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September 26, 2011

Via Electronic Filing

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

In re: Joint General Rule Application of Intellifiber Networks, Inc., Cavalier Telephone Mid-Atlantic, LLC, Talk America, Inc., US LEC of Pennsylvania, LLC, PAETEC Communications, Inc., LDMI Telecommunications, Inc., McLeodUSA Telecommunications Services, LLC, and Windstream Corporation; Docket Nos. A-2011-2258734, A-2011-2258715, A-2011-2258716, A-2011-2258717, A-2011-2258718, A-2011-2258719 and A-2011-22587

Dear Secretary Chiavetta:

Enclosed for filing please find the Preliminary Objections of Intellifiber Networks, Inc., Cavalier Telephone Mid-Atlantic, LLC, Talk America, inc., US LEC of Pennsylvania, LLC, PaeTec Communications, Inc., LDMI Telecommunications, Inc., McLeodUSA Telecommunications Services, LLC and Windstream Corporation ("Joint Applicants"). Copies have been served in accordance with the attached Certificate of Service.

When filed, the Joint Applicants requested that the Application be listed on the Commission's Public Meeting of November 10, 2011, in order to consummate the transaction in calendar year 2011. The merits of the transaction itself are not challenged by any party. Rather, the Law Bureau has raised issues extraneous to the proposed transaction, as more fully set out in the attached Preliminary Objections.

Therefore, Joint Applicants request that the Commissioners rule at the next Public Meeting currently scheduled for October 14, 2011 on the attached Preliminary Objections or, in the alternative, consider the filing to be a direct appeal of a Staff action pursuant to the Commission's regulations at 52 Pa. Code § 5.44(c) subject to review by the Commission.

Further, Joint Applicants request this expeditious action before any automatic reclassification of the pending General Rule Transaction and/or assignment to any Commission office than the Bureau of Technical Utility Services (former FUS division) in order to avoid delay in review of the Joint Application on its merits.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By:

Regina L. Matz



Enclosures

cc *Via Hand Delivery:*

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice-Chairman
Wayne E. Gardner, Commissioner
James H. Cawley, Commissioner
Pamela A. Witmer, Commissioner
Erin Laudenslager, Fixed Utility Services
Jani Tuzinski, Fixed Utility Services
Joseph Witmer, Law Bureau
Kathryn G. Sophy, Deputy Chief Counsel, Law Bureau
Karen Oill Moury, Director of Operations
Cheryl Walker-Davis, Office of Special Assistants
Jan Freeman, Executive Director

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application for All Approvals Under	:
the Pennsylvania Public Utility Code for	:
the Indirect Transfer of Control of	:
Intellifiber Networks, Inc.,	: Docket No. A-2011-2258734
Cavalier Telephone Mid-Atlantic, LLC	: Docket No. A-2011-2258715
Talk America, Inc.,	: Docket No. A-2011-2258716
US LEC of Pennsylvania, LLC,	: Docket No. A-2011-2258717
PaeTec Communications, Inc.,	: Docket No. A-2011-2258718
LDMI Telecommunications, Inc., and	: Docket No. A-2011-2258719
McLeodUSA Telecommunications	: Docket No. A-2011-2258720
Services, LLC to Windstream Corporation	:

NOTICE TO PLEAD

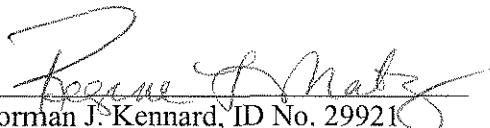
To: Terrance J. Buda, Assistant Counsel
Law Bureau
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-2011

You are hereby notified that, if you do not file a written answer to these Preliminary Objections within ten (10) days from service of this notice the facts set forth may be deemed to be true without requiring other proof. All pleadings such as an Answer to the Preliminary Objections must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel.

Respectfully submitted,

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Attorneys for Windstream Corporation

Dated: September 26, 2011

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application for All Approvals Under	:	
the Pennsylvania Public Utility Code for	:	
the Indirect Transfer of Control of	:	
Intellifiber Networks, Inc.,	:	Docket No. A-2011-2258734
Cavalier Telephone Mid-Atlantic, LLC	:	Docket No. A-2011-2258715
Talk America, Inc.,	:	Docket No. A-2011-2258716
US LEC of Pennsylvania, LLC,	:	Docket No. A-2011-2258717
PaeTec Communications, Inc.,	:	Docket No. A-2011-2258718
LDMI Telecommunications, Inc., and	:	Docket No. A-2011-2258719
McLeodUSA Telecommunications	:	Docket No. A-2011-2258720
Services, LLC	:	
to Windstream Corporation	:	

**PRELIMINARY OBJECTIONS OF
INTELLIFIBER NETWORKS, INC., CAVALIER TELEPHONE MID-ATLANTIC, LLC,
TALK AMERICA, INC., US LEC OF PENNSYLVANIA, LLC, PAETEC
COMMUNICATIONS, INC., LDMI TELECOMMUNICATIONS, INC., MCLEODUSA
TELECOMMUNICATIONS SERVICES, LLC, AND WINDSTREAM CORPORATION**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

NOW COME Windstream Corporation, a Delaware corporation (“Windstream Corp.”), in its sole limited capacity as an acquiring entity and not as a regulated entity, and Intellifiber Networks, Inc. (“Intellifiber”), Cavalier Telephone Mid-Atlantic, LLC (“CavTel-MA”), Talk America, Inc. (“Talk America”), US LEC of Pennsylvania, LLC (“USLEC”), PaeTec Communications, Inc. (“PCT”), LDMI Telecommunications, Inc., and McLeodUSA Telecommunications Services, LLC (“McLeodUSA”) (the “PA Certificated Entities”) (with Windstream Corp. and the PA Certificated Entities collectively referred to as “Joint Applicants”), Joint Applicants to a pending General Rule Transaction pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 63.324, and jointly file these Preliminary Objections pursuant to the Commission’s regulations at 52 Pa.

Code §§ 5.101(a)(4) and (6) to the Protest filed by the Law Bureau Prosecutory Staff (“Protest”) on September 19, 2011. While styled in conformance with the standards for Preliminary Objections, in the interest of expediency of obtaining a ruling, for reasons set forth below, Joint Applicants alternatively request the Commission accept this document as an appeal from an action of staff pursuant to 52 Pa. Code § 5.44, so that action may be taken directly by your Honorable Commissioners at Public Meeting with respect to the relief requested herein.

In these Preliminary Objections, Joint Applicants seek the dismissal of the Protest on the bases that the Protest is legally insufficient and the issue raised in the Protest is identical to that currently being investigated by the same Law Bureau Prosecutory Staff in a pending prior proceeding (the “Informal Investigation”). Specifically, the Protest seeks to adjudicate in this transaction proceeding a separate matter pending against an entity that while not a party to this proceeding is a regulated subsidiary of Joint Applicant Windstream Corp. Staff seeks to adjudicate its cause of action on the regulated subsidiary on the basis of Staff’s stated “belief” that the issue will become an issue for the PA Certified Entities acquired by Windstream Corp. through the transaction that is the subject of this proceeding. That “belief,” however, is not supported by the facts and is directly contradicted by the information acquired by Law Bureau Prosecutory Staff in its pending investigation. As Staff was informed by way of discovery responses, following the last two transactions involving Windstream Corp., none of the newly acquired Pennsylvania subsidiaries adopted a “no proration” policy like the one being separately investigated by Law Bureau Prosecutory Staff and now introduced by way of the Protest to the transaction. Nothing supports Staff’s attempted maneuver to raise this matter by way of Protest to a separate transaction when it is already being appropriately pursued in the context of the Informal Investigation.

In support of these Preliminary Objections, the Joint Applicants aver as follows:

I. BACKGROUND

A. The General Rule Transaction Joint Application

1. On August 12, 2011, Joint Applicants filed an application (“Joint Application”) under Sections 1102 and 1103 of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 1102 and 1103, and the Commission’s Statement of Policy – Utility Stock Transfers under 66 Pa.C.S. § 1102(a)(3), 52 Pa. Code § 69.901 and its Abbreviated Procedures for Review and Approval of Transfer of Control for Telecommunications Public Utilities, 52 Pa. Code § 63.324, for the indirect transfer of control of the PA Certificated Entities to Windstream Corp. through Windstream Corp.’s ultimate acquisition of the PAETEC Parent. As a result of the transaction, PAETEC Parent will become the direct, wholly-owned subsidiary of Windstream Corp. Thus, Windstream will be the new ultimate parent company of the PA Certificated Entities.¹

2. As averred in the Joint Application, the transaction is expected to be virtually seamless to all end user customers. Windstream Corp.’s existing subsidiaries in Pennsylvania and their customers, including Windstream Pennsylvania, LLC (“Windstream Pennsylvania”), the regulated incumbent local exchange carrier subject to the prior pending proceeding described below, are not parties to the transaction and are not involved with or impacted by the transaction. Nor will the transaction have any immediate impact on the end user customers of the PA Certificated Entities. The change in ultimate control does not involve a transfer of operating authority, assets, or customers. Immediately following consummation of the transaction, the PA Certificated Entities will continue to offer the same services, rates, terms and conditions pursuant

¹ Joint Application at 1-2. The complete Joint Application is incorporated herein by reference.

to their existing authorization. No tariff or other changes are proposed in this filing for any of the PA Certificated Entities. The only immediate change resulting from the transaction will be that these certificated entities will be ultimately owned by Windstream Corp. and may subsequently change their names in accordance with Commission procedures to reflect “Windstream” in their names. Any subsequent changes made by the PA Certificated Entities to their tariffs, services, rates, terms and conditions will be made pursuant to normal Commission procedures and in compliance with applicable regulatory requirements.²

3. Joint Applicants requested approval of the Application in an expedited timeframe on or before the Commission’s Public Meeting of November 10, 2011 to allow the parties to consummate this transaction in 2011. Closure of the transaction in 2011 is imperative in order for Joint Applicants to meet critical business objectives, including realization of the synergistic and other public benefits of the transaction, including but not limited to:

- a. The Transaction affirmatively promotes the public interest, is necessary for the proper service and accommodation of the public, and will not negatively impact competition in the Commonwealth. Windstream Corp. is technically and financially well-qualified to become the new ultimate owner of the PA Certificated Entities. After the Transaction, the PA Certificated Entities will continue to have the managerial, technical, and financial qualifications to provide high quality telecommunications services to consumers in the Commonwealth, supported by experienced management of PAETEC and also experienced Windstream Corp. management and the financial resources of Windstream Corp.
- b. Commission approval of the Transaction will clearly serve the public interest. The telecommunications industry has been and continues to be subject to rapid technological advances, evolving consumer preferences and dynamic changes. The creation of Windstream Corp. in 2006 established an independent, stand-alone wireline-centric corporation that serves the public interest by focusing squarely on enhancing local wireline operations primarily in rural areas. Combining the PA Certificated Entities with Windstream Corp. will enable the subsidiaries to continue to offer a broad range of high quality services to enterprise and residential

² Joint Application at 2, 6, 10.

customers. Windstream Corp. will help ensure the continuation of the PA Certificated Entities' ability to deploy and maintain innovative and advanced telecommunications offerings, benefiting Pennsylvania consumers and serving the public interest, convenience and necessity.

