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FILED WITH
Executive Secretary

July 18, 2014

IOWA UTILITIES BOARD

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE

COMPLAINT OF CAROLYN FRAHM

DOCKET NO. FCU-2013-0007

MOTION TO COMPEL DISCOVERY (WINDSTREAM)

For the reasons stated in this motion, the Office of Consumer Advocate (OCA) seeks an order compelling proper responses by Windstream Communications Iowa, Inc., (Windstream) to OCA discovery requests nos. 19, 27, 30, 36-38, 40-42, and 44-51 by a date certain in the near future. As evidenced by correspondence dated May 6, June 16, and July 2, 2014 (Attachments 5 and 7), OCA has made a good faith effort to resolve the issues without the involvement of the Board or the presiding officer.

In support of the motion, OCA states:

Course of discovery (Windstream)

1. On December 16, 2013, OCA sent 35 data requests to Windstream, together with a letter setting forth OCA procedures with respect to information that Windstream might claim to be confidential. See Attachment 1 (containing the letter only). Responses to the data requests were initially due December 23, 2013. At Windstream's request, the response time was extended to January 31 and later to February 28, 2014.

2. On February 28, 2014, Windstream responded to data requests nos. 1-35. See Attachment 2 (containing the responses that are material to this motion, specifically, the responses to data request nos. 3-12, 14-16, 18-19, 21, 23-25, 27, 30, and 32),

NOTE: Confidential material has been identified by placing it between curly brackets {}.

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Confidential Attachment 3 (containing documents produced with the responses to data request nos. 3 and 7), and Confidential Attachment 4 (containing a document produced with the response to data request no. 23).

3. On May 6, 2014, OCA sent two e-mails to Windstream requesting clarification and supplementation of certain of the responses. See Attachment 5 (containing these e-mails).

4. On May 6, 2014, OCA sent new data requests nos. 36-51 to Windstream. Responses were initially due May 13, 2014. At Windstream's request, the time for response was extended to June 12, 2014.

5. On June 11, 2014, Windstream provided responses and objections to data requests nos. 36-51. See Attachment 6 (containing the responses and objections to data requests that are material to this motion, specifically, the responses to data requests nos. 36-38, 40-51). Windstream did not then respond to OCA's May 6 e-mails requesting clarification and supplementation of certain of the earlier responses.

6. On June 16, 2014, and again on July 2, 2014, OCA sent e-mails to Windstream attempting to resolve discovery issues, both the issues previously raised in the e-mails dated May 6, 2014, and issues newly raised by the responses and objections sent June 11, 2014. The June 16 e-mail requested a response no later than June 27, 2014. The July 2 e-mail stated responses were needed no later than July 9, 2014. See Attachment 7 (containing the e-mails dated June 16 and July 2, 2014).

7. On July 10, 2014, Windstream sent three e-mails responding to OCA's e-mails of May 6, June 16 and July 2, 2014. See Attachment 8 (containing the three e-

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mails) and Confidential Attachment 9 (containing a spreadsheet produced with the third of these e-mails).

Data request no. 19

8. Data request no. 19 sought information regarding other complaints received by Windstream from and after August 1, 2012, regarding call completion failure on calls or faxes to the 319-394 NPA/NXX. Windstream's response stated that documents Nos. WIN 90 – WIN 116 were attached. The transmittal letter from Windstream, dated Friday, February 28, 2014, stated these documents were being reviewed and would be sent the following Monday. The documents were not attached and were not sent the following Monday or at any other time.

9. In the second of its e-mails dated July 10, 2014, Windstream stated these documents “are being finalized and will be provided separately.” The third e-mail dated July 10, 2014, did not transmit these documents. Instead, it transmitted a four-page “spreadsheet with documents that had originally been designated as WIN 000090 – WIN 0000116.” See Attachment 8 and Confidential Attachment 9. The third e-mail also objected that data regarding blocked calls prior to January 1, 2013, are not relevant and not calculated to lead the discovery of admissible evidence.

