



RAYMOND B. OSTROSKI  
Direct Dial: 717.255.7622  
rostroski@thomaslonglaw.com

October 2, 2012

*Via Electronic Filing*

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

In re: Petition of US LEC of Pennsylvania, Inc. d/b/a PAETEC Business Services for a Waiver of the Commission's Regulations at 52 Pa. Code §§ 53.58 and 53.59 To Permit Detariffing of Services to Enterprise and Large Business Customers; Docket No.

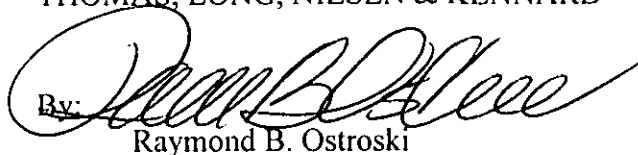
Dear Secretary Chiavetta:

Enclosed for filing, please find the original Petition of US LEC of Pennsylvania, Inc. d/b/a PAETEC Business Services for a Waiver of the Commission's Regulations at 52 Pa. Code §§ 53.58 and 53.59 To Permit Detariffing of Services to Enterprise and Large Business Customers in the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service.

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

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By:   
Raymond B. Ostroski

Enclosures  
cc: Certificate of Service

RECEIVED  
2012 OCT -2 PM 2:43  
PA PUC  
SECRETARY'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of US LEC of Pennsylvania, Inc. :  
d/b/a PAETEC Business Services :  
for a Waiver of the Commission's Regulations :  
at 52 Pa. Code §§ 53.58 and 53.59 To Permit : Docket No. \_\_\_\_\_  
Detariffing of Services to Enterprise and Large :  
Business Customers :

RECEIVED  
2012 OCT -2 PM 2:43  
PA PUC  
SECRETARY'S BUREAU

**PETITION FOR WAIVER OF REGULATIONS**

Pursuant to 66 Pa. C.S. § 501 and 52 Pa. Code § 5.43, US LEC of Pennsylvania, Inc. d/b/a PAETEC Business Services. (“Windstream CLEC”) respectfully requests a waiver of certain portions of the Commission’s regulations at 52 Pa. Code §§ 53.58 and 53.59 relating to the tariffing and classification of services offered by competitive local exchange carriers (“CLEC”). Windstream CLEC requests this waiver so that Windstream CLEC will have the same degree of regulatory flexibility for competitive declaration and detariffing that is guaranteed to incumbent local exchange carriers (“ILECs”) under the provision of Chapter 30 of the Public Utility Code, as well as the same flexibility granted to *MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services (“Verizon Access”)*<sup>1</sup> and AT&T Communications of Pennsylvania, LLC (“AT&T”).<sup>2</sup> Windstream CLEC further requests this waiver so that Windstream CLEC may detariff its services offered to enterprise and large business customers in all ILEC service territories in Pennsylvania, as Windstream CLEC’s other CLEC affiliates have done successfully in many other states, to better serve the needs and meet

<sup>1</sup> See, *Petition of MCImetro Access Transmission Services for a Waiver of the Commission's Regulations at 52 Pa. Code §§ 53.58 and 53.59 to Permit Detariffing of Services to Enterprise and Large Business Customers*, Docket No. P.-2009-2082991, Order dated June 3, 2009.

<sup>2</sup> See, *Petition of AT&T Communications of Pennsylvania, LLC for a Waiver of the Commission's Regulations at 52 Pa. Code §§ 53.58 and 53.59 to Permit Detariffing of Services to Enterprise and Large Business Customers*, Docket No. P-2009-2137972, Order dated May 20, 2010.

the expectations of these sophisticated customers. In support of this petition, Windstream CLEC states as follows:

RECEIVED  
2012 OCT -2 PM 2:48  
PA PUC  
SECRETARY'S BUREAU

**I. BACKGROUND**

1. The name and address of the Petitioner is:

US LEC of Pennsylvania, Inc.  
d/b/a PAETEC Business Services  
4001 North Rodney Parham Road  
Little Rock, AR 72212