- c. The efficiencies and economies of scale resulting from the Transaction will improve the PA Certificated Entities' economic position and, thus, their ability to continue to attract financing to invest in and offer new and innovative services. Enabling small and medium-sized carriers to achieve such efficiencies is publicly beneficial since economically stable competitors enhance competition which serves the public interest. The Transaction will also provide each of the PA Certificated Entities with access to Windstream Corp.'s subsidiaries' advanced network capabilities, technical and financial strengths, and complementary services, which together are expected to strengthen the PA Certificated Entities' ability to provide quality competitive service to their enterprise and consumer customer base. The Transaction will enable the customers of the PA Certificated Entities to benefit from innovative products and to greater economies of scale and scope than they would have had operating independently.
- d. The Transaction will also enhance competition because it will strengthen the PA Certificated Entities and enable them to expand and strengthen their competitive efforts. Joint Applicants expect that the Transaction will strengthen the competitive offerings of the PA Certificated Entities and is not expected to result in the elimination of a competitor in the relevant market.³

B. The Law Bureau Protest

4. In its Protest, Law Bureau Prosecutory Staff acknowledge that the transaction is at the parent company level, does not involve the transfer of customers, authority, or assets, will not result in any change to services, rates, terms, and conditions, and that any future changes will be undertaken pursuant to regulatory processes.⁴

5. However, Law Bureau Prosecutory Staff, without any support in fact and in direct contradiction to facts Staff acquired during discovery in the Informal Investigation, states that it

³ Joint Application at 7-8.

⁴ Protest at ¶¶ 1-3.

“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 implement in Pennsylvania.”⁵ The Windstream Pennsylvania billing policies about which Law Bureau Prosecutory Staff complain involve Windstream Pennsylvania’s adoption, in January 2009, of what Law Bureau Prosecutory Staff has described as a “no proration” billing under which Windstream Pennsylvania bills customers on a full, and not fractional, month basis.⁶ Law Bureau Prosecutory Staff, however, fails to address in its Protest that Windstream Pennsylvania is not a party to the instant transaction proceeding and that newly acquired Windstream Corp. subsidiaries in the two most recent transactions following Staff’s stated opposition to the policy in question have not implemented the policy. Instead, it appears that the Protest is intended to seek an unfair advantage in achieving its desired resolution regarding the policy, which already is being handled in a separate proceeding, by pursuing the same matter here against parties for which Staff has no evidence the policy applies or will apply. In fact, as a result of its Informal Investigation, Staff has evidence exactly to the contrary.

6. The Protest seeks to argue the merits of the separate investigation in the context of this transaction proceeding, and Staff sets forth its challenges to the manner in which Windstream Pennsylvania implemented the “no proration” billing policy, alleging “the Commission did not receive notice that the Company was changing its billing policy”⁷ and that the “policy is not a practice fully and clearly identified in a tariff provision.”⁸ Law Bureau Prosecutory Staff also alleges that the “substantive aspects” of this “no proration” billing policy

⁵ Protest at ¶ 3.

⁶ Protest at ¶ 5.

⁷ Protest at ¶ 12. With respect to the notice issue, as Law Bureau Prosecutory Staff was specifically informed in the course of its Informal Investigation, customers were provided full notice of the policy change before it was implemented.

⁸ Protest at ¶ 13.

of Windstream Pennsylvania “violate the Public Utility Code and Commission regulations.”⁹ Specifically, as described by Law Bureau Prosecutory Staff, the “no proration” billing policy of Windstream Pennsylvania is “unreasonable and unlawful in violation of 66 Pa.C.S. §§ 1303 and 1501” and “is neither just nor reasonable” in violation of 66 Pa.C.S. §1301.¹⁰ Thus, Staff concludes, “it is not in the public interest to approve the Application. 66 Pa.C.S. §1103.”¹¹ Staff’s conclusion, however, fails to demonstrate how the “no proration” policy of Windstream Pennsylvania actually has any bearing at all on the pending transaction let alone causing it not to be in the public interest. Indeed, Staff’s conclusion that the billing policy somehow causes the transaction not to be in the public interest fails to take into account that the billing policy has resulted in fewer customer inquiries over nonfractional billing and virtually no customer complaints in the years in which it has been in place, again, information Staff acquired during the conduct of its Informal Investigation.

7. Citing its authority under Section 308(b) of the Public Utility Code, and the Commission’s delegation to it of authority under *Delegation of Prosecutory Authority to the Bureaus with Enforcement Responsibilities*, Docket No. M-00940594 (Order entered on September 2, 1994), Staff concludes it “has a direct and immediate interest in the Application and billing issues that may be raised, and has standing to bring the present Protest.”¹² The sole basis of Staff’s Protest is its belief that “Windstream PA’s ‘no proration’ billing policy will impact acquired consumers if the Joint Application is approved” and “[i]f [Windstream PA’s] past actions are repeated, PA Certificated entities will implement the same billing policies

⁹ Protest at ¶ 12.

¹⁰ Protest at ¶¶ 17 and 18.

¹¹ Protest at ¶ 12.

¹² Protest at ¶ 9.

adopted by Windstream PA, and in the same manner[.]”¹³ As set forth herein, Staff’s conclusions are legally and factually unsubstantiated and without merit.

C. The Prior Pending Proceeding

8. In December 2010, Windstream Pennsylvania received two *Notifications of Informally Verified Infraction* (“Notifications”) dated December 17, 2010, from the Bureau of Consumer Services (“BCS”). The Notifications averred that Windstream Pennsylvania had violated Sections 64.14(a)(4) and/or (a)(9) of the Commission’s regulations, 51 Pa. Code §§ 64.14(a)(4), (9), with “failure to prorate” identified as the reason for the recorded infractions. By letters dated January 13, 2011, Windstream Pennsylvania denied the informal infractions as not supported in the cited regulations and as in compliance with Windstream Pennsylvania’s tariff. A copy of Windstream Pennsylvania’s responses to the Notifications is attached hereto as Exhibit 1.

9. Following a series of informal meetings at the Commission, Windstream Pennsylvania was advised by letter dated May 3, 2011 from Terrence Buda, Law Bureau Prosecutory Staff, the same staff member that filed the Law Bureau Protest, that the Law Bureau was initiating an Informal Investigation of Windstream Corporation’s certificated public utility companies. As stated in the letter:

This investigation will focus on Windstream [Corporation’s] billing practice that does not pro-rate charges for fractional period and bills customers for an entire cycle when those customers discontinue or change service mid-cycle and whether this practice violates Public Utility Commission regulations, federal regulations, the Public Utility Code, and the Company’s own tariff.

¹³ Protest at ¶ 10.

The Law Bureau of the Pennsylvania Public Utility Commission, acting under delegated authority, has initiated an investigation pursuant to *Delegation of Prosecutory Authority to the Bureaus with Enforcement Responsibilities*, Docket No. M-00940594 (Order entered on September 2, 1994). Pursuant to 52 Pa. Code § 3.113(a), the Law Bureau is authorized to conduct prosecutory investigations regarding the condition and management of a public utility or other corporation subject to Commission jurisdiction. The purpose of such investigations is to gather data or substantiate allegations of potential violations of the Public Utility Code. If Commission staff determines that no violation or potential violation has occurred, the investigation will be terminated by letter. 52 Pa. Code § 3.113(c)(1). In the event that the staff determines that violations or potential violations have occurred and that formal action is warranted, staff may initiate a docketed on-the-record proceeding to resolve the issues.

A copy of the Law Bureau's Informal Investigation Notice is attached hereto as Exhibit 2.

10. As a part of the Law Bureau's Informal Investigation, Windstream Pennsylvania has provided responses to three formal sets of discovery as well as other informal inquiries. In its discovery responses, Windstream Pennsylvania provided all support for its "no proration" billing practices, including tariff citations. In its discovery responses, Windstream Pennsylvania also provided responses that directly contradict the averment in the Law Bureau Protest that the PA Certificated entities will implement the same (full month) billing policies adopted by Windstream Pennsylvania and in the same manner.

11. Specifically, in response to discovery directly on point to the grounds alleged as support for the Law Bureau Protest, Windstream Pennsylvania provided the following responses:

Set III

3. Attachment I states that proration (I assume meaning fractional billing not the full monthly price) will still be incurred in the former D&E areas – is this still the billing practice or does the "no proration" policy now apply? Again, if so why is there still a distinction in the application of this policy?

Answer: Windstream implemented its full month billing policy in January 2009, almost one year before its parent company closed on the acquisition of the D&E entities. Staff subsequently began its inquiries into Windstream's policy, and Windstream therefore delayed full implementation of the policy in the D&E properties during the pendency of Staff's inquiries.

* * *

7. Will Windstream's billing policy (*i.e.*, lack of fractional billing) impact acquired consumers if the Joint Application for Approval of an 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 McLeod USA Telecommunications Services, LLC, to Windstream Corporation (Docket No. A-2011-2258715, *et.al.*) is approved.

Answer: Although Windstream is not a party to that proceeding, it notes that the referenced application states that the transaction is expected to be seamless to customers and does not involve a transfer of operating authority, assets, or customers. Further, the entities that are parties to that proceeding stated that they 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 applicable regulatory processes. The Transaction has not closed, and neither Windstream nor its affiliates are authorized to speak on behalf of the PAETEC entities. However, Windstream states its belief that integration decisions such as billing policies are not currently known and will not be until after close of the transaction. However, in keeping with the statements in the referenced application, any changes in such policies will be implemented in compliance with applicable regulatory requirements, to the extent there are any.

12. In addition to specifically addressing and refuting Staff's belief that provides the sole basis for its Protest, namely that the PA Certificated Entities will implement this same "no proration" policy if the General Rule Transaction is approved, Windstream Pennsylvania also stated in discovery that other affiliates continue to use their own "separate billing systems." As stated in response to Discovery Set III:

2. Does the Company prorate monthly service charges for Dish Network Services, Windstream Cable Services, and/or Usage Sensitive Features? If so, why are these services not impacted by the Company's "no proration" billing policy?

Answer: Monthly charges for Dish Network Services and cable services are prorated because these services are offered by an unaffiliated entity in the case of Dish and by affiliates using a separate billing system in the case of the cable services. Windstream notes that it continues to receive customer inquiries on fractional charges by Dish. Finally, usage sensitive, or "per use" features as designated by their name are billed per incident of use;

thus, any policy of proration or no proration is irrelevant given the nature of these types of services.

A copy of the Set III discovery responses is attached hereto as Exhibit 3.

13. Ten days after this final set of discovery responses were provided to Law Bureau Prosecutory Staff in its Informal Investigation, Staff informed Windstream Pennsylvania's representative by email message sent September 19, 2011, the same date that Law Bureau Prosecutory Staff filed the Protest against Joint Applicants' pending General Rule Transaction, as follows:

I consider the discovery phase of the investigation completed and I will be drafting a letter summarizing the results of the investigation and our findings. For you information, we have also filed a Protest to the Joint Application for approval of an indirect transfer of control at A-2011-2258734 et.al. I think when you review the Protest it will give you a good idea of our perspective of this investigation and the Company's actions, and the findings we have reached.

A copy of Staff's September 19, 2011 email is attached hereto as Exhibit 4.

II. PRELIMINARY OBJECTIONS

A. Standards

14. Preliminary Objections seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. The moving party may not rely on its own factual assertions, but must accept all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. The Commission must assume in ruling that the factual allegations in the opposed pleading are true and the Preliminary Objections may be granted only if the moving party prevails as a matter of law, with any doubt resolved in favor of

the non-moving party.¹⁴ Further, the Commission need only hold evidentiary hearings under Section 1103(b) if it deems them to be necessary and proper.¹⁵

15. The Commission's regulations at 52 Pa. Code §§ 5.101(a) provide the grounds upon which Preliminary Objections are available. Section 5.101(a)(4) provides that Preliminary Objections are available if a pleading is legally insufficient; Section 5.101(a)(9) provides for Preliminary Objections if there is a prior pending proceeding. Joint Applicants submit that the Law Bureau Prosecutory Staff's Protest must be rejected on both these grounds.

