

In the Matter of Windstream Ohio, Inc. and)
Windstream Western Reserve, Inc.'s Application) Case No. 08-1142-TP-WVR
for Out-of-Service Grace Period Under)
Minimum Telephone Service Standards.)

**MOTION TO DISMISS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

¹ OCC is filing a Motion to Intervene in this proceeding concomitantly with this Motion to Dismiss. By filing this Motion to Dismiss, OCC does not relinquish the right to file any additional pleadings in this proceeding.

² OCC's Motion is filed pursuant to Ohio Adm. Code 4901-1-12.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Terry L. Etter

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Windstream Ohio, Inc. and)
Windstream Western Reserve, Inc.'s Application) Case No. 08-1142-TP-WVR
for Out-of-Service Grace Period Under)
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MEMORANDUM IN SUPPORT

On October 1, 2008, Windstream filed an Application seeking to add 48 hours to the timeframe allowed under the Minimum Telephone Service Standards (“MTSS”) for repairing customers’ service outages in eight exchanges.³ According to the Application, which was filed pursuant to Rule 8(D)(1),⁴ the request was prompted by “the September 14, 2008 severe wind storm across Ohio and aftermath.”⁵ Windstream seeks the “grace period” for the September 14 to 19, 2008 period. Contrary to Windstream’s assertions, however,⁶ the Application was not timely filed under Rule 8(D)(1).

Ohio Adm. Code 4901:1-5-08(C)(1) requires local exchange carriers (“LECs”) to credit to a customer one full month of the customer’s regulated local service charges if the customer’s service is out more than 72 hours.⁷ Rule 8(D), however, provides that “LECs may be permitted by the commission to obtain a grace period of an additional

³ See Application at 1. The eight exchanges are Bloomingdale, Cumberland, Granville, Gratiot, Hanover-Marne, Hopedale, Newark and St. Louisville.

⁴ Id.

⁵ Id. Windstream does not define the term “aftermath.”

⁶ Id.

⁷ The MTSS also requires customer credits for missed repair appointments and commitments and for failure to install new service within five business days. Ohio Adm. Code 4901:1-5-08(C)(2) and (3). Windstream’s Application does not mention these customer credits.

forty-eight hours in each exchange where otherwise a customer adjustment would accrue pursuant to paragraph (C) of this rule, due to an extreme, unique, or unforeseeable weather-related incident.” Under Rule 8(D)(1), a “grace period may be requested by a LEC per affected exchange by filing a request for a waiver of paragraph (C) of this rule within ten business days of the weather-related incident.”

Rule 8(D)(1) is clear: a LEC seeking a “grace period” to avoid paying customer credits must file a waiver request within ten business days after the weather-related event took place. This is bolstered by the Commission’s statement in adopting Rule 8(D)(1): “The filing must be provided within ten business days of the weather-related occurrence, which prompts the company’s request for an additional 48-hour grace period.”⁸

Windstream did not file its Application in the time period required for “grace period” requests under Rule 8(D)(1). According to Windstream, the weather-related incident that prompted the Application occurred on September 14, which was a Sunday. The tenth business day after the weather-related incident was no later than Friday, September 26 (it would have been earlier if Windstream considers Saturdays and/or Sundays to be “business days”). By filing its Application for a “grace period” on October 1, Windstream was at least three business days late in meeting the deadline imposed by Rule 8(D)(1).

The September 14 windstorm was a one-day event. Windstream should not be allowed to include the “aftermath” of the September 14 windstorm in calculating the starting point for the timeframe for seeking a “grace period” under Rule 8(D)(1).

⁸ *In the Matter of the Amendment of the Minimum Telephone Service Standards As Set Forth in Chapter 4901:1-5 of the Ohio Administrative Code*, Case No. 05-1102-TP-ORD, Opinion and Order (February 7, 2007) at 54.

Windstream's Application for a "grace period" to avoid paying customer credits under the MTSS was not timely filed under Rule 8(D)(1). Thus, OCC's Motion to Dismiss should be granted. Windstream's Application should be dismissed, and Windstream should be directed to pay customers in the eight exchanges the credits that are due them under the MTSS.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss by the Office of the Ohio Consumers' Counsel was served by first class United States Mail, postage prepaid, to the persons listed below, on this 9th day of October 2008.

/s/ Terry L. Etter
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Summary: Motion Motion to Dismiss by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Etter, Terry L Mr.