2. The name, address and email address of Petitioner's attorneys are:

Norman J. Kennard, Esquire, ID No. 29921  
[nkennard@thomaslonglaw.com](mailto:nkennard@thomaslonglaw.com)  
Raymond B. Ostroski, Esquire, ID No. 38681  
[rostroski@thomaslonglaw.com](mailto:rostroski@thomaslonglaw.com)  
THOMAS, LONG, NIESEN & KENNARD  
212 Locust Street, Suite 500  
Harrisburg, Pennsylvania 17101

3. Windstream CLEC is a CLEC that provides an alternative competitive choice for telecommunications services for, among others, large and enterprise business customers in the service territories of various ILECs, including Verizon Pennsylvania Inc. ("Verizon PA") and the United Telephone Company of Pennsylvania, LLC d/b/a CenturyLink ("CenturyLink PA")

4. On January 7, 2009, Verizon Access filed a petition to detariff its services to large and enterprise business customers. On June 3, 2009, the Commission granted Verizon Access a waiver of 52 Pa. Code §§ 53.58(c), 53.58(d) and 53.59(d). This Order permitted Verizon Access to declare its non-protected services offered to enterprise and large business customers as competitive without first having to file a petition and obtain a competitive designation from the Commission. It further granted a waiver of any requirement to maintain informational tariffs or price lists for both non-protected services and dial tone service offered to enterprise and large

business customers for a two year trial basis upon the condition that Verizon Access maintain its terms, conditions and rates for these services in an on-line guide. By Order entered April 26, 2012, the Commission extended the temporary waiver for an additional four years.

5. On October 3, 2009, AT&T filed a petition to detariff its services to large and enterprise business customers. On May 20, 2010, the Commission granted AT&T a waiver of 52 Pa. Code § 53.58(c), § 53.58(d) and § 53.59(d). This Order permitted AT&T to declare its *non-protected services offered to enterprise and large business customers as competitive without first having to file a petition and obtain a competitive designation from the Commission*. It further granted a waiver of any requirement to obtain informational tariffs or price lists for both non-protected services and dial tone services offered to enterprise and large business customers on a two year trial basis upon the condition that AT&T maintain its terms, conditions and rates for these services in an on-line guide. By Order entered June 21, 2012, the Commission extended the temporary waiver for an additional four years.

6. By this Petition for Waiver, Windstream CLEC asks the Commission to provide Windstream CLEC with at least the same degree of regulatory flexibility as the ILECs with which Windstream CLEC competes when it comes to matters of detariffing and competitive classification, as well as with Verizon Access and AT&T, by permitting Windstream CLEC to declare competitive and detariff any nonprotected service, regardless of whether or not the ILEC itself has chosen to declare its own services competitive and without having to make a demonstration of competitiveness and obtaining “relief” from the Commission.

7. Because Windstream CLEC seeks detariffing only for services offered to large and sophisticated customers, Windstream CLEC also respectfully requests that the Commission exercise its discretion under 66 Pa. C.S. § 1302 to allow it to detariff the protected service of

basic dial tone line provided to large and enterprise business customers in all areas. Windstream CLEC requests waiver of any regulation that requires tariffing of this service, so that Windstream CLEC can achieve full detariffing of services to these customers.

8. Windstream CLEC also requests a waiver of the Commission's regulation at 52 Pa. Code § 53.58(d) under which, even after Windstream CLEC services are detariffed, the Commission would require it to file informational tariffs and/or price lists. Windstream CLEC requests that the informational tariff or price list requirement be waived on the condition that Windstream CLEC posts its terms, conditions and rates on a publicly available website, just as the Commission required for Verizon Access.

