

PENNSYLVANIA PUBLIC UTILITY COMMISSION

HARRISBURG, PA 17105-3265

US LEC of Pennsylvania, Inc.

PUBLIC MEETING – APRIL 18, 2013

PAETEC Communications, Inc.

2338957-TUS

Windstream Communications, Inc.

Docket No. R-2012-2338957, *et al.*

Windstream D&E Systems, Inc.

MOTION OF COMMISSIONER PAMELA A. WITMER

Before the Pennsylvania Public Utility Commission (Commission) today are several tariff supplements filed by the competitive local exchange carriers (CLECs) US LEC of Pennsylvania, Inc., PAETEC Communications, Inc., Windstream Communications, Inc., and Windstream D&E Systems, Inc. (collectively, the Companies).¹ The tariff supplements were filed in December 2012 and January 2013 proposing to implement a collection fee of \$12.00 for business customers with any unpaid balance when a previous month's balance has not been paid in full prior to the next billing date. The proposed collection fee is in addition to the existing percentage-based late payment charge of 1.5% per month for business customers. In accordance with our regulations regarding tariff filing requirements for incumbent local exchange carriers (ILECs) and CLECs, the tariff provisions are currently in effect.² In addition, no protests were filed and no hearings were held regarding the Companies' tariff supplements.

In reviewing the submitted tariff supplements, the Commission's Bureau of Technical Utility Services (TUS) extended the review period by 30 days as permitted by our regulations. In addition, TUS issued data requests to the Companies in order to solicit additional information to assist in their review. In response to certain data requests, the Companies indicated that their business customer contracts permit the imposition of a collection fee as long as they receive the applicable tariff approvals by the Commission. Further, the Companies also indicated that this type of collection fee has been charged in other states where the Windstream CLEC entities operate in an effort to offset the costs associated with the collection of amounts owed by delinquent customers. The Companies list specific costs that can be incurred such as the submission of late notices, implementing bill messages, collection calls and final write-off of delinquent amounts that are uncollectible.

The Commission's regulations at 52 Pa. Code §§53.57, *et al.* set forth the tariff filing requirements for ILECs and CLECs including cost support requirements. Specifically, Section 53.59(e) provides that the Commission may request relevant documentary support, including cost support, from CLECs when they introduce new or revised rates that are higher than the corresponding

¹ US LEC of Pennsylvania Inc. filed Supplement No. 31 to Tariff PA P.U.C. No. 1, PAETEC Communications, Inc. filed Supplement No. 35 to Tariff PA P.U.C. No. 3, Windstream Communications, Inc. filed Supplement No. 6 to Tariff PA P.U.C. No. 2, and Windstream D&E Systems, Inc. filed Supplement No. 6 to Tariff PA P.U.C. No. 5.

² 52 Pa. Code §§53.59(c)(1) and (4).

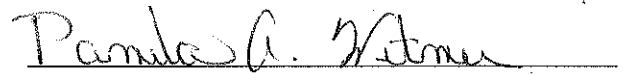
rates of an ILEC in an ILEC's service area. The regulation also states that the Commission's request can only occur when it is necessary to protect consumers such as, without limitation, when the service is targeted to the economically disadvantaged or customers with poor credit histories. 52 Pa. Code at §53.59(e).

I believe that the tariff supplements filed by the Companies do not invoke a Commission determination to require cost data to support the imposition of a collection fee on business customers. While our regulations concerning tariff filings of this type by CLECs permit Commission discretion to request cost data related to new or revised rates for services, our discretion only applies to rates for services which are clearly defined as noncompetitive and competitive at Section 53.57.³ Because the fee that is being charged by the Companies does not implicate the rates for noncompetitive or competitive services as defined by both the current Chapter 30 and our regulations, I believe that Section 53.59 does not apply here. Therefore, the Commission cannot use Section 53.59 as a basis to request cost data to support the \$12.00 collection fee filed in the tariff supplements.

THEREFORE, I move that:

1. The Order approving the tariff supplements be modified consistent with this motion; and
2. The Commission's Bureau of Technical Utility Services draft an appropriate Order consistent with this Motion.

DATE: April 18, 2013



PAMELA A. WITMER, COMMISSIONER

³ Competitive service is defined as a service or business activity offered by an ILEC or CLEC that has been classified as competitive by the Commission under the then relevant provisions of 66 Pa.C.S. §3005 (relating to competitive services). Noncompetitive service is a protected telephone service as defined in 66 Pa.C.S. §3002 (relating to definitions) or a service that has been determined by the Commission as not a competitive service. 52 Pa. Code §53.57. We note that the then relevant provisions of the old Chapter 30 law at 66 Pa. C.S. §§ 3005 and 3002 have been superseded by the 2004 version of the statute at 66 Pa. C.S. § 3011 *et seq.*