



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

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October 6, 2011

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

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

Dear Secretary Chiavetta:

Enclosed for filing is the Answer To Preliminary Objections of Joint Applicants of the Pennsylvania Public Utility Commission, Law Bureau Prosecutory Staff, in the above-referenced matter. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

Terrence J. Buda  
Assistant Counsel  
Attorney ID No. 33477

TJB/dm

Enclosure

cc: As per certificate of service

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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**ANSWER TO PRELIMINARY OBJECTIONS OF JOINT APPLICANTS**

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**AND NOW**, this October 6, 2011 comes the Law Bureau Prosecutory Staff of the Pennsylvania Public Utility Commission (Prosecutory Staff), by and through its attorney in this matter, Terrence J. Buda, Assistant Counsel, and answers the Joint Applicants' Preliminary Objections pursuant to 52 Pa. Code § 5.101(f). In support thereof, Prosecutory Staff submits the following:

1. Admitted.
2. Admitted in part and denied in part. It is admitted that Windstream Pennsylvania, LLC (Windstream PA) is not a party to the transaction and is not involved with or impacted by the transaction. It is denied that the transaction could not have an immediate impact on the end user customers of PA Certificated Entities if Windstream Corporation (Windstream Corp.) chooses to implement the "no proration" policy. It is

further denied that there is any assurance that changes to tariffs, service, rates, terms and conditions will be made pursuant to normal Commission procedures and in compliance with applicable regulation requirements. Relying on the representations made in the Joint General Rule Application (pages 3, 6, and 10), Prosecutory Staff believes that integration decisions such as billing policies are not currently known and will not be known until after close of the transaction. Therefore, Prosecutory Staff submits that the PA Certificated Entities can implement the same billing policies adopted by Windstream PA, and in the same manner that those policies were implemented by Windstream PA.

3. Protestant is without knowledge or information to form a belief as to the truth of the allegations and on that basis denies the allegations.

4. Denied. Prosecutory Staff acknowledged the statements made by Joint Applicants with respect to the transaction. By no means does Prosecutory Staff agree with the Joint Applicants that the transaction could not result in any change to services, rates, terms, and conditions and furthermore, that any future changes will be undertaken pursuant to regulatory processes. In fact, informal investigation of the regulated subsidiary of Windstream Corp. raised questions that the PA Certificated Entities to be acquired in the transaction would follow regulatory processes required in Pennsylvania to change services, rates, terms, and conditions. *See* Protest of Law Bureau Prosecutory Staff, paragraphs 13-19.

5. Denied. By way of further response, Prosecutory Staff believes that Windstream PA under the control of Windstream Corp. implemented its “no proration” billing policy without adequate Commission notice that Windstream PA was changing its billing policy and is not a practice fully and clearly identified in a tariff provision. Rather than acting in bad faith, Prosecutory Staff could not ignore tariff filings, provisions, and information that could bear on the fitness of a Joint Applicant and whether the Joint Application is necessary or proper. Furthermore, the description “no proration” billing is Windstream Pa’s designation and is contained in Data Response I, Question 6, Attachment 1, page 1. This document was not provided because it is Proprietary.

6. Denied. By way of further response, Prosecutory Staff has challenged the “no proration” billing policy here because approval of the Joint Application and closure of the transaction will pave the way for Windstream Corp. to have its certificated subsidiaries implement the same “no proration” billing policies adopted by Windstream PA and in the same manner that those policies were implemented in Pennsylvania. Moreover, Prosecutory Staff’s Protest addressed in great detail Windstream PA’s tariff and the manner in which the “no proration” policy was implemented, and the substantive violations of the Public Utility Code and Commission regulations. *Id.* This is the basis for Prosecutory Staff’s position that Windstream Corp.’s “no proration” policy has a bearing on the pending transaction and is not in the public interest. The Joint Applicants statement that Prosecutory Staff’s conclusion fails to take into account that the billing policy resulted in fewer customer inquiries and no customer complaints is not

supported by Prosecutory Staff's informal investigation. Windstream PA did not support this statement with any study or statistics. It is hard to understand how the Joint Applicants have reached this conclusion because it is Windstream PA's policy that if a customer complains about the policy Windstream PA will give an adjustment to satisfy the customer and therefore not have to count the inquiry as a dispute. Finally, Prosecutory Staff notes in response to Joint Applicants' footnote No. 7 that customer notice of a change in the terms and conditions of service such as a billing practice to its customers does satisfy any deficiencies in the regulatory approval process set by the Commission. Stated differently, the fact that customers were notified of the new billing policy does not cure the improper tariff notification and ameliorate the illegal and patently unfair practice itself.

