

NC

FILE

15-0325-TP-CSS

12

Matthew Fitzsimmons, Chairperson
Rev. Rodney Thomas, Vice Chairperson
Rev. James Rankin, Treasurer
Doris Hunt, Esq., Secretary



Willie F. Austin, President/CEO
James F. O'Donnell, Chief Financial Officer
Karen Butler, Chief Operating Officer
Anita Watson, MD, Medical Director
Billy B. Foster, DMD, Dental Director

February 12, 2015

Public Utilities Commission of Ohio
 Continental Plaza
 180 East Broad Street
 Columbus, Ohio 43215

Re: Windstream Communications, Inc.
 Complaint No. CP1C02 1115ZA
Account No: 2146479

Dear Sir or Madam:

NorthEast Ohio Neighborhood Health Services, Inc. ("NEON Health Services") would like the PUCO to investigate the facts set forth herein.

NEON Health Services is a 501(c)(3) nonprofit federally qualified community health center ("FQHC") organized and existing under the laws of the State of Ohio, having its principal place of business in Cleveland, Cuyahoga County, Ohio. NEON Health Services was formerly known as The Hough Norwood Clinics. NEON Health Services has been serving the medically underserved of Greater Cleveland for the last forty-seven (47) years. NEON Health Services operates several community health centers in Cleveland and East Cleveland which provide primary medical and dental care to those less fortunate among us, i.e., primarily Cuyahoga County's Medicaid families.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business. Technician Date Processed 2/11/15

Corporate Headquarters
 4800 Payne Avenue
 Cleveland, OH 44103
 voice: 888.282.5544 / 216.231.7700
 fax: 216.231.3828

Miles-Broadway Health Center
 9127 Miles Avenue
 Cleveland, OH 44105
 voice: 216.325.6544

East Cleveland Health Center
 15201 Euclid Ave.
 E. Cleveland, OH 44112
 voice: 216.541.5600
 fax: 216.541.5658

Norwood Health Center
 1468 East 55th St.
 Cleveland, OH 44103
 voice: 216.881.2000
 fax: 216.812.8124

Hough Health Center
 8300 Hough Ave.
 Cleveland, OH 44103
 voice: 216.231.7700
 fax: 216.231.7920

Collinwood Health Center
 15322 St. Clair Ave.
 Cleveland, OH 44110
 voice: 216.851.1500
 fax: 216.851.0602

Southeast Health Center
 13301 Miles Ave.
 Cleveland, OH 44105
 voice: 216.751.3100
 fax: 216.751.2480

Superior Health Center
 12100 Superior Ave.
 Cleveland, OH 44106
 voice: 216.851.2600
 fax: 216.851.4125



Windstream is a corporation with its principal place of business in Little Rock, Arkansas. At all times relevant to this matter Windstream (or its predecessors) has been transacting business with NEON Health Services in Ohio.

Beginning in about 2004-05, Windstream and its predecessors, including Paetec, McLeod, and Cavalier Telephone, provided voice and data line services to NEON Health Services. For all of those years, NEON Health Services paid all of the monthly charges and other charges for those services.

In September 2012, NEON Health Services entered into a contract with another provider of voice and data services. On two separate occasions in September 2012, NEON Health Services notified Windstream that it was terminating the contract for the provision of voice and data line services. Windstream knew of the termination since it transferred the lines to our new vendor. NEON Health Services had the right to cancel the contract with Windstream without penalty or charges. After NEON Health Services provided notice to Windstream that it was terminating the contract and no longer needed Windstream's equipment and services, NEON Health Services did not use any of Windstream's equipment and services. Notwithstanding the fact that NEON Health Services canceled the contract with Windstream, Windstream continued to invoice NEON Health Services for monthly services, and NEON Health Services mistakenly continued to pay such invoices --- even though Windstream was not providing any monthly services to NEON Health Services. Because of the confusion associated with the acquisition or mergers from Cavalier Telephone to McLeod to Paetec to Windstream, and the frequent changes in Windstream's/Paetec's/McLeod's/Cavalier's customer service locations, Windstream/Paetec/McLeod/Cavalier Telephone erroneously failed to cancel the contract with NEON Health Services on their own books and records. NEON Health Services' overpayments to Windstream constitute approximately \$148,727.23, exclusive of interest. Windstream has been unjustly enriched by accepting and keeping NEON Health Services' overpayments, without providing any further equipment or services to NEON Health Services. On several occasions, NEON Health Services has demanded that Windstream return and refund this overpayment of approximately \$148,727.23, but Windstream has failed and refused to do so. NEON Health Services has been damaged by Windstream's unjust enrichment in the amount of approximately \$148,727.23 plus interest, costs, and attorneys' fees.

