

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation and determination of appropriate method for issuing time-out-of-service credits to all affected customers of Windstream Florida, Inc.	DOCKET NO. 090057-TL ORDER NO. PSC-09-0359-PAA-TL ISSUED: May 26, 2009
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The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman  
LISA POLAK EDGAR  
KATRINA J. McMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING WINDSTREAM FLORIDA INC.'S REFUND PROPOSAL

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**

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

As part of our quality evaluation program, our staff conducted a comprehensive telephone service evaluation from February 4, 2008, to March 14, 2008, in Windstream's Alachua, Brooker, High Springs, Melrose, and Waldo exchanges. As part of the evaluation, our staff reviewed repair services for compliance with our service standards as found in the Florida Administrative Code (F.A.C.) and the company's Service Guarantee Program (SGP) approved by this Commission.

Our staff analyzed repair tickets received by Windstream during 2007 to determine whether customer's 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. Our staff determined that Windstream issued rebates, except for those related to out-of-service conditions that fell on Sundays and holidays.

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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.," which requires the company to issue an additional credit to customers whose time out of service includes a Sunday or holiday. Therefore, on June 28, 2008, we requested that Windstream explain why the rebates were not issued, and that Windstream 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. 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. We received Windstream's final refund proposal on April 15, 2009.

We have jurisdiction over this matter pursuant to Sections 364.01, 364.285, and 364.604, Florida Statutes.

## **II. Analysis**

Windstream's SGP, approved by this Commission, 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 proposed issuance of credits on customers' bills beginning with the June 2009 billing cycle and submission of 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 this Commission for deposit in the General Revenue Fund by September 30, 2009.

Typically, we work with the regulated entity to define and calculate the interest applicable to refunded principle amounts. In this case, refund amounts on a per-customer basis will range from approximately \$0.50 to \$1.50. Therefore, we find 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, we find 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.

### **III. Decision**

Accordingly, we hereby 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. Additionally, we require Windstream to remit to this Commission any monies that cannot be refunded by September 30, 2009, for deposit in the State of Florida General Revenue Fund; 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.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Windstream Florida, Inc.'s refund proposal is hereby accepted. It is further

ORDERED that Windstream Florida, Inc. remit to this Commission any monies that cannot be refunded by September 30, 2009, for deposit in the State of Florida General Revenue Fund. It is further

ORDERED that Windstream Florida, Inc. submit a 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. It is further

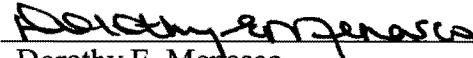
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate

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 shall be closed administratively upon receipt of the final report and unrefunded monies.

By ORDER of the Florida Public Service Commission this 26th day of May, 2009.

ANN COLE  
Commission Clerk

By:   
Dorothy E. Menasco  
Chief Deputy Commission Clerk

(SEAL)

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.

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 June 16, 2009.

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.