the Public Utility Code.

IV. CONCLUSION

20. Accordingly, and for all the reasons set forth above, the Joint Applicant's Application should be denied as the granting of the certificates are not necessary or proper for the service, accommodation, convenience, or safety of the public. Prosecutory Staff believes that future changes by the PA Certificated Entities to services, rates, terms, and conditions would not be undertaken pursuant to regulatory processes.

WHEREFORE, Prosecutory Staff, respectfully requests that the above captioned Application be denied and that the Joint Petitioners be prohibited from closing the Transaction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terrence J. Buda". The signature is fluid and cursive, with a large initial "T" and "B".

Terrence J. Buda
Assistant Counsel
Attorney ID #33477
Law Bureau Prosecutory Staff

DATED: September 19, 2011

APPENDIX A

Windstream Communications, Inc.
4001 Rodney Parham Road
Little Rock, AR 72212
t: 501-748-6655 f:501-748-6583
e-mail: Karen.L.Higgs@windstream.com

Karen Higgs
Manager Tariffs



Date: October 14, 2008

Mr. James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Building
Second Floor, Room-N201
400 North Street
Harrisburg, PA 17120

RECEIVED

OCT 14 2008

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dear Mr. McNulty:

Attached please find tariff revisions to Windstream Pennsylvania, LLC General Subscriber Services Tariff. The revisions are as follows:

| <u>SECTION</u> | <u>TITLE</u> | <u>REVISION</u> | <u>SHEET NO.</u> |
|----------------|-----------------------------------|------------------|------------------|
| | Supplement No. 31 | | |
| | Changes Made by Supplement No. 31 | | |
| | Checksheets | 27 th | 1 |
| | Index | 2 nd | 5 |
| 2 | General Regulations | 1 st | Contents |
| 2 | General Regulations | 1 st | 1,2,13 |

This filing is a clean-up filing to clean up language dealing with deregulated inside wire & equipment.

The issue date of this filing is October 15, 2008 with a proposed effective date of November 14, 2008. Please call me at 501-748-6655 if you have any questions regarding this filing.

Sincerely,

Karen Higgs

Cc: Office of Consumer Advocate
Office of Small Business Advocates
Bureau of Fixed Utility Service

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APPENDIX B



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

December 16, 2008

Docket No. R-2008-2069821

KAREN HIGGS
TARIFFS MANAGER
WINDSTREAM COMMUNICATIONS INC
4001 RODNEY PARHAM RD
LITTLE ROCK AR 72212

Re: Windstream Communications, Inc.
Tariff Revision to Local Exchange Service Tariff

Dear Ms Higgs:

Commission Staff reviewed the tariff revisions, referenced below. Suspension or further investigation does not appear warranted at this time. Therefore, in accordance with 52 Pa. Code, the tariff revisions are effective by operation of law according to the effective dates contained on each page, and the case will be closed. However, this does not constitute a determination that the revisions are just, lawful, and reasonable, but only that suspension or further investigation does not appear warranted at this time, and is without prejudice to any formal complaints timely filed against said tariff revisions.

| Docket | Supplement | Tariff | Description | Filed | Effective |
|----------------|------------|--------|---------------------|------------|------------|
| R-2008-2069821 | 31 | 7 | Ministerial changes | 10/15/2008 | 11/14/2008 |

In accord with Docket No. M-00981052 and our Secretarial Letters issued September 28, 2000, and November 30, 2001, a Pennsylvania telecommunications carrier is required to maintain the most current PUC approved tariff and pending tariff supplements on its website with a link to the Commission's website. However, staff was unable to access your Company's current tariff on-line. **Therefore, within 10 days of the date of this letter, the Company is directed to update its online tariffs and provide confirmation to J. Elaine McDonald at jmcdonald@state.pa.us.**

If you are dissatisfied with the resolution of this matter, you may, as set forth in 52 Pa. Code §5.44, file a petition with the Commission within 20 days of the date of this letter. If you have any questions in this matter, please contact David Ehrhart, Telco Group, Bureau of Fixed Utility Services at 717-783-6174 or davehrhart@state.pa.us.

Sincerely,

James J. McNulty
Secretary

cc: Elaine McDonald, FUS
Kathleen Aunkst, Secretary's Bureau

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APPENDIX C

Windstream Pennsylvania, Inc.

Telephone - PA P.U.C. No. 7

Section 2
Original Sheet 12

S2. GENERAL REGULATIONS

S2.2 Establishment and Furnishing of Service (continued)

S2.2.6 Employee Discount

The Telephone Company reserves the right to furnish at no charge, total or partial local and toll service to such of its employees as it may consider necessary for the proper maintenance of its service.

S2.2.7 Transfer of Service From One Customer to Another

Transfer of service from one customer to another is permitted subject to the application of termination charges and service charges in accordance with this Tariff.

The call number associated with the telephone service to be transferred may, upon request of either customer, be associated with the new customer's service if the new customer assumes all charges outstanding at the time of transfer and obtains, if requested by the Telephone Company, the written consent of the customer from whom the service is transferred.