February 12, 2015

Page 2

In recent weeks and months, Windstream has had its representatives and bill collectors demand payment of \$33,898.37 from NEON Health Services. NEON Health Services has repeatedly asked Windstream's representatives to document the basis for that demand. See attached correspondence. NEON Health Services has repeatedly asked Windstream to provide it with a copy of the controlling contract, including all terms and conditions, which govern this dispute. NEON Health Services has never received this requested information.

In our view, what Windstream is doing here is just not right. We ask the PUCO to investigate this matter as expeditiously as possible.

Thank you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Willie F. Austin".

Willie F. Austin
President and
Chief Executive Officer

WFA/

cc: Windstream Communications, Inc. (w/enc.)
4001 Rodney Parham Road
Little Rock, Arkansas 72212



BROWN & JOSEPH

November 10th, 2014

Willie Austin
4800 Payne Ave
Cleveland, OH 44103

14-9600427
Windstream Communications
Neon Health Center
RE: 2146479, \$33,898.37

Mr. Willie Austin,

In a previous conversation you indicated that an attorney had been retained to represent Neon Health Center. To date I have not been contacted by any legal representatives. In addition, I have attempted to reach you on several occasions, however, I have not been afforded the courtesy of a return call, nor have you provided any documentation refuting the pending claim against you.

Without consequential communication, I certainly will not hesitate to advise our client that further action will be the only viable option in order to enforce the contract you entered in with them. However, be assured that both my client and this office are eager to work with you towards an amicable solution.

We are at the eleventh hour, I urge you to contemplate the urgency of this matter before any possible legal action occurs.

Unless I hear from you or your attorneys immediately, I will assume you have no intentions of honoring your contractual obligation, and further action will be our client's only viable option.

Regards,

George Joseph

Brown & Joseph, Ltd

P O Box 59838, Schaumburg, IL 60159

-----BrownAndJoseph.com-----

PHONE: (847)621-6116 FAX: (847)758-3020 TOLL-FREE: (888)-829-9997

Nicola, Gudbranson & Cooper, LLC

ATTORNEYS AT LAW

ROBERT N. GUDBRANSON
RICHARD A. COOPER
JOHN D. SAYRE
TIMOTHY D. CARNAHAN
MATTHEW T. FITZSIMMONS
L. JAMES JULIANO, JR.
JAMES H. GROVE
RICHARD G. WITKOWSKI
JAMES R. CHRISZT
ARTHUR L. CLEMENTS, III
MICHAEL E. CICERO
BRUCE L. WATERHOUSE, JR.
MICHAEL J. BERTSCH
R. CHRISTOPHER YINGLING
NICHOLAS J. DERTOUZOS
BRENDA L. WOLFF
BECKY M. SCHEIMAN
BENJAMIN J. COOPER
KATHLEEN E. GEE
AMY BERMAN HAMILTON

OF COUNSEL
VINCENT A. FEUDO
ANTHONY R. TROIA

K. V. NICOLA
(1906-1994)

Landmark Office Towers
Republic Building, Suite 1400
25 West Prospect Avenue
Cleveland, OH 44115
Phone: 216-621-7227
Fax: 216-621-3999
www.nicola.com

Direct email: fitzsimmmons@nicola.com

November 19, 2014

Via Facsimile 847-758-3020
And Regular U.S. Mail

Mr. George Joseph
Brown & Joseph, Ltd.
2550 West Golf Road, Suite 300
Rolling Meadows, Illinois 60008

Re: NorthEast Ohio Neighborhood Health Services, Inc./
Windstream Communications - Your File #14-9600427

Dear Mr. Joseph:

I represent NorthEast Ohio Neighborhood Health Services, Inc. ("NEON"). I have investigated this matter and your claim for \$33,898.37 on behalf of your client, Windstream Communications.

NEON terminated its contract with Windstream in approximately September 2012. Notwithstanding the fact that NEON cancelled the contract, Windstream continued to invoice NEON for monthly services and NEON mistakenly continued to pay such invoices -- even though Windstream was not providing any monthly services to NEON. Windstream has been unjustly enriched by payments from NEON over the course of approximately a year. NEON does not owe Windstream money; Windstream owes NEON money. Windstream owes NEON a sizeable refund. If your client files a lawsuit on this matter, NEON will assert a sizeable Counterclaim for money owed to NEON. Against this background, any lawsuit by Windstream against NEON would be frivolous and baseless. NEON would fight it vigorously and seek an award of all of its attorneys' fees, costs, and expenses from Windstream.

Mr. George Joseph
November 19, 2014
Page 2

Please give me a call if you wish to discuss this matter further.

Very truly yours,

A handwritten signature in black ink, appearing to read "Matthew T. Fitzsimmons". The signature is fluid and cursive, with the first name "Matthew" and last name "Fitzsimmons" clearly legible.

