

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its) RULE AND REGULATION NO. 172
Own Motion, seeking to amend Title 291,)
Chapter 5, Telecommunications)
Rules and Regulations, to add rules)
regarding customer billing practices.)

**COMMENTS AND PROPOSED REVISIONS TO
TELECOMMUNICATIONS RULE 002.17**

By Order entered May 19, 2009, the Nebraska Public Service Commission (“Commission”) released an Order Opening Docket and Seeking Comment to which was attached proposed amendments to NAC, Title 291, Chapter 5, Telecommunications Rule 002.17 (the “Rule”). In such Order the Commission requested that comments on the Rule be filed on or before 5:00 p.m. (CDT) on June 30, 2009.

These Comments are submitted on behalf of the Windstream Nebraska, Inc., Windstream Systems of the Midwest, Inc., and Windstream of the Midwest, Inc., collectively referred to as “Windstream.” Windstream appreciates the opportunity to provide these comments regarding the proposed Rule.

Windstream Positions on Sections 002.17A, 002.17B and 002.17D

Windstream has had the opportunity to review the Comments of the Incumbent Local Exchange Carrier Group (“ILEC Group”) that will be filed with the Commission on June 30, 2009. Windstream concurs with the ILEC Group’s comments regarding Sections 002.17A, 002.17B, and 002.17D, and incorporates such Comments herein as if set forth at length.



Windstream Comments on Section 002.17C

The Requirement that Customers receive a pro rata refund in their "Final Bill"

The proposed language in Section 002.17C reads as follows:

Final Bills: Upon termination of service, either customer- or carrier-initiated, the carrier shall cease charging the customer for services and equipment as of the date of termination and shall refund the pro rata portion of the month's charges for the period of days remaining in the billing period after termination of service to the customer.

The proposed language in Section 002.17C is problematic for a number of reasons. First, the Commission lacks the requisite jurisdiction to impose this type of requirement. Second, the proposed requirement unnecessarily places regulated providers at a further competitive disadvantage. Third, the proposed language is inconsistent with established practices and approved tariffs.

a. The Commission Lacks the Jurisdiction to Impose this Requirement

As noted in the ILEC Group's discussion regarding proposed Section 002.17A2, the Commission's jurisdiction extends only to quality of service matters. Imposing a requirement affecting the contractual relationship between the carrier and its customer goes well beyond issues of service quality, subscriber deposits and the disconnection of service. When the Nebraska Legislature passed LB 835, it took what were then dramatic steps to create an environment of light-handed regulation over the telecommunications industry in this State. The Legislature's intent to eliminate rate regulation and to direct the Commission to exercise jurisdiction only with regard to quality of service issues should not be circumvented to create an added layer of regulation that is not based in current law.

Similarly, the Commission should not attempt to use its limited rate regulation authority as a basis for dictating the type of contractual relationship the customer and the carrier should have concerning provision of service. Moreover, requiring that a customer receives a pro rata refund in all cases where a final bill is rendered is clearly not a quality of service issue.

b. The proposed provision places incumbent providers at a competitive disadvantage

Windstream and competitive local exchange companies (“CLECs”) unjustifiably still remain subject to various levels of state and federal regulation, all of which do not apply to other competitors. In its existing form, the regulatory environment already has been slow to keep up with the competitive marketplace, and there exists no reason to worsen the existing disparity by creating further divides between the various market providers all vying for the same customers. Despite the existence of this competition,¹ regulated carriers continue to be the target of efforts to impose additional regulation particularly in areas that are critical to customer retention and the ability to remain competitive with unregulated providers. The efforts to impose further regulation not only create greater regulatory disparity, but also place incumbents such as Windstream at a greater and clear competitive disadvantage. The proposed change to Rule and Regulation No. 172 is a clear example of creating disparate regulation. This proposed Rule is also inconsistent with the underlying principal objectives of LB 835, which was intended to create less regulation and limit the Commission’s jurisdiction to quality of service.

¹ According to the U.S. Department of Health and Human Services, State-level estimates from the National Health Interview Survey from January – December 2007 found that Nebraska ranked third in the nation for wireless substitution in the prevalence of wireless-only households at 23.2%

Today, Nebraska consumers have an abundance of choices in the selection of their telecommunications services provider, including incumbent landline providers, CLECs, Wireless, Cable and VoIP providers. All of these providers will have varying terms and conditions governing provision of service. The Commission, by its limited jurisdiction over incumbents and CLECs should not give unregulated providers further advantage by limiting the type of contractual terms of service that incumbent regulated carriers may have with customers.

Currently many wireless customers are subject to these same types of terms and conditions (for example, non-prorated billing). Unless regulated carriers can implement similar policies that can add some level of certainty to customer demand and the investment required to provision reliable service, the adverse impact of disparate regulation and the lack of parity will only be exacerbated. The proposed language further diminishes the ability to create a level playing field among regulated and non-regulated providers. Moreover, there is no rational basis why a regulated carrier should not have the same opportunity as its wireless competitor to compete for customers under similar terms and conditions.

c. The language is inconsistent with established practices and filed tariffs.

The language of proposed Section 002.17C is inconsistent with approved tariff provisions establishing initial service periods of at least one month, and that the rates owing are payable monthly in advance.² This is the type of contractual arrangement that this Commission and most commissions around the country have generally approved. This has become part of the regulatory contract whereby the customer agrees to take

² See Windstream General Exchange Tariff, Section 12, Original Sheet 1.

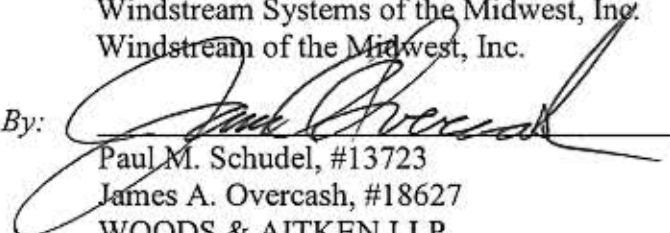
service at least on a monthly basis and the provider in turn commits to provide reliable service by its on-going investment and maintenance of its facilities.

The proposed language of Section 002.17C specifically prevents a carrier from having a non-proration policy that requires full monthly payment through the billing cycle, and it also eliminates the benefits to the customer of not having to incur prorated charges when they initiate service or add services during their billing cycle. This is a tangible benefit to customers who often become confused by the prorated charges appearing on their bill. This should be a matter between the customer and provider and should not be adversely impacted by unnecessary regulation. A non-proration policy is the type of choice consumers should have in today's competitive environment. Consumers can then make rational decisions based on the requirements and benefits of an offered term and condition. Consumers should be allowed to make informed decisions for themselves and all service providers should be allowed to compete for those customers' business in the competitive telecommunications marketplace without Commission interjection in the process.

Dated: June 30, 2009.

Windstream Nebraska, Inc.
Windstream Systems of the Midwest, Inc.
Windstream of the Midwest, Inc.

By:



Paul M. Schudel, #13723
James A. Overcash, #18627
WOODS & AITKEN LLP
301 South 13th Street,
Suite 500
Lincoln, Nebraska 68508
(402) 437-8500
Their Attorneys