10. The objection is untimely and therefore waived. *Cargill, Inc. v. Ron Burge Trucking, Inc.*, 284 F.R.D. 421, 424 (D. Minn. 2012) (absent good cause, “failure to timely respond or object operates as a waiver of . . . discovery objections”); see Iowa R. Civ. P. 1.517(4) (last paragraph). The objection is also meritless. The documents originally designated as WIN 90 through WIN 116 have not been produced. They should be ordered produced.

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Data request no. 27

11. Data request no. 27 requested copies of correspondence with the FCC pertinent to Iowa regarding (i) possible call completion failure, post dial delay, poor transmission quality or misidentification of calling party on any calls or faxes placed to or from Iowa, (ii) general statistical information, either limited to Iowa or including Iowa, regarding the call completion problem, or (iii) relations with underlying or intermediate carriers, including their removal from routes or their sanctioning for failure to meet performance requirements. Windstream's response stated only that Windstream had provided OCA with a copy of the consent decree between Windstream and the FCC. None of the requested correspondence between Windstream and the FCC was provided.

12. In its correspondence dated May 6 and June 16, 2014, OCA again asked Windstream to provide the requested documents. OCA further stated it would work with Windstream if the documents were voluminous.

13. In its second e-mail dated July 10, 2014, Windstream stated: "None of the inquiries, responses and follow up communications was limited to calls to or from Iowa. The outcome of any inquiry is in the Consent Decree. Documents produced in negotiations of the settlement are privileged and confidential. See response to DR 50 previously provided." In its first e-mail dated July 10, 2014, addressing data request no. 50, Windstream similarly stated that "negotiations leading to settlement are privileged," adding: "the FCC has held that the Enforcement Bureau and parties under investigation have a legitimate interest in keeping the investigative phase of a proceeding confidential."

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14. Each of these objections is untimely and therefore waived. *Cargill, Inc. v. Ron Burge Trucking, Inc.*, 284 F.R.D. 421, 424 (D. Minn. 2012) (absent good cause, “failure to timely respond or object operates as a waiver of . . . discovery objections”); see Iowa R. Civ. P. 1.517(4) (last paragraph). For the reasons stated below, each of these objections is also without merit.

15. Although the FCC investigation was not limited to Iowa, it included Iowa. The information obtained by the FCC will include information that is relevant to identifying and correcting problems in Iowa, probably in a context and format that is more informative and more easily understood than the information provided here. Obtaining the information will spare the Board the need to duplicate the FCC’s efforts and will help expedite these proceedings. The rules of discovery are broadly construed to effect the disclosure of relevant information. *State v. Rainsong*, 807 N.W.2d 283, 287 (Iowa 2011).

16. The consent decree does not include any results of the FCC’s investigation. The outcome of the consent decree, moreover, is not yet known. The consent decree calls for the development of a compliance plan and for compliance and non-compliance reports. There is no assurance the consent decree will produce the desired result, particularly as respects intrastate calls, over which the FCC lacks jurisdiction. See OCA resistance to motion to dismiss, filed July 11, 2014, pp. 2-3.

17. Under Iowa R. Evid. 5.408¹ and Board rule 7.18(7),² offers of compromise, as well as conduct and statements made during compromise negotiations,

¹The rule provides: “Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise

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are generally inadmissible. *Brooks v. Holtz*, 661 N.W.2d 526, 529 (Iowa 2003). By the terms of rule 5.408, however, evidence presented in the course of settlement discussions that is otherwise discoverable is not within the scope of the rule's exclusion.

18. These rules are intended to foster settlement negotiations. *NAACP Legal Defense and Educ. Fund, Inc. v. U.S. Dep't of Justice*, 612 F.Supp. 1143, 1146 (D.D.C. 1985). "The sole means used to effectuate that end," however, "is a limitation on the admission of evidence produced during settlement negotiations for the purpose of proving liability at trial." *Id.* The rules were "never intended to be a broad discovery privilege." *Id.* See also *In re MSTG, Inc.*, 675 F.3d 1337, 1344 (Fed. Cir. 2012) ("Congress did not take the additional step of protecting settlement negotiations from discovery").³

negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution."