Matthew T. Fitzsimmons

MTF/eak

cc: Mr. Willie F. Austin
President and Chief Executive Officer
NorthEast Ohio Neighborhood Health Services, Inc.

Nicola, Gudbranson & Cooper, LLC

ATTORNEYS AT LAW

ROBERT N. GUDBRANSON
RICHARD A. COOPER
JOHN D. SAYRE
TIMOTHY D. CARNAHAN
MATTHEW T. FITZSIMMONS
L. JAMES JULIANO, JR.
JAMES H. GROVE
RICHARD G. WITKOWSKI
JAMES R. CHRISZT
ARTHUR L. CLEMENTS, III
MICHAEL E. CICERO
BRUCE L. WATERHOUSE, JR.
MICHAEL J. BERTSCH
R. CHRISTOPHER YINGLING
NICHOLAS J. DERTOUZOS
BRENDA L. WOLFF
BECKY M. SCHEIMAN
BENJAMIN J. COOPER
KATHLEEN E. GEE
AMY BERMAN HAMILTON

OF COUNSEL
VINCENT A. FEUDO
ANTHONY R. TROIA
K. V. NICOLA
(1906-1994)

Landmark Office Towers
Republic Building, Suite 1400
25 West Prospect Avenue
Cleveland, OH 44115
Phone: 216-621-7227
Fax: 216-621-3999
www.nicola.com

Direct email: fitzsimmons@nicola.com

November 21, 2014

**Via Facsimile 847-758-3020
And Regular U.S. Mail**

Mr. George Joseph
Brown & Joseph, Ltd.
2550 West Golf Road, Suite 300
Rolling Meadows, Illinois 60008

Re: NorthEast Ohio Neighborhood Health Services, Inc./
Windstream Communications - Your File #14-9600427

Dear Mr. Joseph:

To follow-up on my November 19th letter, I have confirmed that NEON overpaid your client by \$148,727.23. NEON cancelled the contract in September 2012, yet your client continued to bill NEON for monthly services which your client did not provide. Your client has been unjustly enriched by at least \$148,727.23.

Please have your client refund such money to NEON promptly. The check should be made payable to NorthEast Ohio Neighborhood Health Services, Inc. and sent to:

Mr. Willie F. Austin
President and Chief Executive Officer
NorthEast Ohio Neighborhood Health Services, Inc.
4800 Payne Avenue
Cleveland, OH 44103-2443

Mr. George Joseph
November 21, 2014
Page 2

If we do not hear back from you or Windstream by the close of business on November 28, 2014, we will pursue this matter through other channels. This letter is sent with full reservation of and without waiver of any rights.

Very truly yours,



Matthew T. Fitzsimmons

MTF/eak

cc: Mr. Willie F. Austin
President and Chief Executive Officer
NorthEast Ohio Neighborhood Health Services, Inc.

Nicola, Gudbranson & Cooper, LLC

ATTORNEYS AT LAW

ROBERT N. GUDBRANSON
RICHARD A. COOPER
JOHN D. SAYRE
TIMOTHY D. CARNAHAN
MATTHEW T. FITZSIMMONS
L. JAMES JULIANO, JR.
JAMES H. GROVE
RICHARD G. WITKOWSKI
JAMES R. CHRISZT
ARTHUR L. CLEMENTS, III
MICHAEL E. CICERO
BRUCE L. WATERHOUSE, JR.
MICHAEL J. BERTSCH
R. CHRISTOPHER YINGLING
NICHOLAS J. DERTOUZOS
BRENDA L. WOLFF
BECKY M. SCHEIMAN
BENJAMIN J. COOPER
KATHLEEN E. GEE
AMY BERMAN HAMILTON

OF COUNSEL
VINCENT A. FEUDO
ANTHONY R. TROIA

K. V. NICOLA
(1906-1984)

Landmark Office Towers
Republic Building, Suite 1400
25 West Prospect Avenue
Cleveland, OH 44115

Phone: 216-621-7227

Fax: 216-621-3999

www.nicola.com

December 30, 2014

Direct email: fitzsimmons@nicola.com

Via Facsimile 847-758-3020
And Regular U.S. Mail

Mr. George Joseph
Brown & Joseph, Ltd.
2550 West Golf Road, Suite 300
Rolling Meadows, Illinois 60008

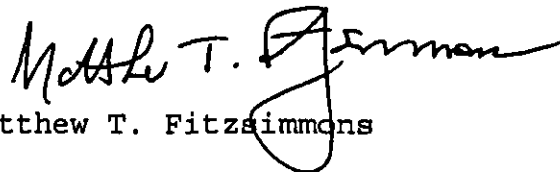
Re: NorthEast Ohio Neighborhood Health Services, Inc./
Windstream Communications - Your File #14-9600427

Dear Mr. Joseph:

To follow-up on our recent conversation, please send me a clean, fully executed copy of any NEON-Windstream Communications contract. I cannot respond to your inquiry without seeing this document.