B. Legal Insufficiency – The Basis for Law Bureau Prosecutory Staff's Protest Bears No Relation to the *City of York* Standard for Approval of a Change in Control Application

16. Staff avers it has a "direct and immediate interest in the Application and billing issues that may be raised."¹⁶ The sole basis for Staff's Protest is its unsubstantiated and specifically refuted belief that "*if* the Company's [Windstream Pennsylvania's] past actions are repeated, PA Certificated entities will implement the same billing policies adopted by Windstream PA, and in the same manner[.]"¹⁷ Staff's stated belief ignores the facts developed in Staff's own pending investigation that no Pennsylvania subsidiary acquired by Windstream Corp. in recent transactions has adopted the billing policy about which Staff complains and that such policy was specifically put on hold following Staff's initiation of the Informal Investigation. Further, Staff's concerns are not germane to the Commission's review of Joint Applicants'

¹⁴ *Mauro v. Pennsylvania Electric Company*, 2010 WL 2866048 (Pa.P.U.C.) (citations omitted).

¹⁵ *Chester Water Authority v. Pa. P.U.C.*, 868 A.2d 384, 390-91 (Pa. 2005) (footnotes and citations omitted) ("[T]he hearing provision of Section 1103 of the Public Utility Code does not require the Commission to hold a hearing on every application for a certificate of public convenience." Rather, per the statutory language, the Commission need only hold such hearings that it deems necessary or proper. "[W]hile due process concerns implicating hearings certainly may arise in the course of particular certification proceedings, we do not regard the act of regulatory approval itself as the type of government activity that inherently requires a hearing to comport with constitutional doctrine.")

¹⁶ Protest at ¶ 9.

¹⁷ Protest at ¶ 10 (emphasis added).

General Rule Transaction and are raised against a corporate parent and potential affiliates even though the alleged violations relate solely to an entity that is not a party to the transaction proceeding. Finally, Staff's claim is speculative, was refuted in the Informal Investigation, and if pursued at all, should not be allowed to be pursued through a Protest to the General Rule Application.

17. The standard for review and approval of a change in control case under Sections 1102 and 1103 of the Public Utility Code is whether approval of the proposed transaction is "necessary and proper for the service, accommodation, convenience and safety of the public."¹⁸ The seminal interpretation of this statutory standard comes from the *City of York*, in which the Supreme Court held that the transaction must "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way."¹⁹

18. The *City of York* standard has recently been expounded upon by the Supreme Court in light of the tremendous change that has affected the telecommunications industry in the past decade. In an appeal of the change of control proceeding involving the Verizon and MCI companies, the Supreme Court rejected the premise that in approving a merger or acquisition the Commission "must secure legally binding benefits to assure public benefit from a merger."²⁰ The Court acknowledged, as did the Commission, "the broader assessment of public benefit" evidenced by the "complementary strengths brought by the joint applicants to the merger;" "the companies' limited presence in each others' markets; and [] the litany of resultant advantages found by the ALJ."²¹ Moreover, the Court found that "the combination of Verizon's and MCI's assets and strengths has substantial potential to create an integrated infrastructure supporting

¹⁸ 66 Pa.C.S. § 1103.

¹⁹ *City of York v. Pa. P.U.C.*, 295 A.2d 825 (Pa. 1972).

²⁰ *Popowsky v. Pa. P.U.C.*, 937 A.2d 1040, 1055 (Pa. 2007) ("*Popowsky*").

²¹ *Id.* at 1049.

delivery of innovative” services and devices, and that such potential in this dynamic world of changing technology was substantial evidence of public benefit of the transaction.²² Thus, the Court sanctioned the Commission’s move away from what had become the tradition in change of control transactions of opportunities for discrete parties to secure binding commitments to satisfy their individual needs and toward a more holistic approach to the interpretation of the “public interest” that considered the broader picture over individual or parochial interests.

19. Joint Applicants are unaware of any change of control proceeding in recent or even more remote history in which the Law Bureau Prosecutory Staff has filed a protest as a means of continuing to pursue issues in a pending Informal Investigation. Other than Staff, no party protested the application generally or raised any issues specifically related to the billing practices of any of Joint Applicants or their regulated subsidiaries or affiliates. Moreover, as described above, Joint Applicants have specifically averred in the pending General Rule Transaction application that the transaction will be virtually seamless to all customers and that no changes to rates, services, terms, and conditions will be implemented immediately as a result of the transaction.

20. Joint Applicants appreciate and do not generally contest the public nature of the interests traditionally represented by Commission Staff. With respect to the very narrow subject identified by Law Bureau Prosecutory Staff in its Protest, however, Joint Applicants submit that the stated interest is completely irrelevant to the issues presented and parties involved in the General Rule Transaction and the applicable public interest standard of review in the pending General Rule Transaction. In its Protest, Staff has failed to plead any facts sufficient to support its requested relief that the “Application be denied and the Joint Petitioners (sic) be prohibited

²² *Id.* at 1058.

from closing the Transaction.”²³ The sole matter complained of in the Protest does not affect whether the transaction will have an anticompetitive effect, or will result in the surviving entities either not being technically, managerially or financially fit or being unable to continue to provide safe and adequate service at just and reasonable rates. In short, nothing asserted in the Protest is even tangentially related to the scope of a Chapter 11 change of control proceeding. If as a result of its Informal Investigation Law Bureau Prosecutory Staff believes it has a cause of action, it should be brought against Windstream Pennsylvania in a separately initiated on-the-record proceeding. Staff has no cause of action against Joint Applicants.

21. Further, Staff’s belief is mere unsubstantiated conjecture. As the evidence Staff developed in the Informal Investigation demonstrates, the billing practices of concern to Staff are those of Windstream Pennsylvania and have not been imposed on the other recently acquired D&E or Q-Comm subsidiaries following their acquisition. To the contrary, as discovery in the Informal Investigation revealed, after Staff began its inquiries into Windstream Pennsylvania’s billing practices, further implementation of the policy was delayed pending the outcome of that investigation regarding Windstream Pennsylvania.

22. Conjecture, particularly conjecture that is specifically refuted by the information obtained by Staff in its Informal Investigation, is insufficient to satisfy Staff’s need to demonstrate a “direct and immediate interest” in the transaction sufficient to establish standing to support the Protest.²⁴ In other words, Staff’s identified interest is too remote. While Staff clearly

²³ Protest at 8.

²⁴ *Re Aqua Pennsylvania Inc.*, 2006 WL 1083288 (Pa.P.U.C.) at *4 (“[A]pproving the Joint Application [for acquisition of other utility assets] will not change the existing operation and, therefore, there is no causal nexus between our approval of the Joint Application and any injury that the municipal entities may suffer in the future from the three separate systems. Similarly, the municipal authorities cannot show a causal nexus between our approval of the Joint Application and the harm which they allege. . . . [T]he concern that the municipal authorities have for the steps that Aqua PA may take after it commences operations is speculative and conjectural, not direct. Such conjecture does not confer a direct interest in this proceeding.”)

has standing to pursue its prosecutorial function and investigation into Windstream's "no proration" billing practice, and to continue that investigation by initiation of a formal on-the-record proceeding, the vehicle of a Protest to Joint Applicants' pending General Rule Transaction is not the proper means of pursuing that function.²⁵

23. Law Bureau Prosecutory Staff's Protest simply does not detail substantive, factual concerns of actual adverse consequences likely to result from the proposed transaction. As Joint Applicants explained in their General Rule Transaction, the transaction is at the parent-level and will not affect current operations of regulated subsidiaries. Further, the public benefits to be attained through the transaction, including economies of scale and scope, are critical. However, the window to secure their achievement is extremely time constrained in the competitive telecommunications market. As recognized above, the Commission endorsed this broader public interest standard relative to merger benefits in the highly competitive telecommunications market in *Popowsky*, and also subsequently employed that broader public interest review in the *Embarq/CenturyTel Merger*.²⁶

²⁵ See *id* ("the Joint Applicants contend that the Joint Protestants are misusing the Commission's process to restrain trade"); *Joint Application of The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania and Embarq Communications, Inc. for Approval of the Indirect Transfer of Control to CenturyTel, Inc.*, Docket No. A-2008-2076038 ("*Embarq/CenturyTel Merger*") (ALJ Initial Decision dated April 3, 2009 at 35) ("BCAP has provided to the Commission an exceedingly long list of proposed conditions for the approval of the merger, presenting in effect a "wish list" of terms and conditions for future interconnection agreements that would displace those to be negotiated in good faith by the parties. BCAP's attempt to use this proceeding as a substitute for legally mandated-negotiations under Sections 251 and 252 of the Telecom Act is inappropriate[.]")

²⁶ See *Embarq/CenturyTel Merger* (Order entered May 28, 2009) at 22-23 ("A financially stronger firm will benefit the public in several respects. The events of the recent past demonstrate the importance of financial strength for allowing a firm to survive turbulent economic times and provide quality utility service to consumers during an economic downturn. In addition, Embarq's Pennsylvania ratepayers will benefit because the combined companies will be better able to invest in infrastructure and bring new products and services to market. Finding of Fact 59. Moreover, a financially stronger firm will benefit all Pennsylvania telecommunications consumers because the combined companies will be better positioned than Embarq, standing alone, to compete in today's telecommunications marketplace.")

C. Prior Pending Proceeding – Law Bureau Prosecutory Staff Should Be Required to Continue Pursuit of its Informal Investigation Through Separate Means and Not Attempt to Effectuate Its Preferred Resolutions to that Investigation Through a Protest to the Joint Application

24. As established above, the subject of Law Bureau Prosecutory Staff's Protest to Joint Applicants' General Rule Transaction is *identical* in scope to the Staff's pending Informal Investigation. As Staff informally informed Windstream Pennsylvania's representative, its discovery was "completed" and the Protest would "give [the company] a good idea of our perspective of this investigation and the Company's actions, and the findings we have reached." The Protest and the Informal Investigation each clearly concerns the billing practices of Windstream Corp.'s current and potentially prospective regulated subsidiaries. Staff has simply chosen two different vehicles to challenge that practice.

25. Under the Commission's newly issued abbreviated procedures for change in control applications, an Order or Secretarial Letter ruling on the General Rule Transaction such as that filed by Joint Applicants will be issued no later than 60 days after the expiration of the protest period *if* the transaction is unprotested.²⁷ Thus, absent Staff's Protest, Joint Applicants had every reasonable expectation that the transaction could be finally ruled upon by the Commission as soon as practicable in the year 2011, and certainly within reach of Joint Applicants' request for action at the Commission's November 10, 2011 Public Meeting.

26. Under the abbreviated procedures, however, the filing of a protest can have the effect of automatically reclassifying the transaction from a General Rule Transaction to traditional rule review.²⁸ This would subject the transaction to full litigation, including discovery, hearings, briefs, initial decision, exceptions and replies, without any limitation as to time. In turn,

²⁷ 52 Pa. Code § 63.324(k).