²The rule provides: "*Inadmissibility.* Any discussion, admission, concession, or offer to settle, whether oral or written, made during any negotiation on a settlement shall be privileged to the extent provided by law, including, but not limited to, Iowa R. Evid."

³Indeed, while the argument that settlement discussions are inadmissible may well be correct, the proposition that the settlement discussions are irrelevant under the discovery rules is a *non sequitur*. *Manufacturing Systems, Inc. of Milwaukee v. Computer Technology, Inc.*, 99 F.R.D. 335, 336 (D. Wis. 1983). Information which may not be admissible at trial is still discoverable so long as that information may lead to the discovery of other admissible evidence. *Computer Associates Intern., Inc. v. American Fundware, Inc.*, 831 F.Supp. 1516, 1531 (D. Colo. 1993). See generally *In re Subpoena Issued to Commodity Futures Trading Com'n*, 370 F.Supp.2d 201, 208-09 (D.D.C. 2005): "The federal courts do not enjoy unbridled authority to define new privileges in discovery whenever they see fit. . . . The Supreme Court has identified several factors that should be considered when assessing a proposed privilege. . . . First, the Court has asked whether there exists a broad consensus in federal and state law in favor of the privilege. . . . The party claiming privilege has the burden to establish its existence. WD Energy is unable to demonstrate a broad consensus in federal court in support of such a privilege. A few federal cases have recognized a settlement privilege. On the other hand, at least two federal cases have not recognized a privilege as such, but have instead required a heightened showing of need for settlement documents on public policy grounds, and a substantial number of cases have rejected such a privilege. . . . Whatever else might be said about this legal landscape, it does not reflect a consensus of support for a settlement privilege in federal court."

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19. Even if there were a discovery privilege for settlement discussions, the mere fact that a settlement was achieved would not shield an entire investigation from discovery. Not every inquiry or response that is part of an investigation, and not every document transmitted with such an inquiry or response, is a part of settlement discussions. See *Brooks v. Holtz*, 661 N.W.2d 526, 529 (Iowa 2003) (part of document admissible and part inadmissible); *In re Initial Public Offering Securities Litigation*, 2004 WL 60290 (S.D.N.Y. 2004) (offers of settlement are not intrinsically a part of a target's response to an agency's inquiry). There is no privilege generally extending to materials provided during the course of an agency's investigation. *In re Qwest Communications Intern. Inc.*, 450 F.3d 1179 (10th Cir. 2006).

20. Here, the consent decree describes the FCC's initial communication to Windstream as a letter of inquiry seeking information about its performance, and that of its intermediate carriers, in completing long distance calls. *In re Windstream Corp.*, 29 F.C.C.R. 1646 (FCC 2014) ¶ 8. Windstream provided narrative responses and supplemental responses, including call answer data for its networks. *Id.* Relevant details are not included in the consent decree. The Bureau's concerns "ultimately" focused on the Legacy PAETEC Network, not the Legacy Windstream Network. *Id.* While it is logical to infer from the fact that a consent decree was ultimately achieved that Windstream and the FCC at some point turned their attention to settlement, it cannot be assumed that settlement discussions were occurring from the outset. That seems unlikely. Only an examination of the documents will reveal which portion of the investigation was a part of settlement discussions and which was not.

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21. Windstream offers no support for its statement that the FCC has held that the Enforcement Bureau and parties under investigation have a legitimate interest in keeping the investigative phase of a proceeding confidential. The argument is therefore properly rejected as unsupported. Public policy, moreover, strongly supports the sharing of such investigative results with the states as part of their jurisdiction to seek to ensure reliable intrastate telephone service.

22. Because the objections are neither timely nor meritorious, the documents should be ordered produced.

Data request no. 30

23. Data request no. 30 asked Windstream to identify each underlying or intermediate carrier that has a contract with Windstream authorizing the carrier to carry traffic for Windstream to or from Iowa.