I would be most appreciative if you would forward it to me promptly. Thank you.

Very truly yours,


Matthew T. Fitzsimmons

MTF/eak

cc: Mr. Willie F. Austin
President and Chief Executive Officer
NorthEast Ohio Neighborhood Health Services, Inc.

Elizabeth A. Kane

From: Matthew Fitzsimmons
Sent: Monday, January 19, 2015 5:55 PM
To: jgold@brownandjoseph.net
Subject: NorthEast Ohio Neighborhood Health Services, Inc.

Please send me a clean, fully executed copy of any NEON-Windstream Communications contract. I cannot respond to your VM inquiry w/o seeing this document first. I have asked Mr. George Joseph to provide me w/ this document, but I haven't received it yet. Thank you.

Matthew T. Fitzsimmons
Attorney at Law
Nicola, Gudbranson & Cooper, LLC
ATTORNEYS AT LAW

25 West Prospect Avenue, Suite 1400
Cleveland, OH 44115
(216) 621-7227
(216) 621-3999 fax
fitzsimmons@nicola.com

CONFIDENTIALITY NOTICE: This transmission and any accompanying documents contain confidential information from the law firm of Nicola, Gudbranson & Cooper, LLC that is legally privileged, confidential, and exempt from disclosure. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone at (216) 621-7227.

Internet communications cannot be guaranteed to be secure or error-free, as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. Therefore, we do not accept responsibility for any errors or omissions that are present in this email or any attachment that have arisen as a result of e-mail transmission.

Elizabeth A. Kane

From: Matthew Fitzsimmons
Sent: Monday, February 09, 2015 3:23 PM
To: CCohen@levitonlawfirm.com
Subject: NEON and Windstream

Dear Mr. Cohen -

To follow-up on our recent discussions, NEON needs the following information before we can have further meaningful discussions:

1. A copy of the controlling contract, including all terms and conditions, which govern this dispute. Is the contract with Cavalier Telephone, Paetec, Windstream, or some other entity? I have asked for this information numerous times, including from the Brown & Joseph people, but I have never received it.
2. Is there a forum selection clause and governing law clause that apply to this dispute?

In September 2012, NEON entered into a contract with another provider of voice and data services. On two separate occasions in September 2012, NEON notified Windstream that it was terminating the contract for the provision of voice and data line services. NEON had the right to cancel the contract with Windstream without penalty or charges. After NEON provided notice to Windstream that it was terminating the contract and no longer needed Windstream's equipment and services, NEON did not use any of Windstream's equipment and services. Notwithstanding the fact that NEON canceled the contract with Windstream, Windstream continued to invoice NEON for monthly services, and NEON mistakenly continued to pay such invoices -- even though Windstream was not providing any monthly services to NEON. Because of the confusion associated with the acquisition or mergers from Cavalier Telephone to Paetec to Windstream, and the frequent changes in Windstream's/Paetec's/Cavalier's customer service locations, Windstream/Paetec/Cavalier Telephone erroneously failed to cancel the contract with NEON on their own books and records. NEON's overpayments to Windstream constitute approximately \$148,727.23, exclusive of interest. Windstream has been unjustly enriched by accepting and keeping NEON's overpayments, without providing any further equipment or services to NEON. On several occasions, NEON has demanded that Windstream return and refund this overpayment of approximately \$148,727.23, but Windstream has failed and refused to do so. NEON has been damaged by Windstream's unjust enrichment in the amount of approximately \$148,727.23.

Please provide the information requested above to me as soon as possible so that we can determine whether there is a prudent, business-like way to resolve this dispute. Obviously, if Windstream sues NEON for \$33,000, NEON will counterclaim for \$148,727.23, plus interest, costs, and

attorneys' fees. Perhaps a lawyer from your firm should now get involved in the discussions with me.

Thank you.

Very truly yours,

Matthew T. Fitzsimmons

Matthew T. Fitzsimmons

Attorney at Law

Nicola, Gudbranson & Cooper, LLC

ATTORNEYS AT LAW

25 West Prospect Avenue, Suite 1400

Cleveland, OH 44115

(216) 621-7227

(216) 621-3999 fax

fitzsimmons@nicola.com

CONFIDENTIALITY NOTICE: This transmission and any accompanying documents contain confidential information from the law firm of Nicola, Gudbranson & Cooper, LLC that is legally privileged, confidential, and exempt from disclosure. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone at (216) 621-7227.

Internet communications cannot be guaranteed to be secure or error-free, as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. Therefore, we do not accept responsibility for any errors or omissions that are present in this email or any attachment that have arisen as a result of e-mail transmission.