²⁸ 52 Pa. Code §§ 63.324(f) and (j)(1).

this would inevitably push final Commission action well beyond the November 10, 2011 Public Meeting specifically, the 2011 time frame generally, and well into 2012 for purposes of adjudicating an issue which is already separately pending against an entity not a party to this proceeding. As Staff is likely aware and one could argue appears to be the motivation behind the Protest, this potential greatly imperils the continued viability of the transaction and potentially subjects it to failure, a result neither Joint Applicant desires and one which could only be avoided were Joint Applicants to attempt to negotiate with Staff its preferred resolution to the Informal Investigation.

27. Thus, merely by filing the Protest giving Joint Applicants its “perspective and findings” from its Informal Investigation, Staff has the ability to wholly derail the pending application unless the Commission dismisses the Protest or, in the alternative, reverses Staff’s determination to proceed with its investigation by filing a protest. In the alternative, as the only means to avoid that outcome, Staff effectively will be allowed to indirectly coerce Windstream Pennsylvania into submitting to Staff’s demands by imperiling the General Rule Transaction involving its parent company Windstream Corp. Stated differently, the General Rule Transaction becomes hostage to the unlimited traditional review.

28. This Commission recently rejected an attempt by an entity, which had a pending complaint against a party that also happened to be a joint applicant to a subsequently filed General Rule Transaction, to interject the subject of the pending complaint into the Chapter 11 transaction by filing a protest. In that case, the Commission affirmed the initial decision of the ALJ, which had granted the joint applicant party’s preliminary objections filed under 52 Pa.

Code § 5.101(a)(6).²⁹ The ALJ found that the equitable common law doctrine of *lis pendens* (the concept codified in that Commission regulation)³⁰ was satisfied because the parties, the rights asserted, and the relief sought were all the same. In addressing issues of material fact raised in the protest, the ALJ concluded that the issues were raised to “muddy the litigation waters,”³¹ were not properly interjected into a Chapter 11 proceeding where a different standard applies,³² and that until a decision was rendered in the pending complaint, “the potential impact of that litigation cannot be used to stop or even slow down the Joint Application.”³³ The Commission agreed. “The fact that Core [the protestant] attempted to couch these claims in terms of the greater ‘public interest’ is not persuasive.”³⁴

29. Joint Applicants contend that the Commission should reach the same result here. Clearly the best evidence that the rights and relief asserted by Law Bureau Prosecutory Staff are the same in both the pending Informal Investigation and the subsequently filed Protest is Staff’s last email message to Windstream Pennsylvania’s representative in the Informal Investigation. As Staff represented there, it had concluded discovery and that day had also filed a Protest to the Joint Application. By Staff’s own admission, the Protest was intended to “give [the company] a good idea of our perspective of this investigation and the Company’s actions, and the findings we have reached.” While the parties to the investigation and transaction are not strictly identical since Staff’s investigation is against Windstream Pennsylvania, which is not a party to the Joint

²⁹ *Joint Application of EarthLink, Inc. and One Communications Corp., et al. for Approval of the Transfer of Indirect Control of CTC Communications Corp., et al. to EarthLink, Inc.*, Docket Nos. A-201102218761 et al. (Order entered April 20, 2011) (“*EarthLink Joint Application Order*”).

³⁰ *Dorsch v. Jenkins*, 365 A.2d 861, 863 (Pa. Super. 1976) (“*Lis pendens* is construed to be the jurisdiction, power, or control which courts acquire over property involved in a suit, pending the continuance of the action, and until final judgment.”).

³¹ *Joint Application of EarthLink, Inc. and One Communications Corp., et al. for Approval of the Transfer of Indirect Control of CTC Communications Corp., et al. to EarthLink, Inc.*, Docket Nos. A-201102218761 et al. (ALJ Initial Decision dated February 14, 2011) (“*EarthLink Joint Application ID*”) at 11.

³² *EarthLink Joint Application ID* at 12-13.

³³ *EarthLink Joint Application ID* at 13.

³⁴ *EarthLink Joint Application Order* at 17.

Application, this fact alone, given the otherwise identical subject of the pending proceeding, should not preclude the Commission from granting Joint Applicants' Preliminary Objections on the basis set forth in 52 Pa. Code § 5.101(a)(6). This is particularly true given that the Protest seeks to adjudicate the identical issue in this proceeding merely because Staff "believes," erroneously and without any substantiation, that the other parties may adopt the same policy. The Commission's regulation, while codifying the common law doctrine of *lis pendens*, does not strictly set forth identical standards. The regulation merely requires the pendency of a prior proceeding, which clearly there is. The fact that Staff has chosen to "muddy the litigation waters" by casting a wider net intended to snare all parties to the Joint Application and slow down this time-sensitive proceeding does not override the point that Staff is raising identical issues in this transaction proceeding as it is actively pursuing separately against Windstream Pennsylvania in the billing investigation. The commonality of scope is reason alone to grant the Preliminary Objections and dismiss the Protest.³⁵

30. Given the pendency of Staff's Informal Investigation, the Commission should dismiss the Law Bureau Prosecutory Staff's Protest, which is filed under the *same* delegation of authority relied upon by Law Bureau Prosecutory Staff for initiation of the Informal Investigation. Instead, Law Bureau Prosecutory Staff should be directed to continue with its findings in the normal course of the exercise of its informal investigative powers. As Staff specifically advised in initiating its investigation: "In the event that the staff determines that

³⁵ While not strictly a party to the proceeding and therefore lacking total identity of parties, Windstream Corporation, as corporate parent of Windstream Pennsylvania, stands in privity with Windstream Pennsylvania with respect to their mutual corporate interests. This clearly is the basis for Staff's proceeding against Joint Applicants rather than continuing its investigation of Windstream Pennsylvania alone. Exact identity of parties is not required where the parties are substantially similar and share substantially similar interests. *Hillgartner v. Port Authority of Allegheny County*, 936 A.2d 131 (Commw. Ct. 2007). Similarly, while the relief requested is not strictly identical, since the Protest seeks total rejection of the Joint Application, a matter not at issue in the Informal Investigation, clearly the end result requested is the same – Windstream Corp's complete cessation of any "no proration" policy. This is consistent with the ALJ's finding in the *EarthLink Joint Application Order* in which while they differed slightly, both essentially sought recompense for services rendered. *EarthLink Joint Application ID* at 10-11.

violations or potential violations have occurred and that formal action is warranted, staff may *initiate* a docketed on-the-record proceeding to resolve the issues.”³⁶ This is the proper course for the continued prosecution of the Staff’s concerns, as prescribed by the Commission’s regulations,³⁷ not Law Bureau Prosecutory Staff’s improvident filing of a protest to a conveniently pending General Rule Transaction.

31. Consistent with the information Windstream Pennsylvania previously provided to Staff, Joint Applicants state for purposes of the record in this proceeding that should this transaction close, the PA Certificated Entities, as newly acquired subsidiaries of Windstream Corp., will not implement the same “no proration” policy as Windstream Pennsylvania either until the later of the completion of the billing and integration processes or resolution of the separate investigation of Windstream Pennsylvania’s billing policy.³⁸ This commitment is not only consistent with the actions of other newly acquired Windstream Corp. subsidiaries in recent transactions in the Commonwealth but also makes moot any allegation by Staff that Windstream Pennsylvania’s billing policy has any bearing whatsoever on the instant transaction.³⁹

³⁶ See Exhibit 2 hereto (emphasis added).

³⁷ 52 Pa. Code § 3.113(b)(2) (“When the Commission staff determines that a violation or potential violation of the act has occurred and when formal action is deemed to be warranted, the Commission staff will initiate a docketed on-the-record proceeding to resolve the issues.”)

³⁸ Thus, Joint Applicants submit, the commitment not to implement the “no proration” policy as stated above should be sufficient to remove the issue from this proceeding by satisfactorily addressing Staff’s concern much as Embarq’s commitment to maintain substantially the service levels they currently provided for wholesale operations satisfied many of the individual demands sought through litigation of the *Embarq/CenturyTel Merger*. See *Embarq/CenturyTel Merger Order* at 22, 51, 52, 56-59.

³⁹ This commitment is not intended to reflect any attempt by Windstream Corp. to take action on behalf of the PAETEC operations prior to the transaction closing and is expressly conditioned on the transaction being consummated.

III. CONCLUSION

32. Dismissal of Staff's Protest is necessary given the fact that the parties to the transaction have reiterated that, consistent with past practices, the billing policy in question would not be implemented by the newly acquired subsidiaries until at least such time as the outstanding investigation of Windstream Pennsylvania's policy has been resolved. Further, dismissal is appropriate because its identified interest in the General Rule Transaction is too remote to the subject matter and scope of review applicable to the transaction to be relevant or to confer the "direct and immediate interest" necessary to support standing in the General Rule Transaction. Moreover, Law Bureau Prosecutory Staff has already initiated a proceeding directly to address the issue about which it complains in the Protest. Staff should be directed to continue its prosecutorial function as initiated in that proceeding.

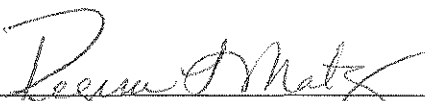
33. In order that Staff's Protest not be allowed to thwart Joint Applicants' General Rule Transaction, however, or otherwise force them to capitulate to whatever demands Law Bureau Prosecutory Staff may make as a result of its Informal Investigation (demands not yet conveyed directly to Windstream Pennsylvania), Joint Applicants implore your Honorable Commissioners to rule directly and expeditiously on these Preliminary Objections and to certainly do so *before* any automatic reclassification of the pending General Rule Transaction and anticipated assignment to the Office of Administrative Law Judge is effectuated.

34. To expedite this ruling, Joint Applicants respectfully but urgently request the Commission not to assign the Preliminary Objections to the Office of Administrative Law Judge for initial review and action per 52 Pa. Code § 5.101(g). In the alternative, Joint Applicants request the Commission to consider this document a petition for appeal from the action of Staff to proceed with a Protest in lieu of initiating a docketed on-the-record proceeding to continue its

Informal Investigation as provided in the Commission's regulations, and to reverse that Staff decision by dismissing the Protest.⁴⁰

WHEREFORE, for the reasons stated above, Joint Applicants respectfully request that the Commission grant these Preliminary Objections and dismiss the Law Bureau Protest as legally insufficient and/or properly the subject of a prior pending proceeding, or in the alternative consider the relief requested a petition for appeal of Staff action warranting dismissal of the Protest, and provide such further relief as the Commission may deem appropriate.

Respectfully submitted,

By: 
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Regina L. Matz, ID No. 42498
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Counsel for PAETEC Parent and PA Certificated Entities

Dated: September 26, 2011

⁴⁰ 52 Pa. Code § 5.44(c) ("Petitions for appeal from the actions of the staff will be addressed by the Commission at public meeting.")

EXHIBIT 1



Jeanne Shearer
Vice President, State Government Affairs
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Jeanne.Shearer@windstream.com

January 13, 2011

Joan Smith
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: BCS Case Number: 2507489, Jodi Wilson

Dear Ms Smith:

Windstream Pennsylvania, LLC ("Windstream" or "Company") is in receipt of the *Notification of Informally Verified Infraction* served by the Bureau of Consumer Services ("BCS") on December 17, 2010 in the above-referenced case. Windstream denies an infraction of the cited regulations. Accordingly, Windstream provides this letter to serve as its written request for a review of each informal infraction, and encloses as supporting documentation, a copy of the complainant's January 2009 invoice, which clearly provides the amount due for basic service, nonbasic service, and taxes and applicable surcharges during the current billing period, and the total amount due, as required by §64.14(a)(4) and §64.14(a)(9) of the Pennsylvania Code.