S2.2.8 Individual Case Basis Arrangements (ICB)

Arrangements may be developed by the Company and, at the Company's discretion, offered on a case-by-case basis taking into account special customer considerations including, but not limited to, volume or term commitments, bundled services, in response to a competitive offering from others, or for a service not generally offered under this tariff. ICB rates and terms will be offered to the Customer in writing on a non-discriminatory basis and a contract entered into between the Company and the Customer. ICB rates, service description, and length of such agreement will be filed with the Pennsylvania Public Utility Commission.

S2.3 Payment Arrangements and Credit Allowances

S2.3.1 Contracts for Service

The Telephone Company reserves the right to require applications for service to be made in writing on forms supplied by it. Upon acceptance of an application for service, all applicable provisions of the Telephone Company's tariffs lawfully on file become the contract between the Telephone Company and the customer. Requests for additional service or changes in service, upon acceptance by the Telephone Company, become a part of the original contract, except that each item of additional service is subject to the appropriate minimum contract term. The acceptance or use of service may be deemed an application for such service and an agreement to pay for it at the rates applicable thereto under the current tariff. Any change in rate or regulations lawfully made acts as a modification of all contracts to that extent without further notice.

~~Except as otherwise provided in this tariff, service is furnished for a minimum contract term of one month.~~

Issued: July 13, 2006

Issued By: Vice President
4001 Rodney Parham Road
Little Rock, AR 72212

Effective: July 13, 2006

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APPENDIX D

TELEPHONE PA P.U.C. No. 7

Windstream Pennsylvania, Inc.
Section 2

Cancelled
Pages

Original Sheet 13

S2. GENERAL REGULATIONS

S2.3 Payment Arrangements and Credit Allowances (continued)

S2.3.2 Deposits

A deposit, in accordance with Commission regulations at 52 PA Code, §§ 64.31-64.41 may be required as security for future bills. Interest rates applied to customer deposits held by the Telephone Company are prescribed by the PUC.

Deposits will be returned in accordance with Commission regulations at 52 PA Code, §§ 64.31-64.41.

The fact that a deposit may have been made in no way relieves the applicant or subscriber from complying with the Telephone Company's regulations as to the prompt payment of bills or constitutes a waiver or modification of the regular practices providing for discontinuance of service for non-payment of any sums due the Telephone Company for service rendered.

S2.3.3 Charges for Fractional Months

When service is established, discontinued, or changed, the charge for local service, equipment and facilities for the fractional part of the current billing month is a pro rata share of the monthly charge.

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Cancelled
By

1st Revised Page No. 13
Effective 11/14/08

OFFICIALLY FILED TARIFF

Issued: July 13, 2006

Effective: July 17, 2006

Issued By: Vice President
4001 Rodney Parham Road
Little Rock, AR 72212

APPENDIX E

Supplement No. 31 to Telephone - PA P.U.C. No. 7

Windstream Pennsylvania, Inc.

Section 2
First Revised Sheet 13
Cancels Original Sheet 13

S2. GENERAL REGULATIONS

S2.3 Payment Arrangements and Credit Allowances (continued)

S2.3.2 Deposits

A deposit, in accordance with Commission regulations at 52 PA Code, §§ 64.31-64.41 may be required as security for future bills. Interest rates applied to customer deposits held by the Telephone Company are prescribed by the PUC.

Deposits will be returned in accordance with Commission regulations at 52 PA Code, §§ 64.31-64.41.

The fact that a deposit may have been made in no way relieves the applicant or subscriber from complying with the Telephone Company's regulations as to the prompt payment of bills or constitutes a waiver or modification of the regular practices providing for discontinuance of service for non-payment of any sums due the Telephone Company for service rendered.

S2.3.3 Charges for Fractional Months

When service is established or changed, the charge for local service for the fractional part of the current billing month is a pro rata share of the monthly charge.

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SECRETARY'S BUREAU

Issued: October 15, 2008

Effective: November 14, 2008

Issued By:

Vice President
4001 Rodney Parham Road
Little Rock, AR 72212

CERTIFICATE OF SERVICE

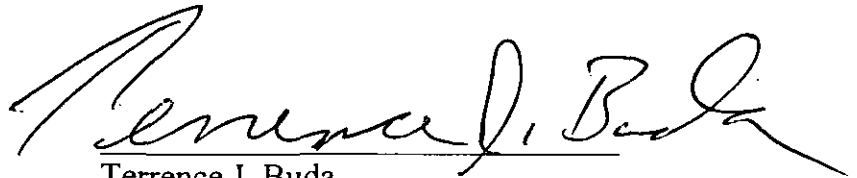
I hereby certify that I am this day serving the foregoing documents in accordance with the requirements of 52 Pa. Code § 1.54 *et seq.* (relating to service by a participant).

Notification by first class mail addressed as follows:

Norman J. Kennard, Esquire
Regina L. Matz, Esquire
Thomas, Long, Niesen and Kennard
212 Locust Street Suite 500
P.O. Box 9500
Harrisburg Pa 17108

Irwin A Popowsky Consumer Advocate
Office of Consumer Advocate
Forum Place 5th Floor
555 Walnut Street
Harrisburg, PA 17101-1923

William R. Lloyd, Jr., Director
Office of Small Business Advocate
Dept. of Comm & Economic Development
Commerce Bldg Suite 1102
300 North Second Street
Harrisburg PA 17101



Terrence J. Buda
Assistant Counsel
Attorney ID # 33477
Pennsylvania Public Utility Commission

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-5000

Dated: September 19, 2011

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