24. Windstream's response did not provide this information, but stated instead: "Windstream does not have contracts specific to Iowa. Contracts between Windstream and other carriers are national, and any could potentially receive traffic going to or from Iowa."

25. In its correspondence dated May 6 and June 16, 2014, OCA again asked for the information, indicating that OCA understands the contracts may not be specific to Iowa.

26. In its second e-mail dated July 10, 2014, Windstream again stated that the contracts are not state specific. It also objected that the request is burdensome and would require extensive research and that the request is not calculated to lead to the discovery of admissible evidence.

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27. The objections are untimely and therefore waived. *Cargill, Inc. v. Ron Burge Trucking, Inc.*, 284 F.R.D. 421, 424 (D. Minn. 2012) (absent good cause, “failure to timely respond or object operates as a waiver of . . . discovery objections”); see Iowa R. Civ. P. 1.517(4) (last paragraph). For the reasons stated below, the objections are also meritless.

28. The contracts need not be state specific in order for the requested information to be relevant. Perhaps the central concern with the failure of calls to complete to rural destinations is the use of intermediate and underlying carriers. Information regarding the identity of the carriers used by Windstream, and related information regarding the adoption and enforcement of (or failure to adopt and enforce) adequate performance requirements, standards and metrics, is relevant to securing reliable completion of Iowa intrastate phone calls.⁴

29. Windstream has offered no support for its claim that providing the requested information would be burdensome. See *State ex rel. Miller v. Publishers Clearing House, Inc.*, 633 N.W.2d 732, 738-39 (Iowa 2001). Nor is it apparent why producing a list of the underlying or intermediate carriers it uses would be burdensome.

30. Because the objections are neither timely nor meritorious, Windstream should be ordered to provide responsive information.

⁴Data request no. 23 (not at issue on this motion) asked Windstream to describe any performance requirements, metrics or standards that Windstream imposes on underlying or intermediate carriers. Windstream’s response stated that “SLAs” are included in each contract and that an example can be found in the contract between Windstream and IntelePeer. OCA’s correspondence dated May 6 and June 16, 2014, asked Windstream to identify the specific provisions in the IntelePeer contract to which Windstream referred. In its second e-mail dated July 10, 2014, Windstream clarified that “SLA” stands for “service level agreement” but did not identify any provisions in the contract that describe the performance requirements, metrics or standards that Windstream imposes on underlying or immediate carriers. See Confidential Attachment 4 (the contract between Windstream and IntelePeer).

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Data requests nos. 36-38, 40-42, and 44-45

31. Data requests nos. 3-12, 14, 16, and 18 sought information regarding the several complaints Ms. Frahm made to Windstream and the routing changes Windstream made in response. The information provided in the responses to these data requests, including the attachments, is far from self-explanatory.⁵ The chronology of the routing changes set forth in these responses is also discrepant with the chronology of the routing changes set forth in Windstream's letter to the Iowa Utilities Board staff dated March 23, 2013. According to the letter, following Ms. Frahm's first two complaints, on February 27 and March 1, 2013, her line tested fine, and it was not until Windstream received her third complaint, on March 7, 2013, that Windstream enlisted the help of Verizon. According to the discovery responses (see responses to nos. 10 and 18), Windstream moved Ms. Frahm's account to Verizon on February 27, 2013, prior to the second and third complaints from Ms. Frahm.

32. Data requests nos. 36-38, 40-42, and 44 asked specific questions designed to clarify the information provided in response to data requests nos. 3-12, 14-16, and 18, including an explanation of the apparent discrepancy in the chronology of the routing changes. Data request no. 45 asked Windstream to identify the person or persons at Windstream with knowledge of the responses to data requests nos. 36-38, 40-42, and 44.