7. Admitted in part and denied in part. It is admitted that Prosecutory Staff has standing but it is denied that Prosecutory Staff's conclusions are unsubstantiated and without merit.

8. Admitted.

9. Admitted.

10. Admitted in part and denied in part. It is denied that Windstream PA's discovery responses support its "no proration" billing practices or contradict the averments in the Prosecutory Staff Protest.

11. Admitted.

12. Denied. By way of further response, Prosecutory Staff refutes any interpretation of Windstream PA's discovery response that would convey a binding

commitment that PA Certificated Entities would not implement a “no proration” billing policy. Moreover, the affiliates referred to as using their own separate billing systems are, in fact, cable companies, not telephone companies.

13. Admitted.

14. The averments of this paragraph state conclusions of law to which no answer is required. To the extent an answer is required, the averments of this paragraph are denied and strict proof is demanded at trial.

15. The averments of this paragraph state conclusions of law to which no answer is required. To the extent an answer is required, the averments of this paragraph are denied and strict proof is demanded at trial.

16. Admitted in part and denied in part. It is admitted that Prosecutory Staff has a direct and immediate interest in the proceeding. However, Prosecutory Staff’s basis for protesting this Joint Application is substantiated. As supported in our Protest under paragraphs 4, 5, 13-19, Windstream PA implemented a billing policy that was not adequately noticed by the Commission, not supported in its tariff and violates the Public Utility Code and Commission regulations. Although the Joint Applicants make a great deal of its assertions that no Pennsylvania subsidiary recently acquired by Windstream Corp. has adopted the billing policy, once the transaction is closed, there is nothing to stop the PA Certificated Entities under control of Windstream Corp. from pursuing that billing policy. It is further denied that Prosecutory Staff’s concerns that a corporate parent and potential affiliates would implement the same billing policy implemented by Windstream PA is not “germane” to the Commission’s review of the Joint Application.

Prosecutory Staff submits that approval of the proposed transaction under 66 Pa. C.S. § 1103 is not “necessary or proper” if it results in the implementation of a billing policy that is in violation of the law and patently unfair to Pennsylvania customers. Moreover, this billing policy adversely impacts the fitness of that entity that is seeking approval of the Joint Application.

17. The averments of this paragraph state conclusions of law to which no answer is required. To the extent an answer is required, the averments of this paragraph are denied and strict proof is demanded at trial.

18. The averments of this paragraph state conclusions of law to which no answer is required. To the extent an answer is required, the averments of this paragraph are denied and strict proof is demanded at trial.

19. Denied. By way of further response, Prosecutory Staff did not file the Protest as a means of continuing to pursue issues in the pending informal investigation. Although Prosecutory Staff would agree that no other party protested the Joint Application relating to the billing practices of the Joint Applicants, regulated subsidiaries or affiliates, Prosecutory Staff submits that given the manner in which the “no proration” billing policy was implemented, it is hardly surprising that any interested party was not aware that the subsidiary of Windstream Corp., Windstream PA, had implemented its “no proration” policy, or implemented the policy in the deceptive manner that the tariff revision was presented. Moreover, the fact that the Joint Applicants represent that no changes will be implemented immediately is hardly reassuring given the manner in which Windstream PA implemented its “no proration” billing policy.

20. Denied. By way of further response, Prosecutory Staff submits that fitness of an applicant for a certificate of public convenience or the transfer of control is never irrelevant to the issues, parties, or public interest standard of review. It is further denied that Prosecutory Staff has not supported the relief requested in the Protest. Even the possibility that Windstream Corp. will have its PA Certificated Entities implement the “no proration” policy in the same manner that Windstream PA implemented the policy, does affect the managerial fitness of the Joint Applicants and the adequacy of their billing service. Prosecutory Staff’s Protest is directly related to the scope of the Chapter 11 change of control proceeding.