The BCS appears to correlate the regulations at §64.14(a)(4) and §64.14(a)(9) with a requirement to prorate as the notice identifies "failure to prorate" as the reason for the recorded infractions. Windstream finds no correlation between its obligations under §64.14(a)(4) and §64.14(a)(9), and proration, and in fact, Windstream's policy is consistent with its tariff which provides a schedule of "monthly" rates, as required by the citations set forth by the BCS.

The billing documentation Windstream provides to support its compliance contains information which is customer proprietary network information; Windstream has marked this information as "CONFIDENTIAL" and the BCS should treat this information accordingly and not make it subject to public review. If you have any questions please contact me at 717-738-8169.

Sincerely,

A handwritten signature in cursive script that reads "Jeanne Shearer".

Jeanne Shearer

Enclosure

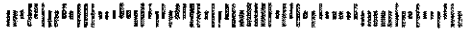
REDACTED

Page 1 of 4
JANUARY 28, 2009

Mail Date:
Billing Number:
Account Number:

ATTN: SUPPORT SERVICES
1720 GALLERIA BLVD
CHARLOTTE, NC 28270
ADDRESS SERVICE REQUESTED

*Thank you for selecting
Windstream
as your communications
partner!*



014343 01 AV 0.324 0064

For local billing inquiries
please call

1-800-347-1991

MONDAY THROUGH FRIDAY 7:00 A.M. TO 7:00 P.M. (EST)
SATURDAY 8:30 A.M. TO 5:00 P.M. (EST)

See page 3 for your service providers

*If you are paying for
multiple Windstream
accounts with one
check, please include
the remittance slip for
each account and note
the account numbers
on the memo line
of your check.
Thank you.*

Windstream now offers
online billing at
www.windstream.com
Your PIN to
register is:

WINDSTREAM SERVICE AT-A-GLANCE

Previous Bill	\$	114.05
Payments/Adjustments thru 01/26	\$	114.05CR
Amount Previously Due	\$.00

SUMMARY OF CURRENT CHARGES

 LOCAL	\$	60.08
 LONG DISTANCE	\$	6.61
 ENTERTAINMENT	\$	46.62



CURRENT CHARGES DUE FEBRUARY 18, 2009 \$ 113.51

TOTAL AMOUNT DUE \$ 113.51

Amounts shown above include 1.95 of state taxes paid by the utility.

KEEP
SEND

Please detach here and return with remittance
(Make checks payable to: WINDSTREAM PENNSYLVANIA INC)



Account Number	
Mailed Date	JANUARY 28, 2009
Total Amount Due	113.51
Due Date	FEBRUARY 18, 2009
Amount Paid \$	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

Check here for address change or comments
Please write on reverse side



Windstream
P O BOX 9001908
LOUISVILLE, KY 40290-1908

700066800000002115252660901250000001135120

GENERAL INFORMATION

Payments that you have made but do not appear on this bill as a credit should be deducted from the "Total Amount Due" before you make the payment. The remittance slip should always accompany your payment. When paying in person, please bring your remittance slip. The "Amount Due" date on this bill refers to the current month's charges and does not extend any previous billing due dates or payment arrangements. An explanation of the various charges, rate schedules, and instructions on how to verify the accuracy of this bill can be obtained at a local Windstream retail location or by calling Windstream Customer Service toll-free at the number on the front page of this bill. All federal, state and local taxes are computed in accordance with the appropriate tax laws.

Billing or service questions or complaints should be referred to Windstream Customer Service. Discrepancies should be reported within 20 days of the date of the bill to allow necessary adjustments to be made before the next bill cycle. If a portion of your bill is incorrect or disputed that amount only may be deducted from your payment. All other charges must be paid to avoid interruption of your service. Please call Windstream Customer Service toll-free to report the error.

If your amount due is less than \$2.01, you may not receive a billing statement.

A "Late Payment Charge" may apply to each customer bill when the previous month's bill has not been paid in full, leaving an unpaid balance carried forward. The charge is applied to the total amount carried forward and is included in the amount due on the current bill. Service and equipment are billed one month in advance. Windstream will not prorate charges or provide credit for any partial periods if you change, add or terminate your service on a date prior to the last day of your billing cycle. This only applies to Windstream services and may not apply to services provided by other parties. The minimum service period is 30 days. "CR" next to a charge, denotes a credit. If "CR" appears next to the "Total Amount Due", do not pay.

eCheck authorization: 16347 By entering this 5-digit code when paying by phone, I hereby authorize Windstream and the financial institution designated by me to charge the account I have specified for payment of my Windstream services. I understand that a fee will be charged to my Windstream account for each request returned unpaid. If two requests are returned unpaid, I will be excluded from this option. In addition, I understand that Windstream and the financial institution reserve the right to terminate this payment option. This authorization can be revoked by notifying Windstream at the customer service number listed on my bill prior to 4:00 P.M. CST on my specified payment date.

EXPLANATION OF CALL CODES

- Long Distance Class of Call
P = Person to Person
S = Station to Station
Long Distance Rate Periods
D = Day
E = Evening
N = Night
DM = Day Multirate
EM = Evening Multirate
NM = Night Multirate
IC = International Call Rate Period

TAXES, SURCHARGES AND FEES

9-1-1 Service: This fee recovers Windstream's costs associated with construction, maintenance and upgrades of 911 services and related facilities. This fee also recovers the costs of local government providing 911 services in states that have enacted a 911 surcharge, in which case the amount of the fee is set in accordance with state law.

Access Charge per FCC Order/CLEC Network Access: This charge, also known as the Federal Subscriber Line Charge (SLC), is an FCC regulated fee that enables local telephone companies to recover a portion of the costs of connecting customers' homes or businesses to the telephone network, so those customers may receive and/or initiate interstate calls.

Federal Tax: A federal excise tax paid to the Federal Government, which is applied to all wireline customers.

State Tax: A state tax levied on all wireline customers. The tax usually applies only to local monthly service charges and usually takes the form of a sales tax. The application of this tax may vary by state.

County Tax: A county tax levied on all wireline customers. The tax usually applies only to local monthly service charges and usually takes the form of a sales tax. The application of this tax may vary by county.

City Tax: A city tax levied on all wireline customers. The tax usually applies only to local monthly service charges and can be a sales tax, a franchise fee tax, or both. The application of this tax may vary by city.

Intrastate Toll Tax / Equalization Surcharge: A usage-based tax levied by some individual states on long distance calls made in the state.

Gross Receipts Tax/Surcharge: This charge recovers for a tax that is imposed either on Windstream or on customers directly by various states for the provision of communications services. In the case of gross receipts surcharges, they are not government mandated charges.

Federal USF Fee: The Federal Universal Service Fund (USF) was established by the FCC to ensure that telecommunications services are affordable for customers with low incomes and customers living in rural areas where the cost of providing service is high. The fund also provides discounted telecommunication services to schools, libraries and rural healthcare providers. Through this fee, Windstream recovers the cost of its mandated contribution to the USF as permitted by the FCC.

State USF Fee: Some states have implemented a State Universal Service Fund (SUSF) similar to the federal USF. In those states, telecommunications companies must contribute a percentage of billed revenues to the SUSF. The states, in turn, allow telecommunications companies to recover their mandatory contribution to SUSF from their customers.

Relay Service Surcharge: The Americans with Disabilities Act requires all companies offering voice service to provide access to a Telecommunications Relay Service (TRS) and to contribute to a shared fund to support this service. This service enables an individual who is hearing or speech impaired to communicate with others through access to a Teletypewriter (TTY) and/or Telecommunications Device for the Deaf (TDD).

Local Number Portability (LNP) Fee: LNP allows customers to keep their current local telephone number when changing telephone service providers. The FCC has determined that the local telephone company may recover certain costs for providing LNP.

Interstate Service Fee: The Interstate Service Fee helps recover costs associated with providing interstate long distance including, for example, interstate and international connection charges. This fee is not a tax or charge required by the government.

Deregulated Administration Fee: The Deregulated Administration Fee recovers costs associated with the administration of providing many products and services, such as maintenance and entertainment offerings. This fee is not a tax or charge required by the government.

Keep this portion for your records. Return this portion with your payment.

Change of Address Effective Date ___/___/___ WS00225b 700966

Name
Attention
New Address Apt / Suite #
City State Zip
Business Phone Home Phone

Comments

Mail Date:
Billing Number:
Account Number:

SERVICE PROVIDER(S)

Your InterLATA long distance carrier(s) are:
WINDSTREAM COMMUNICATIONS 1-800-223-4844

Your IntraLATA long distance carrier(s) are:
WINDSTREAM COMMUNICATIONS 1-800-223-4844

Your Local carrier is*:
Windstream 1-800-347-1991

* If you have multiple telephone numbers, further information concerning long distance center assignments for these additional lines are on record with your local business office.

SUMMARY OF PAYMENTS AND ADJUSTMENTS

PAYMENTS	99 95 CR
ADJUSTMENTS	14 10 CR
TOTAL PAYMENTS AND ADJUSTMENTS	114 05 CR

SUMMARY OF CURRENT CHARGES

BASIC		
WINDSTREAM	8 88	
TOTAL	8 88	
TOLL		
WINDSTREAM COMMUNICATIONS	6 81	
TOTAL	6 81	
NON-BASIC		
WINDSTREAM	51 20	
TOTAL	51 20	
ENTERTAINMENT		
DISH NETWORK SERVICES	46 62	
TOTAL	46 62	
CURRENT CHARGES DUE 02/18/09	112 81	

Non-payment of the TOTAL for BASIC charges shown above could result in disconnection of those services and may be subject to collection actions.

Nonpayment of all other charges for services listed above may result in the disconnection of these services and may be subject to collection actions, but will not result in the disconnection of basic local service.



**WINDSTREAM
SUMMARY OF CURRENT CHARGES**

Service from 01/25/09 to 02/24/09
Toll charge inquiries call 1-800-255-8267

BASIC SERVICE		
*PSETA(911) FEE FOREST	1 50	
ACCESS CHARGE PER FCC ORDER	8 30	
PA RELAY SURCHARGE	05	
FEDERAL TAX	72	
FEDERAL UNIVERSAL SERVICE FEE	20	
TOTAL BASIC SERVICE	8 88	
NON-BASIC SERVICE		
LOCAL SERVICE	46 99	
STATE TAX ADJUSTMENT SURCHARGE	34 CR	
DEREGULATED ADMINISTRATION FEE	1 55	
TOTAL NON-BASIC SERVICE	51 20	
* Public Safety Emergency Telephone Act (911) Fee		
TOTAL WINDSTREAM CHARGES	60 08	

DETAIL OF LOCAL SERVICE CHARGES

The following detail itemizes your current billing as required by your state regulatory agency. These charges are reflected on your regular monthly bill. Taxes and prorated monthly charges are not included.

Quantity	Service Description	Monthly Charges
BASIC SERVICE		
1	ACCESS CHARGE PER FCC ORDER	8 30
NON-BASIC SERVICE		
1	CONNECT UNLIMITED PACKAGE	49 99

WINDSTREAM CUSTOMER MESSAGE

Important Information for Customers Paying by Check:
Windstream may convert your payments by check to an electronic Automated Clearinghouse (ACH) debit transaction. The debit transaction will appear on your bank statement, although your check will not be presented to your financial institution or returned to you. This ACH debit transaction will not enroll you in any Windstream automatic debit process and will only occur each time a check is received. Any resubmissions due to insufficient funds may also occur electronically. Please be aware that all checking transactions will remain secure, and payment by check constitutes acceptance of these terms. We value your business and appreciate you selecting Windstream as your telecommunications provider.