33. The responses to data requests nos. 36-38, 40-42, and 44 are uninformative and non-responsive. For the most part, they simply cross-reference the

⁵Included with the attachments to this motion are documents identified by Windstream as WIN 000062 through WIN 000085. These documents were provided by Windstream under a claim of confidentiality as attachments to its responses to data requests nos. 3 and 7. The documents were provided as pdf files with the following file names: WIN 62 - "{ }"; WIN 63 - "{ }"; WIN 64-73 - "{ }"; WIN 74 - "{ }"; WIN 75-76 - "{ }"; WIN 77-79 - "{ }"; WIN 80-81 - "{ }"; WIN 82-83 - "{ }"; WIN 84-85 - "{ }". See Confidential Attachment 3.

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non-self-explanatory records that prompted the questions in the first place, or they object altogether. For example:

A. In response to data request no. 41, which asks for an explanation of the apparent discrepancy in the chronology of the routing changes, Windstream first objects that the data request seeks information that is not relevant or calculated to lead to the discovery of admissible evidence. Windstream acknowledges that its documentation is in a condensed short-hand version, but it offers no explanation of what the condensed short-hand language means. Windstream states that it does not know why there may be a discrepancy.

B. In further response to data request no. 41, Windstream states that it worked with both Verizon and IntelePeer in efforts to correct the issues and provide the best possible service. Despite repeated attempts to obtain a coherent answer not only from Windstream but also from Verizon and IntelePeer to the question who did what when in order to address Ms. Frahm's several complaints, OCA has yet to receive such an answer.⁶

C. In response to data request no. 44, which asks Windstream to provide a plain English explanation of the documentation at WIN 62-73, and to exclude any information or explanation that is not relevant to Ms. Frahm's complaints regarding the failure of calls to complete to Mediapolis or actions that were taken to remediate that complaint, Windstream objects that the data request is overly broad and burdensome, that it seeks information that is neither relevant

⁶In its e-mail dated July 10, 2014, addressing data request no. 43 (not at issue on this motion), Windstream denies that it was required to follow step 3 of the resale order flow referenced by Verizon.

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nor calculated to lead to the discovery of admissible evidence, and that it is vague and ambiguous.

D. In response to data request no. 45, which asks for the identity of the person or persons at Windstream with knowledge of the responses to data requests nos. 36-38, 40-42, and 44, Windstream objects that the data request is overly broad and burdensome, then states it will designate a “corporate representative” for further discovery “if necessary.”

34. In its correspondence dated June 16, 2014, OCA requested either direct answers to the questions posed in data requests nos. 36-38, 40-42, and 44 or the name and position of the individual or individuals who have first-hand knowledge of the routing changes that were made in response to Ms. Frahm’s complaints, *i.e.*, the person or persons who made the changes, who noted the changes in a condensed short-hand version in Windstream’s records, who directed the changes, and who corresponded with Verizon and IntelPeer concerning the changes.

35. In its e-mails dated July 10, 2014, Windstream did not provide direct answers to the questions asked and did not identify the person or persons with personal knowledge.

36. Data requests nos. 36-38, 40-42, and 44-45 seek relevant information that will assist OCA, and ultimately the Board, in understanding what Windstream’s records show in terms of the routing changes that were made in response to Ms. Frahm’s complaints. These data requests similarly seek relevant information that will clarify the chronology of these changes. Windstream should be required to provide responsive information.

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Data request no. 46

37. Data request no. 46 asked for a list of providers that Windstream has de-routed at a specific destination level, as stated in response to data request nos. 15, 21, and 24, together with the specific destination, the reason for removal and any notices or correspondence regarding the removal. The request asked that any instances in which the destinations were outside Iowa be excluded. Windstream objected on grounds the request is burdensome, irrelevant, and vague. In its e-mail dated July 10, 2014, Windstream stated that the consent decree between Windstream and the FCC ensures the development of and compliance with adequate standards.