9. Windstream CLEC affiliated companies have successfully detariffed services to large and enterprise business customers in a number of states. These customers are generally companies that are accustomed to dealing with Windstream CLEC on a detariffed basis. Some large business customers choose Windstream CLEC as their telecommunications service provider in part because it offers uniform terms, conditions, service descriptions and processes over multiple states, to the extent consistent with applicable law, regardless of the service or the location where it is offered. To advance these goals of uniformity and simplicity, Windstream CLEC offers its large business and enterprise customers an executable contract and/or its on-line terms and conditions which appear at [www.windstream.com](http://www.windstream.com) and which contains an on-line catalog of standardized terms, conditions, service descriptions and state specific rates for local exchange services offered by Windstream CLEC that have been detariffed and allows changes to be made contemporaneously across the various states that have detariffed these services. Sophisticated enterprise and large business customers expect and demand to be able to consult one document for a simplified and efficient foundation for the terms and conditions of service,

rather than having to consult tariffs in multiple states. Windstream CLEC seeks detariffing in Pennsylvania to allow it to better meet the needs and expectations of these sophisticated customers in Pennsylvania as its affiliated companies have done in other states.

## II. ARGUMENT

### A. **The Commission Should Waive 52 Pa. Code § 53.58 So That Windstream CLEC Has The Same Detariffing Flexibility As the ILECs and Verizon Access.**

10. Chapter 30 (as amended in Act 183) provides a process whereby an ILEC may declare any service that is not categorized as “protected” under the statute to be “competitive,” and it will be so classified automatically, without Commission review or approval. 66 Pa. C.S. § 3016(b). ILEC services already classified competitive before Act 183 took effect at the end of 2004 also remain competitive under the new law. 66 Pa. C.S. § 3013(c).

11. Under Act 183, if a service is classified as “competitive,” the Commission cannot require it to be tariffed. 66 Pa. C.S. § 3016(d)(2) (“the commission may not require tariffs for competitive service offers to be filed with the commission”). This tariffing restriction is not limited only to services offered by ILECs. And while Act 183 preserved the Commission’s ability to require the ILEC to file a price list for competitive services, 66 Pa. C.S. § 3016(d)(4) (“the commission may require a local exchange telecommunications company to maintain price lists with the commission applicable to its competitive services”), such price lists are specifically limited to ILEC services; there is no provision allowing the Commission to require price lists of competitive LECs.

12. The result of the interplay among these provisions is that ILECs are free to declare any nonprotected service to be competitive without requiring Commission approval, and

once they do so the ILECs cannot be required to tariff those services, but at most can be required to file a price list.

13. The pre-Act 183 regulation at 52 Pa. Code § 53.58(a) was intended to maintain “tariff parity” between the filing requirements applicable to ILECs and CLECs at that time. It states that “ILEC services that have been classified as competitive under the relevant provisions of 66 Pa. C.S. § 3005 (relating to competitive services) may also be offered by CLECs as competitive services without prior competitive determination and classification by the Commission subject to this section.” 52 Pa. Code § 53.58(a). Under the old Chapter 30, there was no provision to “declare” a service to be competitive, and a Commission determination was required for any competitive classification. This regulation thus simply made clear that CLECs would not be required to make a competitive showing if the ILEC had already done so.

14. The Commission has already held that ILECs should not have more freedom and flexibility to automatically detariff services than a CLEC operating in the same territory by limiting CLECs to automatically detariffing only those services that the ILEC has chosen to designate as competitive.

15. The ability of Windstream CLEC and other CLECs to declare nonprotected services as competitive and to detariff them should not be dependent on what the local ILEC has or has not done to declare its own services competitive. Applying the regulations in this manner would create the very “regulatory divide” that the Commission has previously sought to avoid. This more onerous regulation of CLECs is contrary to the status of CLECs as competitive providers of alternative service and contravenes Act 183’s policy goal to promote and encourage competitive entry by CLECs “on *equal* terms throughout all geographic areas of this Commonwealth.” 66 Pa. C.S. §3011(1). It also violates the restriction of 47 U.S.C. § 253,

which requires state regulations to be “competitively neutral” and prohibits state regulation of CLECs which erects barriers to entry.

