



THOMAS, NIESEN & THOMAS, LLC

Attorneys and Counsellors at Law

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September 15, 2017

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Linda Leonard v. Windstream Communications, Inc.
Docket No. C-2017-2615997

Dear Secretary Chiavetta:

Enclosed for filing on behalf of Windstream Communications, Inc. are its Preliminary Objections to the Complaint of Linda Leonard in the above matter. Copies of the Preliminary Objections are being served in accordance with the attached certificate of service.

Please be advised that, in accordance with 52 Pa. Code § 5.101(e), Windstream is not filing an Answer to the Complaint at this time because one of the preliminary objections argues insufficient specificity of a pleading.

Should you have any questions or need additional information, please do not hesitate to contact me. Thank you for your assistance.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Charles E. Thomas, III

Enclosure

cc: Certificate of Service (w/encl.)
Daniel Pilkington (w/encl.) (via email)

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

| | | |
|----------------------------------|---|---------------------------|
| Linda Leonard, | : | |
| Complainant | : | |
| | : | |
| v. | : | Docket No. C-2017-2615997 |
| | : | |
| Windstream Communications, Inc., | : | |
| Respondent | : | |

NOTICE TO PLEAD

TO: Linda Leonard
1379 Hungry Hollow Rd.
Leechburg, PA 15656

YOU ARE HEREBY NOTIFIED, pursuant to 52 Pa. Code § 5.101(b), an answer to the following Preliminary Objections must be filed within ten (10) days of its date of service. Your answer to the Preliminary Objections must be filed with the Secretary of the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the undersigned counsel for Windstream Communications, Inc.

Dated: September 15, 2017



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*Attorney for Respondent
Windstream Communications, Inc.*

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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**PRELIMINARY OBJECTIONS OF
WINDSTREAM COMMUNICATIONS, INC.**

AND NOW, comes Respondent Windstream Communications, Inc. (“Windstream”), by and through its counsel, and, pursuant to 52 Pa. Code § 5.101(a), files these Preliminary Objections to the Complaint of Linda Leonard (“Complainant” or “Ms. Leonard”). In support of preliminary dismissal of the Complaint, Windstream submits as follows:

I. INTRODUCTION

1. On or about July 10, 2017, Complainant filed a formal complaint with the Public Utility Commission (“Commission”), alleging a reliability, safety or quality problem with her telephone service and requesting the installation of a new “hub or substation” as relief.

2. The Commission served the Complaint upon Windstream on July 26, 2017.

3. By Secretarial Letter dated August 14, 2017, the Commission granted Windstream an extension of time until September 15, 2017 in which to file an answer and/or other responsive pleading to the Complaint.

4. The Commission’s Rules of Administrative Practice and Procedure permit the filing of preliminary objections to challenge a complaint. Specifically, the Commission’s

regulation at 52 Pa. Code § 5.101(a) permits a party to file preliminary objections, *inter alia*, when the complaint lacks insufficient specificity and when the complaint is legally insufficient. 52 Pa. Code § 5.101(a)(3) and (4).

5. Windstream objects to Ms. Leonard’s Complaint on grounds that it is insufficiently specific and legally insufficient.

II. PRELIMINARY OBJECTIONS

A. Insufficient Specificity of the Complaint – 52 Pa. Code § 5.101(a)(3)

6. Ms. Leonard’s Complaint should be dismissed pursuant to 52 Pa. Code § 5.101(a)(3) because it is insufficiently specific.

7. The Commission’s regulations require a formal complaint to set forth “[a] clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation.” 52 Pa. Code § 5.22(a)(5).

8. In her Complaint, Ms. Leonard checked a box indicating that she is having “a reliability, safety or quality problem” with her telephone service.¹ The Complainant, however, failed to explain what service problems presently exist or provide any relevant information that would enable Windstream to determine whether a violation of law has occurred.

9. While the Complainant attached a series of dispute reports dating back to 2011 related to informal complaints apparently filed with the Commission’s Bureau of Consumer Services (“BCS”), a review of those dispute reports confirms that, in each and every instance, Windstream promptly investigated Complainant’s service issue claims and took reasonable and appropriate steps to resolve such claims, including making all necessary repairs and offering bill

¹ Complaint at 2.

credits. Ms. Leonard, moreover, acknowledged to Windstream that either she was satisfied with the action taken or the service issues had been resolved.