38. Windstream has offered no support for its claim that providing the requested information would be burdensome. See *State ex rel. Miller v. Publishers Clearing House, Inc.*, 633 N.W.2d 732, 738-39 (Iowa 2001). There is nothing vague in the terms. They are quoted from Windstream's initial discovery responses. The requests are probative of whether Windstream has developed and enforced adequate standards to ensure that intermediate carriers complete calls. They are therefore both relevant and reasonably calculated to lead to the discovery of admissible evidence. The consent decree does not make them irrelevant.⁷

Data request no. 47

39. Data request no. 47 asked for a list of providers that Windstream has completely removed from the routing and/or disconnected their services, as stated in response to data requests nos. 15, 21, and 24, together with the date of removal or disconnection, the reason for removal or disconnection, and any notices or

⁷The only requirement in the consent decree specifically relating to underlying or intermediate carriers is the one referenced in data request no. 50, discussed below. See *In re Windstream Corp.*, 29 F.C.C.R. 1646 (FCC 2014) ¶ 15(e).

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correspondence regarding the removal. Windstream objected on grounds the request was burdensome, irrelevant, and vague. Windstream also stated that the response to data request no. 25 had listed the carriers Windstream had “removed specifically from routing in Iowa.”

40. The response to data request no. 25 did not provide a complete response to data request no. 47. The response to data request no. 25 stated: “Windstream removed Teliix and All Access from routing in Iowa. Teliix was removed in September or October 2013, and it is unclear when All Access was removed.” This response did not provide the reason for removal. It did not provide the requested notices or correspondence. It did not make clear whether, as opposed to removing a carrier specifically from routing in Iowa, Windstream has generally removed a carrier or carriers from routing nationally or globally, including Iowa.

41. Windstream has offered no support for its claim that providing the requested information would be burdensome. See *State ex rel. Miller v. Publishers Clearing House, Inc.*, 633 N.W.2d 732, 738-39 (Iowa 2001). There is nothing vague in the terms. They are quoted from Windstream’s initial discovery responses. The requests are probative of whether Windstream has developed and enforced adequate standards to ensure that intermediate carriers complete calls. They are therefore both relevant and reasonably calculated to lead to the discovery of admissible evidence.

Data request no. 48

42. Data request no. 48 asked Windstream to provide the specific elements used by Windstream to monitor and evaluate performance of terminating carrier trunk groups, as referenced in response to data request no. 32, including Answer Seizure Ratio

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(ASR%), Post Dial Delay (PDD) measurements, and number of Trouble Tickets per Minute of Use terminated. The data request also asked Windstream to explain how these elements are measured and how Windstream uses them. Windstream objected on grounds of burdensome and relevance.

43. Windstream offered no support for its claim that providing the requested information would be burdensome. See *State ex rel. Miller v. Publishers Clearing House, Inc.*, 633 N.W.2d 732, 738-39 (Iowa 2001). There is nothing vague in the terms. They are quoted from Windstream's initial discovery responses. The docketing order specifically references a need for inquiry into "what standards Windstream imposes on underlying carriers to ensure that calls complete." The request is therefore both relevant and reasonably calculated to lead to the discovery of admissible evidence.

44. In its e-mail dated July 10, 2014, Windstream stated that the specific elements used by Windstream to measure performance of underlying carriers are identified in response to data request no. 32. That is not the case. The response to data request no. 32 merely listed what three of the performance measures are called – Answer Seizure Ratio, for example – without stating how they are measured and without giving the specific numbers that are deemed acceptable performance. It is thus impossible to evaluate based on the information provided whether Windstream has adopted adequate standards for monitoring intermediate or underlying carriers. See docketing order, p. 8 ("The responses from the companies to date do not *fully* explain . . . what standards Windstream imposes on underlying carriers to ensure that calls complete") (emphasis added).

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Data request no. 49

45. Data request no. 49 asked Windstream to identify the Compliance Officer designated pursuant to section 14, and produce the Compliance Plan developed pursuant to section 15, of the consent decree between Windstream and the FCC, together with any Noncompliance Reports and any Compliance Reports pursuant to sections 16 and 17 of the same consent decree. Windstream objected on grounds of relevance and on grounds they contain information that is proprietary.