16. The Commission should waive its regulations to permit Windstream CLEC the same degree of *regulatory* flexibility that the statute now guarantees to ILECs by allowing Windstream CLEC to declare competitive and detariff its nonprotected services to the same degree as the corresponding ILECs. This waiver is needed to avoid burdening CLECs in a way that is not “competitively neutral” and thus runs afoul of Section 253. Indeed, such a waiver is essential in order to conform the regulations to the changes in Chapter 30 pursuant to the Commission’s own cogent observation that “the Pennsylvania General Assembly surely did not intend to undermine the letter and the spirit of [Section 253 of] TA-96 through the enactment of Act 183 in 2004.”<sup>3</sup>

17. Windstream CLEC therefore requests that the Commission waive the requirements of 52 Pa. Code § 53.58 to provide AT&T the same degree of regulatory flexibility as is provided to ILECs under Act 183. Specifically, the Commission should allow Windstream CLEC to declare its nonprotected services to large and enterprise business customers in any ILEC territory to be competitive and to detariff those services.

**B. The Commission Should Waive Any Regulations Requiring Windstream CLEC To Tariff Basic Dial Tone Line Service to Enterprise And Large Business Customers.**

18. Windstream CLEC also respectfully requests that the Commission exercise its discretion to permit detariffing of Windstream CLEC’s basic dial tone line service to large and enterprise business customers in all areas - even if that service is not classified “competitive” for

---

<sup>3</sup> *MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services Supplement NO. 120 to Pa. P.U.C. Tariff No. 3, Proposing to Detariff Local Exchange Services for Large and Enterprise Businesses*, Docket No. R-2008-2054904, Order dated November 26, 2008, p. 3.

the ILEC - so that all of Windstream CLEC's retail services offered to those customers can be detariffed.

19. Windstream CLEC recognizes that basic dial tone line service is a "protected service" under Act 183 and ILECs cannot automatically declare it as competitive without a competitive showing. In Verizon PA's territory, all services offered to its enterprise and large business customers are competitive, including basic dial tone line service, based upon a Commission finding that pre-dates Act 183, but in other ILEC territories, basic dial tone line service even to large business customers may still be classified as noncompetitive and protected. The Commission nevertheless retains the flexibility and authority to permit that service to be detariffed for a particular carrier in appropriate circumstances, without classifying them "competitive" for other regulatory purposes.

20. The Commission has discretion under 66 Pa. C.S. § 1302 to establish tariffing requirements "within such time and in such form as the commission may designate." Windstream CLEC respectfully requests that it exercise this discretion to allow Windstream CLEC to detariff basic dial tone line service to large and enterprise business customers. Further, to the extent that any provision of Chapter 53 requires Windstream CLEC to tariff these services, Windstream CLEC respectfully requests a waiver of that requirement.

21. Windstream CLEC is a competitive carrier that by definition is coming in as, at the very least, the second provider in the territory (and there likely are many more alternative service providers in these areas). Windstream CLEC is seeking this relief only for services offered to large and enterprise customers, which are sophisticated buyers of telecommunications services. As discussed below, these customers sometime purchase services on a multistate basis, are accustomed to having all of their services detariffed, and are well able to find the information

they need on the company's website. It is not necessary to require a CLEC like Windstream CLEC to tariff basic dial tone line service for such customers. It also could cause customer confusion if certain services are tarified in one geographic area in Pennsylvania but not in another, even though offered under the same Windstream CLEC contract.

**C. The Commission Should Waive The Requirement for Windstream CLEC To Maintain Informational Tariffs Or Price Lists, In Favor of Website Posting.**

22. Under Chapter 30, the corresponding ILEC cannot be required to file more than a "price list," and even that requirement is discretionary to the Commission and not mandatory. 66 Pa. C.S. § 3016(d)(4). The Commission should not rely on regulations that were promulgated for the very purpose of equalizing tariff filing burdens for CLECs and ILECs to impose a more onerous burden on CLECs to file an "informational tariff" that cannot be required of the ILEC under applicable law.

23. Windstream CLEC requests that the Commission waive the requirements of Section 53.58(d) to eliminate any requirement for Windstream CLEC to file a price list or informational tariff for its detariffed services to enterprise and large business customers. As a condition of this waiver, Windstream CLEC would maintain its terms, conditions, and rates for these services on-line and/or require customers to execute written contracts for services. One reason these enterprise and large business customers choose Windstream CLEC, and utilize contracts and/or its on-line rate and service information postings, is to obtain the very same simplicity and uniformity that Windstream CLEC seeks to offer with this waiver request - uniform terms, conditions, service descriptions, and processes to the extent consistent with applicable law regardless of what the service is or where it is offered.