After February 17, 2009, the FCC will require all full-power television broadcast stations to stop broadcasting in analog format and broadcast only in digital format. A television receiver with only an analog broadcast tuner then as a result will require a converter box to receive full-power over-the-air broadcasts with an antenna. Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations. Analog-only TVs also should continue to work as before with cable and satellites services (including DISH Network), gaming consoles, VCRs, DVD players and similar products.

What does this mean to you as a DISH Network customer?

Great News! No action is needed for TVs connected to DISH when you purchase locally. Your DISH service will not be impacted by this conversion, and you will not need to purchase additional equipment for TVs connected to DISH. Analog TVs not connected to your DISH service may need additional equipment or may have to be replaced. Please visit www.dishnetwork.com/dl or call 1-888-253-6644 for more information on how to stay connected.

For more information about this transition, please visit www.DTV.gov. You can also visit www.dtv2009.gov or call 1-888-DTV-2009 for information about subsidized coupons for digital-to-analog converter boxes.

Thank you for being a valued Windstream customer. We appreciate your business.

You currently subscribe to Connect Unlimited, which includes a residential phone line, unlimited long-distance, Caller ID, Call Forwarding, and other popular calling features. Certain calling restrictions apply. For complete details or terms & conditions, please visit windstream.com or call the customer service number on your bill.

* Information available in Spanish upon request.
Información disponible en español si se solicita.

To help us serve you faster, please bring your entire billing statement with you when paying in person at one of our payment center locations.



Jeanne Shearer
Vice President, State Government Affairs
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(o) – 717-738-8169
(m) – 717-201-3537

Jeanne.Shearer@windstream.com

January 13, 2011

Joan Smith
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: BCS Case Number: 2624192 – Richard Fenstermacher

Dear Ms Smith:

Windstream Pennsylvania, LLC (“Windstream” or “Company”) is in receipt of the *Notification of Informally Verified Infraction* served by the Bureau of Consumer Services (“BCS”) on December 17, 2010 in the above-referenced case. Please note the faxing/ mailing date of the notice is March 18, 2010, and is believed to be an error.

Windstream denies an infraction of the cited regulations. Accordingly, Windstream provides this letter to serve as its written request for a review of each informal infraction, and encloses as supporting documentation, a copy of the complainant’s October and November 2009 invoices, which clearly provide the amount due for basic service, nonbasic service, and taxes and applicable surcharges during the current billing period as required by §64.14(a)(4) of the Pennsylvania Code.

The BCS appears to correlate the regulations at §64.14(a)(4) with a requirement to prorate as the notice identifies “failure to prorate” as the reason for the recorded infractions. Windstream finds no correlation between its obligations under §64.14(a)(4) and proration, and in fact, Windstream’s policy is consistent with its tariff which provides a schedule of “monthly” rates, as required by the citations set forth by the BCS.

The billing documentation Windstream provides to support its compliance contains information which is customer proprietary network information; Windstream has marked this information as “CONFIDENTIAL” and the BCS should treat this information accordingly and not make it subject to public review. If you have any questions please contact me at 717-738-8169.

Sincerely,

A handwritten signature in black ink that reads "Jeanne Shearer". The signature is written in a cursive, flowing style.

Jeanne Shearer

Enclosures

REDACTED

Page 1 of 3
OCTOBER 13, 2009

Mail Date:
Billing Number:
Account Number:

ATTN: SUPPORT SERVICES
1720 GALLERIA BLVD
CHARLOTTE, NC 28270
ADDRESS SERVICE REQUESTED

*Thank you for selecting
Windstream
as your communications
partner!*

#BWNKCCG

For local billing inquiries
please call

1-800-347-1991

MONDAY THROUGH FRIDAY 7:00 A.M. TO 7:00 P.M. (EST)
SATURDAY 8:30 A.M. TO 5:00 P.M. (EST)

See page 3 for your service providers.

*If you are paying for
multiple Windstream
accounts with one
check, please include
the remittance slip for
each account and note
the account numbers
on the memo line
of your check.
Thank you.*

WINDSTREAM SERVICE AT-A-GLANCE

PREVIOUS BILL	\$	25.75
PAYMENTS/ADJUSTMENTS THRU 10/09	\$	25.75 CR
AMOUNT PREVIOUSLY DUE	\$.00
CURRENT CHARGES DUE NOVEMBER 02, 2009	\$	25.72
TOTAL AMOUNT DUE	\$	25.72

Amounts shown above include 1.17 of state taxes paid by the utility.

PAYMENT OPTIONS:

- By Mail: Send check and remittance slip to address listed below.
 - By Phone: For automated payments or to speak to a representative, call 1-800-537-7755.
 - On-line: Visit www.windstream.com/support.
 - In person: Visit the Windstream Communications store nearest you today.
- For a list of store locations, visit www.windstream.com/support.

KEEP
\$ 25.72

Please detach here and return with remittance
(Make checks payable to: WINDSTREAM PENNSYLVANIA, LLC)



Account Number
Billing Number:
Mailed Date OCTOBER 13, 2009
Total Amount Due 25.72
Due Date NOVEMBER 02, 2009

Your bank account will be drafted on 11/02/09 for \$25.72

Check here for address change or payments.
Please write on reverse side.

Barcode

Windstream
P O BOX 9001908
LOUISVILLE, KY 40290-1908

7000888000000002116629520910100000000257249

GENERAL INFORMATION

Payments that you have made but do not appear on this bill as a credit should be deducted from the "Total Amount Due" before you make the payment.

Billing or service questions or complaints should be referred to Windstream Customer Service. Discrepancies should be reported within 20 days of the date of the bill to allow necessary adjustments to be made before the next bill cycle.

If your amount due is less than \$2.01, you may not receive a billing statement.

A "Late Payment Charge" may apply to each customer bill when the previous month's bill has not been paid in full, leaving an unpaid balance carried forward.

eCheck authorization: 17901 By entering this 5-digit code when paying by phone, I hereby authorize Windstream and the financial institution designated by me to charge the account I have specified for payment of my Windstream services.

EXPLANATION OF CALL CODES

- Long Distance Class of Call
P = Person to Person
S = Station to Station
Long Distance Rate Periods
D = Day
E = Evening
N = Night
DM = Day Multirate
EM = Evening Multirate
NM = Night Multirate
IC = International Call Rate Period

TAXES, SURCHARGES AND FEES

9-1-1 Service: This fee recovers Windstream's costs associated with construction, maintenance and upgrades of 911 services and related facilities.

Federal USF Fee: The Federal Universal Service Fund (USF) was established by the FCC to ensure that telecommunications services are affordable for customers with low incomes and customers living in rural areas where the cost of providing service is high.

Access Charge per FCC Order/CLEC Network Access: This charge, also known as the Federal Subscriber Line Charge (SLC), is an FCC regulated fee that enables local telephone companies to recover a portion of the costs of connecting customers' homes or businesses to the telephone network.

State USF Fee: Some states have implemented a State Universal Service Fund (SUSF) similar to the federal USF. In those states, telecommunications companies must contribute a percentage of billed revenue to the SUSF.

Federal Tax: A federal excise tax paid to the Federal Government, which is applied to all wireline customers.

Relay Service Surcharge: The Americans with Disabilities Act requires all companies offering voice service to provide access to a Telecommunications Relay Service (TRS) and to contribute to a shared fund to support this service.

State Tax: A state tax levied on all wireline customers. The tax usually applies only to local monthly service charges and usually takes the form of a sales tax.

Local Number Portability (LNP) Fee: LNP allows customers to keep their current local telephone number when changing telephone service providers.

County Tax: A county tax levied on all wireline customers. The tax usually applies only to local monthly service charges and usually takes the form of a sales tax.

Interstate Service Fee: The Interstate Service Fee helps recover costs associated with providing interstate long distance including, for example, interstate and international connection charges.

City Tax: A city tax levied on all wireline customers. The tax usually applies only to local monthly service charges and can be a sales tax, a franchise fee tax, or both.

Deregulated Administration Fee: The Deregulated Administration Fee recovers costs associated with the administration of providing many products and services, such as maintenance and entertainment offerings.

Intrastate Toll Tax / Equalization Surcharge: A usage-based tax levied by some individual states on long distance calls made in the state.

Gross Receipts Tax/Surcharge: This charge recovers for a tax that is imposed either on Windstream or on customers directly by various states for the provision of communications services.

Keep this portion for your records
Send Return this portion with your payment.

Change of Address Effective Date ___ / ___ / ___ W8002108 745844



Name
Attention
New Address Apt / Suite #
City State Zip
Business Phone Home Phone

Comments

Mail Date:
Billing Number:
Account Number:

SERVICE PROVIDER(S)

Your Local carrier is*:

Windstream 1-800-347-1881

* If you have multiple telephone numbers, further information concerning long distance carrier assignments for these additional lines are on record with your local business office.

SUMMARY OF PAYMENTS AND ADJUSTMENTS

PAYMENTS	25.75 CR
TOTAL PAYMENTS AND ADJUSTMENTS	25.75 CR

SUMMARY OF CURRENT CHARGES BY SERVICE PROVIDER

WINDSTREAM	25.72
CURRENT CHARGES DUE 11/02/09	25.72

REGULATORY PRESENTATION OF CURRENT CHARGES

The following summary presents your current charges by service type as defined by your state regulatory agency. Totals for each service type include applicable surcharges, fees and taxes.

BASIC LOCAL SERVICE	25.72
TOTAL	25.72

Non-payment of the TOTAL for BASIC charges shown above could result in disconnection of these services and may be subject to collection actions.

Nonpayment of all other charges for services listed above may result in the disconnection of these services and may be subject to collection actions, but will not result in the disconnection of basic local service.

This bill includes charges for:
870-845-7496

WINDSTREAM DETAIL OF CURRENT CHARGES

Service from 10/03/09 to 11/03/09
Toll charge requires call 1-800-347-1901

SERVICES	
1 AUTOMATED DRAFT PAYMENT	.00
1 NO TELEMARKETING	.00
1 RESIDENTIAL LINE	16.00
TOTAL SERVICES	16.00
SURCHARGES AND OTHER FEES	
ACCESS CHARGE PER FCC ORDER	6.31
*PSETA(911) FEE SCHUYLKILL	1.25
FEDERAL UNIVERSAL SERVICE FEE	.78
PA RELAY SURCHARGE	.05
PA STATE TAX ADJ SURCHARGE	.57
TOTAL SURCHARGES AND OTHER FEES	8.96
* Public Safety Emergency Telephones Act (911) Fee	
TAXES	
FEDERAL TAX	.75
TOTAL TAXES	.75
TOTAL WINDSTREAM CHARGES	25.72

WINDSTREAM CUSTOMER MESSAGE

Important Information for Customers Paying by Check
Windstream may convert your payments by check to an electronic Automated Clearinghouse (ACH) debit transaction. The debit transaction will appear on your bank statement, although your check will not be presented to your financial institution or returned to you. This ACH debit transaction will not enroll you in any Windstream automatic debit process and will only occur each time a check is received. Any resubmissions due to insufficient funds may also occur electronically.



