

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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Consumer Advocate

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July 13, 2011

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

Re: In the Matter of the Petition of Windstream
Pennsylvania, LLC for BFRR Deployment
Extensions Relating to Carrier Servicing
Areas in the Albion, Coalport, Conneautville,
Rimbersburg, Rockland, Rural Valley,
Shipperville, and Sigel Exchanges
Docket No. P-2011-2248534

Dear Secretary Chiavetta:

Enclosed for filing please find the Office of Consumer Advocate's Answer, in the
above-captioned proceeding.

Copies have been served upon all parties of record as shown on the enclosed
Certificate of Service.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel H. Cheskis".

Joel H. Cheskis
Assistant Consumer Advocate
PA. Attorney ID# 81617

Enclosures

cc: Office of Special Assistants
Certificate of Service

146146

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In the Matter of the Petition of	:	
Windstream Pennsylvania LLC for	:	Docket No. P-2011-2248534
BFRR Deployment Extensions Relating to	:	
Carrier Serving Areas in Albion, Coalport,	:	
Conneautville, Rimersburg, Rockland,	:	
Rural Valley, Shippenville and Sigel Exchanges	:	

**ANSWER
OF THE
OFFICE OF CONSUMER ADVOCATE**

On June 23, 2011, Windstream Pennsylvania, LLC (“Windstream” or “the Company”) filed a Petition for Bona Fide Retail Request Deployment Extensions to Carrier Serving Areas in the Albion, Coalport, Conneautville, Rimersburg, Rural Valley Shippenville, and Sigel Exchanges (“Petition”). In its Petition, Windstream requests that the Pennsylvania Public Utility Commission (“Commission”) grant an extension of six months for it to complete broadband deployment to each of the Carrier Serving Areas (“CSAs”) in the above-captioned exchanges. Windstream is required to deploy broadband service to these CSAs pursuant to the Bona Fide Retail Request (“BFRR”) program contained in Chapter 30 of the Public Utility Code, 66 Pa. C.S. § 3011, *et seq.* As discussed further below, the Office of Consumer Advocate (“OCA”) files this Answer generally in support of the Windstream Petition.

In support of the OCA’s Answer, the OCA submits as follows:

I. ANSWER

A. Introduction.

In Chapter 30 of the Public Utility Code, the General Assembly finds and declares it to be the policy of this Commonwealth to, among other things:

(2) Maintain universal telecommunications service at affordable rates while encouraging the accelerated provision of advanced services and deployment of a universally available, state-of-the-art, interactive broadband telecommunications network in rural, suburban and urban areas, including deployment of broadband facilities in or adjacent to public rights-of-way abutting public schools, including the administrative offices supporting public schools, industrial parks and health care facilities.

66 Pa. C.S. § 3011(2). To help achieve the goal of accelerating the deployment of a universally available, state-of-the-art, interaction broadband telecommunications network, Chapter 30 also provides that a local exchange telecommunications company (“ILEC”) shall offer a BFRR program if that ILEC elects to amend its network modernization plan by committing to accelerate broadband availability to 100% of its total retail access lines by December 31, 2013. Windstream has made such an election and offers a BFRR program.

Section 3014(c) governs the BFRR program. 66 Pa. C.S. § 3014(c). The BFRR program provides that, if 50 customers, or 25% of the total retail access lines, whichever is less, in a particular CSA commit to subscribe to broadband service from the ILEC for one year, the ILEC is required to deploy broadband service within one year of receiving the last of the necessary commitments. 66 Pa. C.S. § 3014(c)(2). Section 3014(c) also provides, however, that the one-year deadline to deploy the broadband service may be extended when new construction or property acquisition is required to deploy the service. 66 Pa. C.S. § 3014(c)(5). Pursuant to Section 3014(c)(5), Windstream now petitions the Commission for an extension of the one-year deadline by six months for 11 CSAs located throughout its service territory.

The OCA recognizes that the BFRR program has worked to provide a large number of Pennsylvania consumers with broadband services sooner than they otherwise may have received it. For the reasons discussed below, the OCA generally agrees that Windstream has met the standard for an extension. In addition, the OCA recognizes as consumer benefits Windstream's offer of one free high speed internet service for each month of delay to each affected customers, as well as Windstream's indication that the deployed service will be much faster than that required by Chapter 30.

B. The Windstream Petition Meets The Chapter 30 Requirement For A Six Month Extension Of Broadband Deployment Deadlines Under The BFRR Program Because Property Acquisition Or New Construction Is Required For Each Identified Community.

In order to meet the Commonwealth's goal of ubiquitous deployment of high-speed internet access service, the General Assembly created the Bona Fide Retail Request ("BFRR") program when enacting Act 183 of 2004 as Chapter 30. The BFRR program is required under Chapter 30 for those ILECs that agree to meet the 100% deployment requirement by December 31, 2013. Pursuant to Section 3014 of Chapter 30, if a sufficient number of customers within the same geographic area commit to subscribing to high speed internet service from the ILEC for one year, the ILEC must provide that service within one year after reaching that threshold. To date, many successful BFRR's throughout the Commonwealth have brought high speed internet service to communities sooner than they otherwise might have received it.