**D. Enterprise And Large Business Customers Are Sophisticated Customers That Are Accustomed To Operating On A Detariffed Basis In Other States.**

24. The customers that purchase the services for which Windstream CLEC seeks detariffing are enterprise and large business customers that have negotiated and signed contracts with Windstream CLEC or have otherwise agreed to be bound by Windstream CLEC's on-line terms and conditions.

25. These customers typically have telecommunications consultants and outside counsel who advise them in choosing their telecommunications providers. These advisers actually review the proposed contracts and/or on-line terms and conditions, as well as the applicable state-specific tariff and other posted information before recommending that the customers choose to accept service from Windstream CLEC. These contracts and/or on-line resources provide a better customer experience because all of the rates, terms, and conditions for all of the detariffed states can be readily found and referred to. By contrast, each time a customer's consultant or attorney needs to consult an individual state tariff, the customer incurs needless cost and delay. Windstream CLEC's contracts and/or on-line references save customers time and resources, and also provide a more cost-effective way for Windstream CLEC to provide the customer the uniformity it desires.

26. If detariffing is permitted in Pennsylvania, as a condition, Windstream CLEC would agree to continue to provide on its publicly available website the terms, conditions, product descriptions, and rates applicable to its enterprise and large business customers that are no longer tariffed.

III. CONCLUSION

For the foregoing reasons, Windstream CLEC respectfully requests that the Commission waive its applicable regulations as currently set forth in 52 Pa. Code §§ 53.58 and 53.59 to permit Windstream CLEC to detariff its services to its enterprise and large business customers in all applicable ILEC territories and to maintain the terms, conditions and rates for those services on a publicly available website.

Respectfully submitted,

By 

Raymond B. Ostroski, ID No. 38681  
[rostroski@thomaslonglaw.com](mailto:rostroski@thomaslonglaw.com)  
THOMAS, LONG, NIESEN & KENNARD  
212 Locust Street, Suite 500  
Harrisburg, PA 17101  
(717) 255-7622

*Attorneys for US LEC of Pennsylvania, Inc.  
d/b/a PAETEC Business Services*

Dated: October 2, 2012

RECEIVED  
2012 OCT -2 PM 2:48  
PA PUC  
SECRETARY'S BUREAU

**VERIFICATION**

I, Chris Cranford, Product Manager - Pricing & Tariffs, of US LEC of Pennsylvania, Inc. d/b/a PAETEC Business Services, hereby state that the facts in the attached Petition are to and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same if a hearing was 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.



Chris Cranford  
Product manager - Pricing & Tariffs  
US LEC of Pennsylvania, Inc.  
d/b/a PAETEC Business Services

Date: 10-2-12

RECEIVED  
2012 OCT -2 PM 2:44  
PA PUC  
SECRETARY'S BUREAU

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of October, 2012, I did serve a true and correct copy of the foregoing upon the persons below via first class mail, postage prepaid, at Harrisburg, Pennsylvania as follows:

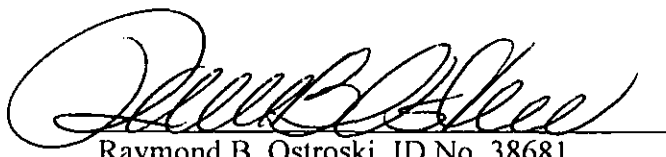
Office of Consumer Advocate  
Forum Place, 5<sup>th</sup> Floor  
555 Walnut Street  
Harrisburg, PA 17101

Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

Office of Trial Staff  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Susan D. Paiva, Esquire  
Verizon Pennsylvania  
1717 Arch Street  
Philadelphia, PA 19103

Zsuzsanna E. Benedek, Esquire  
CenturyLink  
240 North Third Street, Suite 300  
Harrisburg, PA 17101



Raymond B. Ostroski, ID No. 38681

RECEIVED  
2012 OCT -2 PM 2:43  
PA PUC  
SECRETARY'S BUREAU