46. Windstream's concerns regarding the claimed confidentiality and proprietary character of these materials are appropriately addressed in the letter OCA has already sent to Windstream regarding OCA procedures with respect to materials claimed to be confidential. See Attachment 1. Because the FCC and the Iowa Board are conducting parallel investigations within their respective jurisdictions with respect to the same rural call completion problem, the work of the federal authorities is both relevant and reasonably calculated to lead to the discovery of admissible evidence here. There is no good reason why federal and state authorities should have to duplicate each other's work. The federal compliance plan may well contain provisions that will be helpful in crafting a solution at the state level.⁸

⁸In its e-mail dated July 10, 2014, Windstream observes that the FCC, in its recent call completion order, applied its recording, retention and reporting requirements to intrastate as well as interstate services. Motion, p. 6. See *In the Matter of Rural Call Completion, Report and Order and Further Notice of Proposed Rulemaking*, 28 F.C.C.R. 16154 (FCC 2013) ¶ 33. The FCC took this action (disputed by only one commenter) because "allowing providers to record, retain, and report only interstate information would provide an incomplete picture of the rural call completion problem and leave us poorly equipped to ensure that calls are being properly completed" and because "collecting only a partial picture of rural call completion rates may prevent us from ensuring that interstate calls are properly being completed." *Id.* Nothing in the FCC's actions had the effect of divesting the states of their jurisdiction to address the reliability of intrastate telephone service. Indeed, the FCC expressly recognized the existing state jurisdiction: "We look forward to working with our state partners – some of whom may be strained for resources to address these problems themselves – to ensure that customers of rural carriers do not continue to suffer from poor termination rates." *Id.*, ¶ 34.

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Data request no. 50

47. Data request no. 50 asks (i) for the rationale for continuing to use an intermediate provider on one route after the intermediate provider has shown a sustained inadequate performance on another route and (ii) whether there were communications between Windstream and the FCC regarding a difference between the FCC's settlement with Level 3 and the FCC's settlement with Windstream on this point. If the answer to the latter question is yes, the data request also asked for copies of the communications. Windstream objected on grounds the request called for speculation and on grounds of "privilege."

48. Neither of the questions asked in data request no. 50 asked Windstream to speculate. The answer to the second question is either yes or no.

49. The objection did not identify the claimed privilege. The attorney-client privilege would not extend to communications sent to or received from an outside party such as the FCC.

50. In its e-mail dated July 10, 2014, citing Iowa R. Evid. 5.408 and 199 IAC 7.18(7), Windstream stated that negotiations leading to settlement are privileged. As discussed above in conjunction with data request no. 27, these rules address admissibility at hearing, not the scope of discovery. There is an important public interest in understanding why Windstream and the FCC reached a different conclusion on this point from the conclusion reached by Level 3 and the FCC.

51. In its e-mail dated July 10, 2014, Windstream stated that the FCC has held that the Enforcement Bureau and parties under investigation have a legitimate interest in

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keeping the investigative phase of a proceeding confidential. As discussed above in conjunction with data request no. 27, the argument lacks legal support.

Data request no. 51

52. Data request no. 51 asked whether there are differences between the ways Windstream routes long distance calls or makes use of intermediate carriers as between its Legacy PAETEC Network and its Legacy Windstream Network that explain why the FCC's investigation ultimately focused on the former. Data request no. 51 also asked whether calls placed from Ms. Frahm's number utilize the Legacy PAETEC Network or the Legacy Windstream Network. Windstream objected that the request calls for speculation of the FCC's motives in conducting its investigation, then stated that prior to February 27, 2013, calls placed from Ms. Frahm's number utilized the SONUS Network, which is a Legacy Nuvox Network.

53. As requested in OCA's correspondence dated June 16, 2014, Windstream should clarify whether the Legacy Nuvox Network is (a) a part of the Legacy PAETEC Network or (b) a part of the Legacy Windstream Network or (c) neither a part of the Legacy PAETEC Network nor a part of the Legacy Windstream Network. Windstream's e-mail dated July 10, 2014, does not provide such a clarification. It merely repeats Windstream's earlier statement that the SONUS network was part of Nuvox.

