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-M-E-M-O-R-A-N-D-U-M-

DATE: April 23, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Compliance (M. Watts) *MB*
Office of the General Counsel (Brooks) *MB*
Division of Service, Safety & Consumer Assistance (P. Buys) *MB* *AMA*

RE: Docket No. 090057-TL – Investigation and determination of appropriate method for issuing time-out-of-service credits to all affected customers of Windstream Florida, Inc.

AGENDA: 05/05/09 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\RCP\WP\090057.RCM.DOC

Case Background

Windstream Florida, Inc. (Windstream) is certificated as a local exchange telecommunications company (LEC) with the Florida Public Service Commission (the Commission.)

As part of the Commission's service quality evaluation program, staff conducted a comprehensive telephone service evaluation in the Alachua, Brooker, High Springs, Melrose, and Waldo exchanges during the period February 4, 2008, to March 14, 2008. As part of the evaluation, staff reviewed repair services for compliance with the Commission's service

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standards as found in the Florida Administrative Code (F.A.C.) and the company's Commission-approved Service Guarantee Program (SGP).

Staff analyzed Windstream's repair tickets received during 2007 to determine whether out-of-service conditions were cleared within 24 hours and, if not, whether the proper rebate was automatically applied to the affected customer's account. Windstream operates under an SGP, in addition to this Commission's service quality rules. Staff determined that Windstream issued rebates, except for those related to out-of-service conditions that fell on Sundays and holidays. Windstream's SGP states, "Sundays or holidays are not covered by the SGP and will be calculated and credited to customers consistent with Rule 25-4.110(6), F.A.C." In this recommendation, staff addresses those instances in which rebates were not credited to customers' accounts for Sundays and holidays.

On June 28, 2008, staff requested that Windstream explain why the rebates were not issued, and correct all areas where the service evaluation standards were not satisfied. Windstream investigated and found that the missed rebates were due to a programming error in the billing software. The SGP defers to Rule 25-4.110(6), F.A.C., for rebates on Sundays and holidays, and requires the company to issue an additional credit to customers whose time out of service includes a Sunday or holiday. Windstream reported that its billing system software was corrected effective July 2008.

Windstream stated that it would provide a total of \$1,374.73 in out-of-service rebates to 1,492 customers in accord with Rule 25-4.110(6), F.A.C., for the period July 2006 through June 2008, and would provide automatic rebates consistent with the rule going forward. Windstream submitted its final refund proposal on April 15, 2009.

The Commission has jurisdiction over this matter pursuant to Sections 364.01, 364.285, and 364.604, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

Discussion of Issues

Issue 1: Should the Commission accept Windstream Florida, Inc.'s proposal to issue a refund to the affected customers beginning with the first billing cycle in June 2009, for failing to issue automatic rebates to customers who experienced out-of-service conditions for more than 24 hours, as required by Rule 25-4.110(6), F.A.C., from July 2006 through June 2008; require the company to remit monies that cannot be refunded to the Commission for deposit in the State of Florida General Revenue Fund by September 30, 2009; and require the company to report in writing by September 30, 2009, to the Commission stating, (1) how much was refunded to its customers, (2) the number of customers, and (3) the amount of money that was unrefundable?

Recommendation: Yes, the Commission should accept Windstream's refund proposal. (M. Watts/P. Buys/Brooks)

Staff Analysis: Windstream's Commission-approved SGP states in part:

Windstream shall make automatic credits in the amounts specified below for out of service troubles as reported by the customer:

Duration	
24 to 48 hours	\$ 12
> 2 days to 5 days	\$ 16
> 5 days	\$ 40

Sundays or holidays are not covered by the SGP and will be calculated and credited to customers consistent with Rule 25-4.110(6), F.A.C.

Rule 25-4.110(6), F.A.C., states the following:

Each company shall make appropriate adjustments or refunds where the subscriber's service is interrupted by other than the subscriber's negligent or willful act, and remains out of order in excess of 24 hours after the subscriber notifies the company of the interruption. The refund to the subscriber shall be the pro rata part of the month's charge for the period of days and that portion of the service and facilities rendered useless or inoperative; except that the refund shall not be applicable for the time that the company stands ready to repair the service and the subscriber does not provide access to the company for such restoration work. The refund may be accomplished by a credit on a subsequent bill for telephone service.

Windstream proposes to issue credits on the customers' bills beginning with the June 2009 billing cycle. Windstream should submit its final report by September 30, 2009. As

required by Rule 25-4.114, F.A.C., for customers entitled to a refund, but no longer in its system, Windstream will mail a refund check to the last known billing address, except that no refund for less than \$1.00 will be made to these customers. Any monies that are unrefundable shall be remitted to the Commission for deposit in the General Revenue Fund by September 30, 2009.

Typically, staff works with the regulated entity to define and calculate interest applicability for refunded principle amounts. In this case, refund amounts on a per-customer basis will range from approximately \$0.50 to \$1.50. Staff believes that it is not practical, and it would be costly for Windstream to program its systems to calculate and implement the payment of interest on the refund amounts anticipated in this proceeding. Because the interest amounts are small, and the costs to implement payment appear high, staff believes that interest should not be added to the rebates. Rule 25-4.114, F.A.C., Refunds, provides the Commission flexibility to order refunds with or without interest.

Accordingly, staff recommends that the Commission accept Windstream Florida, Inc.'s proposal to issue a refund to the affected customers beginning with the first billing cycle in June 2009, for failing to issue automatic rebates to customers who experienced out-of-service conditions for more than 24 hours, as required by Rule 25-4.110(6), F.A.C., from July 2006 through June 2008; require the company to remit monies that cannot be refunded to the Commission for deposit in the State of Florida General Revenue Fund by September 30, 2009; and require the company to report in writing by September 30, 2009, to the Commission stating, (1) how much was refunded to its customers, (2) the number of customers, and (3) the amount of money that was unrefundable.

Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will be a proposed agency action. Thus, the Order will become final and effective upon issuance of the Consummating Order if no person whose substantial interests are affected timely files a protest within 21 days of issuance of this Order. The company should submit its final report, identified by docket number, and a check for the unrefunded amount (if any), made payable to the Florida Public Service Commission, by September 30, 2009. Upon receipt of the final report and unrefunded monies, if any, this docket should be closed administratively if no timely protest has been filed. **(Brooks)**

Staff Analysis: The Order issued from this recommendation will be a proposed agency action. Thus, the Order will become final and effective upon issuance of the Consummating Order if no person whose substantial interests are affected timely files a protest within 21 days of issuance of this Order. The company should submit its final report, identified by docket number, and a check for the unrefunded amount (if any), made payable to the Florida Public Service Commission, by September 30, 2009. Upon receipt of the final report and unrefunded monies, if any, this docket should be closed administratively if no timely protest has been filed.