REDACTED

Page 1 of 3
NOVEMBER 12, 2009

Mail Date:
Billing Number:
Account Number:

ATTN: SUPPORT SERVICES
1725 GALLERIA BLVD
CHARLOTTE, NC 28270
ADDRESS SERVICE REQUESTED

*Thank you for selecting
Windstream
as your communications
partner!*



#BWNKCCG

7

For local billing inquiries
please call

1-800-347-1991

MONDAY THROUGH FRIDAY 7:00 A.M. TO 7:00 P.M. (EST)
SATURDAY 8:30 A.M. TO 5:00 P.M. (EST)

See page 3 for your service providers

*If you are paying for
multiple Windstream
accounts with one
check, please include
the remittance slip for
each account and note
the account numbers
on the memo line
of your check.
Thank you.*

WINDSTREAM SERVICE AT-A-GLANCE

PREVIOUS BILL	\$	25.72
PAYMENTS/ADJUSTMENTS THRU 11/10	\$	25.72 CR
AMOUNT PREVIOUSLY DUE	\$.00
CURRENT CHARGES DUE DECEMBER 01, 2009	\$	6.74
TOTAL AMOUNT DUE	\$	6.74



PAYMENT OPTIONS:

- By Mail: Send check and remittance slip to address listed below.
- By Phone: For automated payments or to speak to a representative, call 1-800-537-7755.
- On-line: Visit www.windstream.com/support.
- In person: Visit the Windstream Communications store nearest you today.
For a list of store locations, visit www.windstream.com/support.

KEEP
\$ 7.00

Please detach here and return with remittance
(Make checks payable to: WINDSTREAM PENNSYLVANIA, LLC)



Account Number:
Billing Number:
Mailed Date: NOVEMBER 12, 2009
Total Amount Due: 6.74
Due Date: DECEMBER 01, 2009

Your bank account will be drafted on 12/01/09 for \$6.74

Check this box if address change is necessary.
Please return on reverse side.



Windstream
P O BOX 9001908
LOUISVILLE, KY 40290-1908

700088800000002116629520911100000000067455

GENERAL INFORMATION

Payments that you have made but do not appear on this bill as a credit should be deducted from the "Total Amount Due" before you make the payment.

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A "Late Payment Charge" may apply to each customer bill when the previous month's bill has not been paid in full, leaving an unpaid balance carried forward.

eCheck authorization: 17901 By entering this 9-digit code when paying by phone, I hereby authorize Windstream and the financial institution designated by me to charge the account I have specified for payment of my Windstream services.

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NM = Night Multirate
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Federal Tax: A federal excise tax paid to the Federal Government, which is applied to all wireline customers.

State Tax: A state tax levied on all wireline customers. The tax usually applies only to local monthly service charges and usually takes the form of a sales tax.

County Tax: A county tax levied on all wireline customers. The tax usually applies only to local monthly service charges and usually takes the form of a sales tax.

City Tax: A city tax levied on all wireline customers. The tax usually applies only to local monthly service charges and can be a sales tax, a franchise fee tax, or both.

Intrastate Toll Tax / Equalization Surcharge: A usage-based tax levied by some individual states on long distance calls made in the state.

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State USF Fee: Some states have implemented a State Universal Service Fund (SUSF) similar to the federal USF. In those states, telecommunications companies must contribute a percentage of billed revenue to the SUSF.

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Interstate Service Fee: The Interstate Service Fee helps recover costs associated with providing interstate long distance including, for example, interstate and international connection charges.

Deregulated Administration Fee: The Deregulated Administration Fee recovers costs associated with the administration of providing many products and services, such as maintenance and entertainment offerings.

Keep this portion for your records.
Send Return this portion with your payment.

Change of Address Effective Date / / W5002108 749587



Name
Attention
New Address Apt / Suite #
City State Zip
Business Phone Home Phone

Comments

Mail Date: NOVEMBER 12, 2008
Billing Number:
Account Number:

SERVICE PROVIDER(S)

Your Local carrier is*:

Windstream 1-800-347-1991

* If you have multiple telephone numbers further information concerning long distance carrier assignments for those additional lines are on record with your local business office

SUMMARY OF PAYMENTS AND ADJUSTMENTS

Table with 2 columns: Description, Amount. Rows: PAYMENTS 25.72 CR, TOTAL PAYMENTS AND ADJUSTMENTS 25.72 CR

SUMMARY OF CURRENT CHARGES BY SERVICE PROVIDER

Table with 2 columns: Description, Amount. Rows: WINDSTREAM 6.74, CURRENT CHARGES DUE 12/01/08 6.74

REGULATORY PRESENTATION OF CURRENT CHARGES

The following summary presents your current charges by service type as defined by your state regulatory agency. Totals for each service type include applicable surcharges, fees and taxes.

Table with 2 columns: Description, Amount. Rows: NON-BASIC SERVICE 6.74, TOTAL 6.74

Non-payment of the TOTAL for BASIC charges shown above could result in disconnection of those services and may be subject to collection actions.

Nonpayment of all other charges for services listed above may result in the disconnection of these services and may be subject to collection actions, but will not result in the disconnection of basic local service.

This bill includes charges for: 670-646-7486

WINDSTREAM DETAIL OF CURRENT CHARGES

Service from 11/10/08 to 12/09/08
Toll charge inquiries call 1-800-347-1991

Table with 3 columns: Description, Amount, Total. Rows: SERVICES (AUTOMATED DRAFT PAYMENT .00, RETAINED NUMBER SVC-RES 5.99, TOTAL SERVICES 5.99), SURCHARGES AND OTHER FEES (PA STATE TAX ADJ SURCHARGE .21, TOTAL SURCHARGES AND OTHER FEES .21), TAXES (FEDERAL TAX .18, STATE TAX .36, TOTAL TAXES .54), TOTAL WINDSTREAM CHARGES 6.74

WINDSTREAM CUSTOMER MESSAGE

Important Information for Customers Paying by Check
Windstream may convert your payments by check to an electronic Automated Clearinghouse (ACH) debit transaction. The debit transaction will appear on your bank statement, although your check will not be presented to your financial institution or returned to you. This ACH debit transaction will not enroll you in any Windstream automatic debit process and will only occur each time a check is received. Any resubmissions due to insufficient funds may also occur electronically. Please be aware that all checking transactions will remain secure and payment by check constitutes acceptance of these terms. We value your business and appreciate you selecting Windstream as your telecommunications provider.



EXHIBIT 2



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

IN REPLY PLEASE
REFER TO OUR FILE

Bp8# 2227108

May 3, 2011

Jeanne Shearer
Vice President- State Government Affairs
Windstream Corporation
PO Box 458
Ephrata, PA 17522

Re: Informal Investigation of Windstream Corporations' Billing Practices

Dear Ms. Shearer:

The purpose of this letter is to provide notice that the Law Bureau Prosecutory Staff (Prosecutory Staff) is initiating an informal investigation of Windstream Corporations' (Windstream or the Company) certificated public utility companies,¹ consistent the Public Utility Code and related regulations. 66 Pa. C.S. §§ 331(a) and 506; 52 Pa. Code § 3.113. This investigation will focus on Windstream's billing practice that does not pro-rate charges for fractional periods and bills customers for an entire cycle when those customers discontinue or change service mid-cycle and whether this practice violates Public Utility Commission regulations, federal regulations, the Public Utility Code, and the Company's own tariff.

The Law Bureau of the Pennsylvania Public Utility Commission, acting under delegated authority, has initiated an investigation pursuant to *Delegation of Prosecutory Authority to the Bureaus with Enforcement Responsibilities*, Docket No. M-00940594 (Order entered on September 2, 1994). Pursuant to 52 Pa. Code § 3.113(a), the Law Bureau is authorized to conduct prosecutory investigations regarding the condition and management of a public utility or other corporation subject to Commission jurisdiction. The purpose of such investigations is to gather data or substantiate allegations of potential violations of the Public Utility Code. If Commission staff determines that no violation or potential violation has occurred, the investigation will be terminated by letter. 52 Pa. Code § 3.113(c)(1). In the event that the staff determines that violations or potential violations have occurred and that formal action is warranted, staff may initiate a docketed on-the-record proceeding to resolve the issues. 52 Pa. Code § 3.113(c)(2).

¹ Windstream Buffalo Valley, Inc - ILEC, Windstream Communications, Inc - CAP, IXC, ILEC, CLEC, Windstream Conestoga, Inc - ILEC, Windstream D&E, Inc - ILEC, IXC, CLEC, Windstream Pennsylvania, LLC - ILEC.

During the conduct of this investigation, the Law Bureau will be making information and document requests directed to your attention and may conduct interviews or depositions. Please designate an individual to whom data and document requests and deposition notices should be sent and furnish his or her name, title, address, telephone number, fax number and email address. At this time, please respond to **Data Request I** and provide the following information and documents to my attention within 14 days of your receipt of this letter:

1. Identify the date Windstream implemented its billing practice that the Company will not 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;
2. Identify the tariff provision that authorizes the Company to implement this practice of billing customers for an entire cycle regardless of when the customer changes or discontinues service;
3. Describe Windstream's billing practice before its decision to no longer pro-rate bills, and provide the tariff authority for the previous billing practice;
4. Since the implementation of Windstream's decision to no longer pro-rate charges, identify the number of customers who discontinued or changed service mid-billing cycle and did not receive a pro-rated bill;
5. Identify the amount of revenue derived from customers who discontinued or changed service and were not credited for the partial periods;
6. Provide records of all training and procedures used by Windstream's customer service representatives to implement its current billing practice that does not provide for pro-rated bills;
7. Provide all documents including electronic mail that evidenced the Company's decision to implement its billing practice that does not provide for pro-rated bills;
8. Provide records of all billing disputes filed by Pennsylvania customers against the Company since the implementation of its current billing practice that does not provide for pro-rated bills;
9. Identify any formal action taken against Windstream and affiliates in a court of law, the Pennsylvania Public Utility Commission or any other state

commission, and by any state attorney general, that involves Windstream's billing practices;

10. Identify the management employees responsible for Windstream's decision to forego pro-rated billing;
11. Provide an organizational chart that includes the names of Windstream management employees.

If the response to any request for information or documents should make reference in whole, in part, or as otherwise required to documents which contain the information, please identify each such document. Also, please indicate the extent to which the data, information, or records supplied or relied upon in formulating the answers are contained in any computerized form and attach hereto a true copy or copies thereof.

The term "document" or "documents" means any record of any kind, and includes, but is not limited to, writings, drawings, graphs, charts, photographs, computer records and other compilations of data from which information can be obtained, translated, if necessary, by the answering party through detection devices into reasonable usable form.

The term "communication" means any manner or form of information or message transmission, however produced or reproduced, whether by "document" as defined herein, orally or otherwise. If such communication was oral or at a meeting, identify the person speaking, the person spoken to and other persons who were present during the communication or meeting, state the date and place of the communication or meeting and describe the substance of said communication. If such communication was contained in a document, identify the document.

The term "identify" means state the full name, last known residence and business address(es) and the telephone numbers, length of service with the last known employer, present title and job description as well as prior titles and job descriptions.

Regardless of any document retention policy, you are directed to retain under your control and not destroy all physical or electronic drafts or final documents, information and data, including, but not limited to corporate records, memoranda, accounts, employee or policy documents, training documents, advertising, contracts, contract proposals, mail and electronic mail, web pages, internet information, computer programs, databases and any other information in physical or electronic form which may pertain to this matter.