10. Since the Complainant states that the Complaint is not based on an appeal from a BCS decision, and no additional information is provided aside from old informal complaints, it is impossible for Windstream to ascertain the basis for the Complainant's allegations that there is a "reliability, safety or quality problem" with the Complainant's telephone service. In addition, general statements about needing "reliable" landline telephone service for an "emergency"² fail to provide sufficient information for Windstream to determine whether the Complainant's claims have any merit and to meaningfully respond to the allegations in the Complaint.

11. Based on the limited facts provided in the Complaint, there does not appear to be any current or existing reliability, safety or quality problems with the Complainant's telephone service. In fact, Windstream's own investigation into the Complainant's account did not uncover any new trouble tickets or service issues since the date of the most recent informal complaint.

12. A complaint must contain information specific enough to allow the respondent to understand the allegations against it in order to conduct a meaningful investigation of the allegations and to prepare a coherent response or defense.³ Ms. Leonard's Complaint fails to meet this standard and therefore should be dismissed.

B. Legal Insufficiency of the Complaint – 52 Pa. Code § 5.101(a)(4)

13. The Complaint should also be dismissed pursuant to 52 Pa. Code § 5.104(a)(4) because it fails to cite a statute, regulation, tariff provision, or Commission order which Windstream has allegedly violated and is, therefore, legally insufficient.

² Complaint at 3.

³ *Angelo Rodriguez v. Philadelphia Gas Works*, Docket No. F-2009-2110772, Initial Decision (Final Order entered Jan. 5, 2010).

14. The Public Utility Code requires a formal complaint to set forth “any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the Commission.” 66 Pa.C.S. § 701. *See also* 52 Pa. Code §§ 5.21(a) and 5.22(a)(5).

15. In her Complaint, Ms. Leonard alleges that she is having a reliability, safety, or quality problem with her telephone service, but fails to identify a statute, regulation, tariff provision, or Commission order which Windstream has allegedly violated.

16. Moreover, all actions taken by Windstream in connection with the informal complaints attached to the Complaint were in conformity with the Commission’s regulations and acceptable industry practice, and are neither unusual nor a breach of the company’s duty as a public utility to furnish and maintain adequate, efficient, safe and reasonable service and facilities.

17. A complaint must be dismissed as legally insufficient where, as here, even accepting as true all well-pleaded material and relevant facts, the complaint “does not raise a violation of the Public Utility Code, any Commission Order or regulation or any Commission-approved tariff.”⁴

18. The Complainant has failed to present any legally sufficient claims for which relief can be granted, and the Complaint, accordingly, should be dismissed. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 52 Pa. Code § 5.21(d).

⁴ *Evans v. PECO Energy Company*, Docket No. C-2013-2368477, Initial Decision (Final Order entered February 6, 2014).

III. CONCLUSION

WHEREFORE, for the reasons set forth above, Windstream Communications, Inc. respectfully requests that the Pennsylvania Public Utility Commission grant these Preliminary Objections and dismiss the Complaint of Linda Leonard at Docket No. C-2017-2615997.

Respectfully submitted,



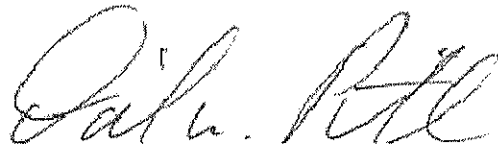
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Harrisburg, PA 17101
Tel: 717.255.7611
cet3@tntlawfirm.com

*Attorney for Respondent
Windstream Communications, Inc.*

DATED: September 15, 2017

VERIFICATION

I, Daniel Pilkington, Counsel II for Windstream Communications, Inc., hereby state that the facts set forth in the foregoing document 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).



Daniel Pilkington, Counsel II

Dated: September 15, 2017

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION


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CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of September, 2017, served a true and correct copy of the foregoing document upon the person(s) listed below in accordance with the requirements of 52 Pa. Code § 1.54:

VIA FIRST CLASS MAIL

Linda Leonard
1379 Hungry Hollow Rd.
Leechburg, PA 15656



Charles E. Thomas, III
PA Attorney ID # 201014