

FILE

3

Bell & Royer Co., L.P.A.

Attorneys at Law

33 South Grant Avenue

Columbus, Ohio 43215-3927

Telephone (614) 228-0704

Telecopier (614) 228-0201

Langdon D. Bell
lbell33@aol.com

Barth E. Royer
barthroyer@aol.com

March 9, 2012

Ms. Barcy F. McNeal
Secretary
Public Utility Commission of Ohio
180 East Broad Street
Columbus, Ohio 43266-0573

RECEIVED-CCKETING DIV
2012 MAR -9 PM 3:23
PUCO

Re: *Talk America Inc. d/b/a Cavalier Telephone*
d/b/a PAETEC Business Services d/b/a
Cavalier Telephone and TV
VoIP-PSTN Tariff Revision Filed March 8, 2012
Case No. 12-0570-TP-ATA

Windstream Western Reserve, Inc.
VoIP-PSTN Tariff Revision Filed March 8, 2012
Case No. 12-0626-TP-ATA

Windstream Nuvox, Inc.
VoIP-PSTN Tariff Revision Filed March 8, 2012
Case No. 12-0627-TP-ATA

Dear Ms. McNeal:

This letter follows up on Verizon's February 17, 2012 letter identifying aspects of the tariffs under review in the above-referenced cases that failed properly to implement the provisions of the Federal Communications Commission's ("FCC") November 18, 2011 Report and Order reforming the universal service and intercarrier compensation systems on a nationwide basis (the "FCC Order").¹ As noted in that earlier letter, the VoIP-PSTN tariffs filed by Talk America Inc. d/b/a Cavalier Telephone d/b/a PAETEC Business Services d/b/a Cavalier Telephone and TV ("Cavalier"), Windstream Western Reserve, Inc. ("Windstream Western") and Windstream Nuvox, Inc. ("Windstream Nuvox") (together, the "Windstream companies") improperly omitted traffic that terminated in Internet Protocol ("IP") format from treatment

¹ *Connect America Fund*, WC Docket No. 01-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking (November 18, 2011), ¶¶ 933-975; 47 C.F.R. § 51.913(a).

This is to certify that the copies furnished are true and accurate and correct representations of a true and correct document delivered to the regular office of the Public Utility Commission of Ohio.
Technician AT Date Processed 3/9/12

Bell & Royer Co., L.P.A.

March 9, 2012

Page 2

under the FCC's new VoIP-PSTN compensation regime, and also contained unfair factor setting terms.

While the tariff revisions that the Windstream companies filed on March 8, 2012 resolve some of the concerns that Verizon had expressed on February 17, 2012, the March 8, 2012 tariffs still exclude two categories of traffic that are properly subject to the FCC's new VoIP-PSTN intercarrier compensation regime: (1) traffic that the Windstream companies' access customers *terminate* in IP format,² and (2) traffic that Windstream companies *originate* in IP format.³

As the Windstream companies' tariffs correctly recognize, "VoIP-PSTN Traffic" is traffic exchanged with the customer "in Time Division Multiplexing format over PSTN facilities, *which originates and/or terminates in Internet protocol (IP) format*"⁴ The Windstream companies may not unilaterally deviate from the FCC-ordered regime by excluding traffic that originates in IP format at their end, as well as traffic that terminates in IP format at their access customers' end, from proper treatment under that new regime. As noted in Verizon's February 17, 2012 letter, the FCC explicitly "declin[ed] to adopt an asymmetric approach that would apply VoIP-specific rates for only IP-originated or only IP-terminated traffic," as some commenters had proposed.⁵ The FCC cited arbitrage concerns relating to asymmetric payments on VoIP traffic, concluding that "[a]n approach that addressed only IP-originated traffic would perpetuate—and expand—such concerns."⁶ The plain language of the FCC's VoIP-PSTN compensation rule applies to traffic "exchanged between a local exchange carrier and another telecommunications carrier in [TDM] format that *originates and/or terminates* in IP format."⁷

Moreover, the Windstream companies' tariffs still require initial factors to be submitted within fifteen days of the tariffs' effective date, or else they will be set at zero (resulting in *all* VoIP-PSTN traffic being billed at intrastate access rates).⁸ This unfairly gives access customers insufficient time to implement the new VoIP-PSTN traffic identification process that is required by the FCC's VoIP-PSTN regime. The Windstream companies should be required to give customers a reasonable time to submit initial factors.

* * *

² See Cavalier Tariff, § 2.3.4.C.1.; Windstream Western Tariff, § S.1.1.J(C)(1); Windstream Nuvox Tariff, § 2.3.13(C)(1).

³ See Cavalier Tariff, § 2.3.4.C.2.; Windstream Western Tariff, § S.1.1.J(C)(2); Windstream Nuvox Tariff, § 2.3.13(C)(2).

⁴ See Cavalier Tariff, "Section 1-Definitions," First Revised Page 10 ("Toll VoIP-PSTN Traffic") & § 2.3.4.A.1; Windstream Western Tariff, § S.1.1.J(F) ("Toll VoIP-PSTN Traffic") & § S.1.1.J(A)(1); Windstream Nuvox Tariff, § 2.5, 1st Revised Page 2-41 ("Toll VoIP-PSTN Traffic") & § 2.3.13(A)(1) (emphasis added).

⁵ FCC Order, ¶ 942; *see also* ¶ 948.

⁶ *Id.*

⁷ 47 C.F.R. § 51.913(a) (emphasis supplied); *see also* FCC Order ¶ 940.

⁸ See Cavalier Tariff, § 2.3.4.D.; Windstream Western Tariff, § S.1.1.J(D); Windstream Nuvox Tariff, § 2.3.13(D).

Bell & Royer Co., L.P.A.

March 9, 2012

Page 3

The Commission should order the Windstream companies to refile corrected tariffs to ensure that they implement the VoIP-PSTN intercarrier compensation regime as the federal rules require.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Royer', with a long horizontal flourish extending to the right.

Barth E. Royer
Counsel for Verizon

cc: Kathy Hobbs, Windstream
(kathy.hobbs@windstream.com)

Sharon Thomas, Consultant to Talk America Inc. d/b/a Cavalier Telephone
(stthomas@tminc.com)