Inquiries regarding this investigation should be addressed to the undersigned as follows:

Terrence J. Buda, Assistant Counsel
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA. 17105-3265

(Telephone) (717) 783-3459
(Fax) (717) 783-3458
Email TBuda@state.pa.us

Your anticipated cooperation with this matter is greatly appreciated. I am assuming that you will be the contact person with respect to this informal investigation. However, if that assumption is incorrect, or if you have any questions, please contact me at (717) 783-3459.

Sincerely,

Terrence J. Buda
Law Bureau Prosecutory Staff

cc: Karen O. Moury, Director of Operations
Kathryn G. Sophy, Deputy Chief Counsel
Alexis Bechtel, Director Bureau of Consumer Services
Sheila Brown, Policy Analyst Manager, Bureau of Consumer Services
Joan Smith, Compliance Specialist, Bureau of Consumer Services
Robert Wilson, Director of Bureau of Fixed Utility Services
Janet Tuzinski, Manager Telecommunications, Bureau of Fixed Utility Services
Melissa Derr, Fixed Utility Financial Analyst, Bureau of Fixed Utility Services

EXHIBIT 3

WINDSTREAM'S RESPONSES TO THIRD SET OF DATA REQUESTS

1. Please provide all the Company's records of complaints and disputes maintained for 4 years pursuant to §64.192 and § 64.192 (3). In the response to Data Request I, Question No. 3, the Company discussed the reasons for implementing the full month/no proration ("no proration") billing policy or practice stating that proration caused customer confusion resulting in complaints that the customer did not fully understand their bill or that the bills were for amounts they did not expect (I assume meaning they were smaller than expected). We are particularly interested in records of customers who registered complaints that they did not expect the amount of their bill to be that small.

Answer: This question requests records of complaints and disputes for the previous four years. Prior to the implementation of the full month billing policy in January 2009 Windstream customer service representatives frequently addressed questions from customers inquiring about the amount of their first month bill. Customers questioned their first bill being larger (not smaller) than expected due to the billing of prorated charges for the first fractional month added to the first full month charge that the customer expected to receive. These customers' inquiries did not rise to the level of dispute set forth in Section 64.2 of the Pennsylvania Code since they were not grievances that remained unresolved. Instead, customer service representatives resolved the confusion by explaining the pro rata share (fractional first month) of the bill. Since the implementation of the full month billing policy in January 2009, there have been no customer calls concerning confusion over proration because Windstream stopped prorating fractional months. However, since that time there have been a minimal number of complaints concerning full month billing, all of which were provided in response to Question 8 of the First Data Request. In general, billing questions from Windstream customers decreased by approximately 25% between the months immediately prior to the implementation of Windstream's policy and the following months.

2. Does the Company prorate monthly service charges for Dish Network Services, Windstream Cable Services, and/or Usage Sensitive Features? If so, why are these services not impacted by the Company's "no proration" billing policy?

Answer: Monthly charges for Dish Network Services and cable services are prorated because these services are offered by an unaffiliated entity in the case of Dish and by affiliates using a separate billing system in the case of the cable services. Windstream notes that it continues to receive customer inquiries on fractional charges by Dish. Finally, usage sensitive, or "per use" features as designated by their name are billed per incident of use; thus, any policy of proration or no proration is irrelevant given the nature of these types of services.

3. Attachment I states that proration (I assume meaning fractional billing not the full monthly price) will still be incurred in the former D&E areas – is this still the billing practice or does the “no proration” policy now apply? Again, if so why is there still a distinction in the application of this policy?

Answer: Windstream implemented its full month billing policy in January 2009, almost one year before its parent company closed on the acquisition of the D&E entities. Staff subsequently began its inquiries into Windstream’s policy, and Windstream therefore delayed full implementation of the policy in the D&E properties during the pendency of Staff’s inquiries.

4. In response to Data Request I, Question No. 2, the Company identifies General Service Tariff: S2.3.1 as authority for implementing the “no proration” billing practice. When did Windstream add this sentence/language to its tariff? Does the language predate Windstream’s “no proration” billing policy?

Answer: S2.3.1 was in the tariff when Windstream was renamed in 2006.

5. When and how did the Company inform the Commission that it was interpreting S2.3.1 to change its tariff from a proration policy to a full month billing policy?

Answer: Windstream did not change S2.3.1, and therefore, notice to the Commission as contemplated by the question was not required. Windstream provided advance notice of the policy change to its customers.

6. In response to Data Request I, Question No. 3, the tariff authority for proration is identified as General Service Tariff: S2.3.3, prior to the section’s revision in November 2008. The revision effective November 14, 2008 only deletes the word “discontinued”. Therefore, S2.3.3 is still titled “Charges for Fractional Months” and still describes fractional billing for service that is “established or changed”. Is keeping this language in the tariff an oversight on the part of the Company, does Windstream still prorate for some service, or did Windstream seek to shield its policy from staff thus avoiding any review of the billing changes implemented by the Company? Please explain.

Answer: Windstream notes that, to the extent this question implies otherwise, its actions in providing the amendment to the Commission and advance notice to its customers of the policy have been appropriate and forthright. There was not an oversight when filing the tariff amendment and Windstream does not still prorate monthly telephone services. Under Windstream’s full month billing policy, when a customer establishes or changes service, the customer is not charged for the portion of time service is received prior to the beginning of the next billing cycle. Therefore, because the customer benefits from this policy, Windstream did not update this part of the tariff. In hindsight however, Windstream notes that amending the tariff by removing S2.3.3 would be more in keeping with its full month billing policy.

7. Will Windstream's billing policy (*i.e.*, lack of fractional billing) impact acquired consumers if the Joint Application for Approval of an 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 McLeod USA Telecommunications Services, LLC, to Windstream Corporation (Docket No. A-2011-2258715, *et.al.*) is approved.

Answer: Although Windstream is not a party to that proceeding, it notes that the referenced application states that the transaction is expected to be seamless to customers and does not involve a transfer of operating authority, assets, or customers. Further, the entities that are parties to that proceeding stated that they 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 applicable regulatory processes. The Transaction has not closed, and neither Windstream nor its affiliates are authorized to speak on behalf of the PAETEC entities. However, Windstream states its belief that integration decisions such as billing policies are not currently known and will not be until after close of the transaction. However, in keeping with the statements in the referenced application, any changes in such policies will be implemented in compliance with applicable regulatory requirements, to the extent there are any.

8. Finally, please identify the employee or officer of the Company that responds to these questions and responded to Data Request I, Question Nos. 2 and 3, and Data Request II, Question Nos. 6, 7, and 8?

Answer: Stephen Weeks, Director – Wholesale Services, except that the response to Question No. 7 was provided by Windstream's Regulatory Legal department.

EXHIBIT 4

Shearer, Jeanne

From: Buda, Terrence <TBUDA@pa.gov>
Sent: Monday, September 19, 2011 3:46 PM
To: Shearer, Jeanne
Subject: RE: Windstream Informal Investigation - Data Request III

Jeanne, thanks again for the Company's cooperation. I consider the discovery phase of the investigation completed and I will be drafting a letter summarizing the results of the investigation and our findings. For your information, we have also filed a Protest to the Joint Application for approval of an indirect transfer of control at A-2011-2258734 et. al. I think when you review the Protest it will give you a good idea of our perspective of this investigation and the Company's actions, and the findings we have reached. If you have any questions, do not hesitate to contact me. Terry

Terrence J. Buda, Assistant Counsel
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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From: Shearer, Jeanne [<mailto:Jeanne.Shearer@windstream.com>]
Sent: Friday, September 09, 2011 4:55 PM
To: Buda, Terrence
Subject: RE: Windstream Informal Investigation - Data Request III

9-9-11

Terry,

Please find attached, Windstream's responses to Data Request III.

Have a great weekend.

Jeanne

From: Buda, Terrence [<mailto:TBUDA@pa.gov>]
Sent: Tuesday, August 30, 2011 10:15 AM
To: Shearer, Jeanne
Cc: Sophy, Kathryn G; Tuzinski, Janet; Brown, Sheila; Derr, Melissa; Smith, Joan
Subject: Windstream Informal Investigation - Data Request III

Jeanne, I have a few more questions in addition to the questions I emailed on the 22nd and 24th of August, 2011. I will list all the questions below and designate this Data Request III.

1. Please provide all the Company's records of complaints and disputes maintained for 4 years pursuant to §64.192 and § 64.192 (3). In the response to Data Request I, Question No. 3, the Company discussed the reasons for implementing the full month/no proration ("no proration") billing policy or practice stating that proration caused customer confusion resulting in complaints that the customer did not fully understand their bill or that the bills were for amounts they did not expect (I assume meaning they were smaller than expected). We are particularly interested in records of customers who registered complaints that they did not expect the amount of their bill to be that small.
2. Does the Company prorate monthly service charges for Dish Network Services, Windstream Cable Services, and/or Usage Sensitive Features? If so, why are these services not impacted by the Company's "no proration" billing policy?
3. Attachment I states that proration (I assume meaning fractional billing not the full monthly price) will still be incurred in the former D&E areas – is this still the billing practice or does the "no proration" policy now apply? Again, if so why is there still a distinction in the application of this policy?
4. In response to Data Request I, Question No. 2, the Company identifies General Service Tariff: S2.3.1 as authority for implementing the "no proration" billing practice. When did Windstream add this sentence/language to its tariff? Does the language predate Windstream's "no proration" billing policy?
5. When and how did the Company inform the Commission that it was interpreting S2.3.1 to change its tariff from a proration policy to a full month billing policy?
6. In response to Data Request I, Question No. 3, the tariff authority for proration is identified as General Service Tariff: S2.3.3, prior to the section's revision in November 2008. The revision effective November 14, 2008 only deletes the word "discontinued". Therefore, S2.3.3 is still titled "Charges for Fractional Months" and still describes fractional billing for service that is "established or changed". Is keeping this language in the tariff an oversight on the part of the Company, does Windstream still prorate for some service, or did Windstream seek to shield its policy from staff thus avoiding any review of the billing changes implemented by the Company? Please explain.
7. Will Windstream's billing policy (*i.e.*, lack of fractional billing) impact acquired consumers if the Joint Application for Approval of an 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 McLeod USA Telecommunications Services, LLC, to Windstream Corporation (Docket No. A-2011-2258715, *et.al.*) is approved.
8. Finally, please identify the employee or officer of the Company that responds to these questions and responded to Data Request I, Question Nos. 2 and 3, and Data Request II, Question Nos. 6, 7, and 8?

Thank you again for the Company's cooperation. Hopefully, you can get me responses to these questions as soon as possible. Terry.


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VERIFICATION

I, Michael D. Rhoda, Senior Vice President – Government Affairs of Windstream Corporation, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).


Signature

Date: September 26, 2011

VERIFICATION

I, William Haas, am Vice President of Public Policy and Regulatory of PAETEC Communications, Inc., a subsidiary of the PAETEC Parent and affiliate of the PA Certificated Entities. I am authorized to represent the PAETEC Parent and PA Certificated Entities to make this verification on their behalf and hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).



Signature

Date: 9-26-11

CERTIFICATE OF SERVICE

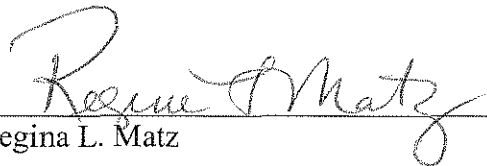
I hereby certify that on this 26th day of September, 2011, I did serve a true and correct copy of the foregoing upon the persons below as follows:

Via Electronic and 1st Class Mail

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Regina L. Matz