Chapter 30, however, also provides an opportunity for an ILEC to receive an additional six months to deploy high speed internet service to a particular community when such deployment requires new construction or the acquisition of property. More specifically, Section 3014 requires:

Where, as a result of property acquisition, including acquiring rights-of-way, or new construction, a local exchange telecommunications company is unable to provide the requested advanced service within the one-year period set forth in paragraph (4), the company may petition the commission for an extension of up to six months, with service upon the customer or customers who made the bona fide retail request and the department if the department submitted the request on behalf of the customer or customers.

66 Pa. C.S. § 3014(c)(5). The OCA submits that Windstream's petition should be granted because deployment to each of the identified CSAs requires new construction or the acquisition of property.

In its Petition, Windstream states that "each of the CSAs qualifies for an extension based upon the property acquisition criterion of Act 183" under Section 3014(c)(5) of Chapter 30.

Petition at 4. More specifically Windstream provides:

Each of the affected CSAs described below will require the construction of new pad sites. All new pad sites, in turn, requires surveys and the acquisition and recording of at least one, and possibly more, new rights-of-way. Once the new property is accessible, all new sites must be graded and one or more new poles or concrete pads installed to support the further installation of the required number of new remote cabinets and cross connect boxes.

Id. at 5; *see also*, Id. at 7, 8. As such, Windstream has satisfied the requirement under Chapter 30 for an additional six months to deploy to each of these CSAs due to the acquisition of property or new construction.

In addition, the OCA submits that the Windstream Petition should be granted because Windstream has offered to "any customer included within the BFRR at the time of this filing and who has been notified of the one year deployment date, one month free broadband service for every month delay in deployment beyond the original due date assigned." Id. at 19-20.

Windstream further notes that as a result of the delayed deployment, the affected consumers will

receive faster high speed internet service. This is as a result of the use of funding through the federal Broadband Initiatives Program in the American Recovery and Reinvestment Act of 2009 (“ARRA”) to deploy the service. Windstream notes that conditions of the ARRA money “require Windstream to deploy broadband at speeds greater than 3 mbps in the downstream direction, twice as fast as required for the BFRR deployment under Act 183” and that “in fact, Windstream will actually deploy speeds ranging from 6 to 12 mbps, which are substantially in excess of the 1.544 mbps downstream speed currently required under Act 183.” Id. at 17.

While it is not uncommon for a company to deploy speeds faster than the minimum broadband speed required by Chapter 30, the OCA submits that the certainty of providing speeds of 6 to 12 mbps downstream is a significant consumer benefit in this case. Furthermore, Windstream’s offer to provide affected customers with one free month of internet service for every month delay beyond the original deployment due date is likely unique and represents a significant offer in response to the delayed deployment. Both of these offers represent consumer benefits that the Commission should adopt as part of Windstream’s Petition.

Finally, with regard to Windstream’s discussion in its Petition of its intent to finance the deployment of broadband services to the 11 CSAs in question through ARRA money, Id. at 2-3, the OCA supports the use of ARRA money for broadband deployment in Pennsylvania. As Windstream stated, through the ARRA, Congress appropriated \$7.2 billion to expand access to broadband services in unserved and underserved areas throughout the United States. Windstream states in its Petition that it received notification from Rural Utilities Service on September 13, 2010 that its application for funding through ARRA for these broadband deployments has been approved. Id. at 3. Windstream has not yet, however, received funds from ARRA for these 11 deployments and states that its receipt of such funding may be

jeopardized if it commences construction prior to receiving the federal funds. Windstream further provides details regarding the significant financial benefit of deploying broadband service to these 11 communities using the ARRA funds.¹

The OCA submits that the Windstream petition satisfies the requirement in Chapter 30 for an additional six months to deploy to the affect CSAs because of the requirement to acquire property or new construction for each CSA. As such, the OCA submits that the Windstream Petition should be granted because each CSA qualifies for an additional six months for deployment because each deployment requires the acquisition of property or new construction.

II. CONCLUSION

WHEREFORE, the Pennsylvania Office of Consumer Advocate respectfully submits this Answer in response to the above-captioned Petition filed by Windstream Pennsylvania, LLC dated June 23, 2011. The OCA generally supports the Windstream Petition because Windstream is allowed a six-month extension to deploy broadband to communities where property acquisition or new construction is required. In addition, this extension will allow Windstream

¹ The OCA would not agree that approval of this extension should be granted solely because of the delay in ARRA funding. Rather, the BFRR extension is justified based on the statutory criteria of Chapter 30. The availability of ARRA funding, however, provides the additional benefits to consumers that are described in the Windstream Petition.

customers to receive additional benefits when the projects are completed. As such, the Commission should grant Windstream's Petition.

Respectfully submitted,



Joel H. Cheskis (PA. Atty. I.D. #81617)
Assistant Consumer Advocate

For: Irwin A. Popowsky
Consumer Advocate

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(717) 783-5048

Dated: July 13, 2011
145307

CERTIFICATE OF SERVICE

Re: In the Matter of the Petition of Windstream Pennsylvania, LLC for BFRR Deployment Extensions Relating to Carrier Servicing Areas in the Albion, Coalport, Conneautville, Rimbersburg, Rockland, Rural Valley, Shippenville, and Sigel Exchanges
Docket No. P-2011-2248534

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Answer, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 13th day of July, 2011.


SERVICE BY INTER-OFFICE MAIL

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SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

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