

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to terminate Service Guarantee
Plan, by Windstream Florida, Inc.

DOCKET NO. 100039-TL
ORDER NO. PSC-10-0163-PAA-TL
ISSUED: March 22, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP
DAVID E. KLEMENT
BEN A. "STEVE" STEVENS III

NOTICE OF PROPOSED AGENCY ACTION ORDER
TERMINATING WINDSTREAM FLORIDA, INC.'S
SERVICE GUARANTEE PLAN

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. Case Background

On January 20, 2010, Windstream Florida, Inc. (Windstream) filed a petition with this Commission to terminate its Service Guarantee Plan (SGP). Windstream currently operates under a SGP, as well as the Commission's service quality rules.¹

Windstream is an incumbent local exchange company (ILEC) and is authorized by this Commission, pursuant to Certificate No. 10, to provide local exchange telecommunications services in Florida. By Order No. PSC-06-0425-PAA-TP,² issued May 19, 2006, we accepted Windstream's offer to initiate a SGP, in addition to meeting our rules regarding customer service.

¹ Chapter 25-4, Florida Administrative Code (F.A.C.)

² Docket No. 050938-TP, In Re: Joint application for approval of transfer of control of ALLTEL Florida, Inc., holder of ILEC Certificate No. 10 and PATS Certificate No. 5942, from Alltel Corporation to Valor Communications Group, and for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to transfer of long distance customers of ALLTEL Communications, Inc. to Alltel Holding Corporate Services, Inc.

DOCKET NUMBER DATA

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FPSC-COMMISSION CLERK

In 2009, the Florida Legislature amended Chapter 364, Florida Statutes (F.S.). These changes became effective July 1, 2009.³ The Legislative amendments to the statutes redefined the terms “basic local telecommunications service”⁴ and “nonbasic service.”⁵ In October 2009, we amended our rules to reflect the statutory changes. Our rule amendments included amendments to our service quality rules. The service quality rules pertain to the establishment of primary service and repair of interrupted service within specific time frames, and the measurement of answer time for subscribers who call the residential business or repair office. As a result of these changes, Windstream believes that its current SGP and our service quality rules are duplicative and that operating under this our rules alone will adequately protect its customers. Therefore, Windstream seeks to terminate its SGP.

On February 8, 2010, our staff sent Windstream a data request. The primary purpose of the data request was to obtain Windstream’s position on the various combinations of dial tone and associated services that would either qualify or disqualify customers’ eligibility for coverage under our service quality rules. Windstream filed a response to staff’s data request on February 15, 2010. On February 16, 2010, our staff e-mailed Windstream seeking further clarification of Windstream’s February 15 response to staff’s data request. Windstream’s clarification was received via e-mail on February 17, 2010.

We are vested with jurisdiction over this matter pursuant to Sections 364.01, 364.03, 364.035, and 364.386, Florida Statutes.

II. Analysis

Rule 25-4.085, Florida Administrative Code (F.A.C.), Service Guarantee Program, states that a company may petition this Commission for approval of a Service Guarantee Program, which would relieve the company from the rule requirement of each service standard addressed in the approved Service Guarantee Program.

By Order No. PSC-06-0425-PAA-TP, issued May 19, 2006, we approved Windstream’s SGP. Our Order, which became final and effective by Order No. PSC-06-0503-CO-TP, issued June 13, 2006, was granted in conjunction with our approval to transfer control of the company from Alltel Florida, Inc. to Windstream. In an effort to ensure that the transfer was in the public interest and that the company’s service quality would not decline after the transfer was complete, Windstream agreed to operate under a SGP in addition to our service quality rules.

Typically, when a company operates under a SGP that company is not subject to the service quality rules. Subjecting a company to both a SGP and the service quality rules could cause the company economic hardship by imposing duplicate penalties. SGPs exempt the company from specific service quality rules but still allow the company to meet the quality of

³ Chapter 2009-226, Laws of Florida.

⁴ Section 364.02(1), F.S.

⁵ Section 364.02(10), F.S.

service provisions of Chapter 364, F.S., by providing a quick response time and compensation to qualifying customers should service issues arise. Windstream has operated under both a SGP and the service quality rules since June 2006. However, the company now seeks to terminate its SGP and operate solely under our service quality rules.

As a result of the statutory changes and the changes to our rules, the number of customers protected by the service quality rules has decreased. Only customers who receive services classified as basic telecommunications services, as defined by Section 364.02, F.S., are eligible for protections. Therefore, if we grant Windstream's petition to terminate its SGP, Windstream customers who subscribe to nonbasic services are not eligible for protection under the service quality rules. However, as described later, use of certain nonbasic services will not disqualify customers for protection under the service quality rules.

On February 8, 2010, our staff sent a data request to Windstream seeking clarification as to which services a Windstream customer is eligible for protection under our service quality rules. In its responses to the data requests filed on February 15 and 17, Windstream listed its rationale for classifying a service as basic or nonbasic.

Windstream identifies that there are several nonbasic services, if used by a customer, that will not disqualify the eligibility of local service for protection under our service quality rules. Examples of these nonbasic services are 911 calls, directory assistance calls, relay calls, etc. Customers who subscribe to bundled packages which include Internet and video will not be protected.

Windstream concurs with this Commission's findings in Docket No. 090461-TL, In Re: Petition for modification of Service Guarantee Program by BellSouth Telecommunications, Inc. d/b/a AT&T Florida, that basic local telecommunications service as defined in Section 364.02, F.S., does not include a primary interexchange carrier (PIC) or a local primary interexchange carrier (LPIC). In other words, if a customer selects a local toll or long distance toll provider, the customer's line is not basic service and will not be protected by our service quality rules.

III. Conclusion

For more than three years, Windstream has been subject to both the SGP and our service quality rules. Windstream has consistently exceeded our rules on service quality. Windstream will continue to submit reports that are currently required by our service standards rules and understands and has acknowledged that it will be subject to enforcement for the entire set of performance data it files with this Commission.

Accordingly, we find it appropriate to approve Windstream's Petition to Terminate Service Guarantee Plan.

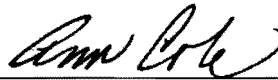
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Windstream's Petition to Terminate its Service Guarantee Plan is hereby granted as set forth in the body of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket should be closed administratively upon issuance of the Consummating Order.

By ORDER of the Florida Public Service Commission this 22nd day of March, 2010.



ANN COLE
Commission Clerk

(S E A L)

TJB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 12, 2010.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.