21. Denied. By way of further response, Prosecutory Staff’s position and conclusions based on the discovery responses of Windstream PA in the informal investigation are not unsubstantial as the only commitment with respect to integration decisions is that no changes to rates, services, terms, and conditions will be implemented immediately as a result of the transaction. This leaves open the possibility that the billing policy could be implemented at a later date.

22. Denied. By way of further response, the possibility that Windstream Corporation and the PA Certificated Entities would implement the “no proration” billing policy is not conjecture and sufficiently demonstrates an interest to establish standing. Furthermore, Prosecutory Staff is not pursuing its Protest to the Joint Application to pursue its prosecutorial function. Prosecutory Staff’s participation in the Joint Application as a Protestant is entirely different than its prosecutorial function in the informal investigation.

23. Denied. By way of further response, it appears that the Joint Applicants have completely ignored all the problems with the implementation and application of Windstream Corp.'s "no proration" billing policy detailed in the Protest. There is nothing after the closure of the transaction that would prevent the PA Certificated Entities from implementing this billing policy in a manner that does not provide adequate notice to the Commission, violates the Public Utility Code, violates Commission regulations, and charges customers for services they do not receive. It is further denied that the transaction could not affect current operations of regulated subsidiaries as the integration decisions will not be known until after the close of the transaction. Finally, Prosecutory Staff is without knowledge or information to form a belief as to the public benefits to be attained through the transaction.

24. Denied. By way of further response, Prosecutory Staff's Protest is not identical in scope to the pending informal investigation. As explained in the Protest (paragraphs 10 – 19), the purpose of the Protest is to impede the further implementation of Windstream Corp.'s "no proration" policy and present evidence on whether approval of the Joint Application is necessary or proper. On the other hand, Prosecutory Staff's informal investigation is pursuing a billing policy that has already been implemented by Windstream PA. Simply put, this investigation will address unrelated issues that involve fines and possible refunds for the implementation of the "no proration" billing policy by Windstream PA. These issues will not have to be resolved in any future proceeding if the "no proration" billing policy is not implemented for the PA Certificated Entities as sought by Prosecutory Staff in its Protest.

25. The averments of this paragraph state conclusions of law to which no answer is required. To the extent an answer is required, the averments of this paragraph are denied and strict proof is demanded at trial.

26. Denied. By way of further response, the paragraph addresses, for the most part, conclusions of law to which no response is required. However, the Joint Applicants use this paragraph to question Prosecutory Staff's motives in filing its Protest.

Prosecutory Staff's motive in pursuing its informal investigation was to determine whether Windstream PA's "no proration" billing policy violates the Public Utility Code, Commission regulations, federal regulations, and its own tariff. Prosecutory Staff's Protest made allegations that Windstream PA committed these violations. In its Preliminary Objections, having the opportunity to do so, the Joint Applicants did not contest Prosecutory Staff's finding or the substantive basis for filing the Protest.

Prosecutory Staff's motive in filing its Protest is to prevent Windstream Corp.'s PA Certificated Entities from implementing its "no proration" billing policy that charges customers for services that they do not provide, and their customers do not receive.

27. Denied. By way of further response, Prosecutory Staff did not file the Protest to give Joint Applicants its "perspective and findings." The email attached to their Preliminary Objections as Joint Applicants' Exhibit 4 was sent to Jeanne Shearer as a matter of professional courtesy to give Windstream PA notice that we would be filing a Protest and that the substance of the Protest would give Windstream PA's lobbyist informal notice as to our findings after completing the informal investigation. Rather than filing the Protest to give Prosecutory Staff's "perspective and findings" from the

informal investigation, which was that the “no proration” policy violated statutes and regulations and charged customers for services they did not receive, the email merely acknowledged to the Joint Applicants’ representative the obvious - our allegations in the Protest followed our findings and conclusions in the informal investigation.

28. The averments of this paragraph state conclusions of law to which no answer is required. To the extent an answer is required, the averments of this paragraph are denied and strict proof is demanded at trial.

29. Denied. By way of further response, the “rights and relief “ asserted by the Prosecutory Staff are clearly not the same in both the pending informal investigation and Prosecutory Staff’s Protest. The Joint Applicants’ actions in taking an email out of context is not dissimilar to filing a substantive tariff revision that totally changes its billing policy but describes the tariff changes as ministerial. The Protest was not filed to “give [the company] a good idea of our perspective of this investigation and the Company’s actions, and the findings we have reached.” Prosecutory Staff’s email stated that the Protest “will give you a good idea of our perspective of this investigation and the Company’s actions, and the findings we have reached.” Moreover, the parties to the investigation and transaction are not identical and this fact is important because it establishes that the proceedings are unrelated. Again, the investigation addresses the past implementation of the “no billing” billing policy whereas the Protest is intended, not to reveal the results of our informal investigation, but to prevent the further propagation of this billing policy in Pennsylvania by jurisdictional companies. Prosecutory Staff intends on pursuing formal action at the conclusion of the informal investigation. In addition to

addressing the substantive issues revolving around the “no proration” billing policy, Prosecutory Staff will pursue refunds to customers and the imposition of civil penalties going back to the initiation of this policy on January 7, 2009. Therefore, Prosecutory Staff’s Protest is intended to prevent Windstream Corp. from implementing its policy so additional Pennsylvanians will not be subjected to paying for services they do not receive. Staff will not have to address these issues of redress. Frankly, in the informal investigation, Prosecutory Staff requested that Windstream Corp. identify the amount of revenue derived from customers who were not credited for the partial periods. Windstream maintained it did not keep such records. Although in the formal complaint proceeding, Prosecutory Staff will continue to pursue this response as inadequate, we would prefer not to have to pursue these issues against the PA Certificated Entities.

Finally, Section 5.101(a)(6) is not applicable because the informal investigation and the Joint Application proceeding are not alike, as just explained. Thus, there is no prior related proceeding because the status of each proceeding is much different. The issue in the transaction proceeding is the likelihood that Windstream Corp.’s regulated subsidiaries will implement the “no proration” billing policy to the detriment of customers of those companies. Based on information, documents, and statements of Windstream PA in the informal investigation, Prosecutory Staff believes that it would not be in the public interest for Windstream Corp. to acquire these companies and/or for the “no proration” billing policy to be further employed in Pennsylvania. This concern and reason alone is sufficient to support denying the Preliminary Objection. If Prosecutory

Staff's Protest is dismissed, and the "no proration" billing policy is implemented that horse will effectively already be out of the barn.

30. Denied. By way of further response, given Windstream PA's "no proration" billing policy, and the manner in which it was implemented, it would have been improvident on the part of Prosecutory Staff not to have filed the Protest and allowed the transaction to close paving the way for Windstream Corp's. jurisdictional subsidiaries to implement the policy and negatively impact Pennsylvania customers.

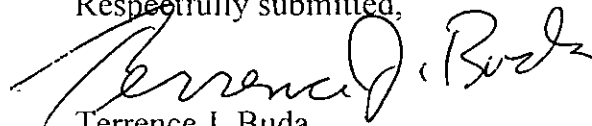
31. Admitted. By way of further response, this paragraph reflects the Joint Applicants' commitment that the PA Certificated Entities, as newly acquired subsidiaries of Windstream Corp., will not implement the same "no proration" policy as Windstream PA either until the later of the completion of the billing and integration processes or resolution of the separate investigation of Windstream PA's billing policy. Prosecutory Staff assumes that Joint Applicants' commitment anticipates that the resolution of the separate investigation will include a period of time for a formal complaint proceeding.

32. Denied.

33. Denied.

34. Denied.

Respectfully submitted,



Terrence J. Buda

Assistant Counsel

Attorney ID #33477

Law Bureau Prosecutory Staff

DATED: October 6, 2011

## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing documents, Answer to Preliminary Objections of Joint Applicants, upon the persons listed and in the manner indicated below, which service satisfies the requirements of 52 Pa. Code § 1.54 *et seq.*

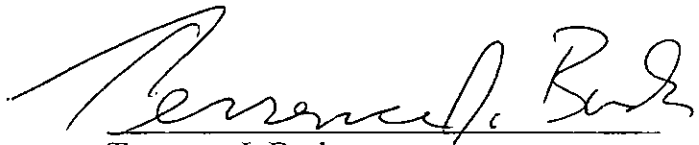
### Notification by first class mail addressed as follows:

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