54. Data request no. 51 does not ask Windstream to speculate regarding the FCC's motives for conducting the investigation. The reasons the FCC has been conducting an investigation are the same as the reasons the Board has docketed these proceedings: because calls are not completing as they should. It is possible, moreover,

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perhaps likely, that correspondence between Windstream and the FCC, as requested in data request no. 27 (see above), sheds light on the question asked.

WHEREFORE, OCA moves for an order compelling proper responses to OCA data requests nos. 19, 27, 30, 36-38, 40-42, and 44-51 by a date certain in the near future.

Respectfully submitted,

Mark R. Schuling
Consumer Advocate

/s/ Craig F. Graziano _____

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December 16, 2013

SENT VIA E-MAIL

Richard W. Lozier, Jr.
Belin McCormick, PC
The Financial Center
666 Walnut, Suite 2000
Des Moines, IA 50309

RE: Iowa Utilities Board Docket No. FCU-2013-0007 (C-2013-0025)
Carolyn Frahm

Dear Mr. Lozier:

This letter is intended to confirm the procedure used by this office to preserve and protect the confidentiality of documents or other information provided to the OCA under a claim of confidentiality.

As you may know, the Office of Consumer Advocate (OCA) is a statutory division of the Iowa Department of Justice and as such is subject to Iowa Code Chapter 22, Iowa's Open Records law. Any documents or other information, including but not limited to responses to data requests or other discovery, provided to the OCA under a claim of confidentiality will not be released to any person outside the OCA (other than consultants, if any, retained by OCA in connection with this proceeding who will observe the same procedures) until the party claiming confidentiality has an opportunity to take appropriate action to prevent disclosure under Iowa Code Chapter 22.

If the OCA receives a request for the release of documents or other information for which you claim confidentiality, the OCA will promptly notify you and delay the release of the documents or other information for 14 calendar days from the date of the request pursuant to Iowa Code § 22.8(4) to permit you to take appropriate action to prevent disclosure.

If the OCA files with the Iowa Utilities Board a document containing information for which you have claimed confidentiality, pages containing such information will be conspicuously marked confidential and will be filed separately on a confidential basis, and the

information claimed to be confidential will be redacted from the public version of any filing. If the Iowa Utilities Board has not yet determined whether the information constitutes “confidential records” pursuant to Iowa Code § 22.7, you would have the opportunity to file with the Utilities Board a request for confidential treatment pursuant to 199 Iowa Admin. Code 1.9.

This procedure will apply to all material submitted under a claim of confidentiality and will continue in force until such time as Iowa Code Chapter 22 is amended to prohibit such a procedure. This procedure, however, should not be construed as a determination by OCA that such confidentially designated material may be exempt from disclosure under Chapter 22. Instead, this procedure is intended to allow efficient discovery to take place by preserving the rights of the parties involved until such time, if any, as a final determination of confidentiality is needed.

If you have any questions, please let me know. Thank you.

Sincerely,

/s/ Craig F. Graziano

Craig F. Graziano

Attorney

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

3. Please give the date of each telephone communication between Windstream and Frahm. For each, please identify the person who placed the call and the person who answered it and state all known details of what was said. Please indicate the position of the person who placed or received the call on behalf of Windstream. Please produce copies of all records of each such call, including any recordings or notes. Please include each telephone message left by Windstream for Frahm.

To the best of Windstream's knowledge, please see documentation at Bates Numbers WIN 000062 - WIN 000073. Some of the documentation produced in response to this Data Request is a compilation of trouble tickets regarding Ms. Frahm. This compilation is for internal Windstream purposes only and is being provided to fully respond to this Data Request. The compilation is not a formal reporting tool or submission. It is confidential and should be afforded confidential treatment and protected from disclosure by OCA.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

4. Please produce all documents that concern or address the alleged failure of calls to complete from Frahm's phone number to the Mediapolis number provided in her complaint, including but not limited to each of the trouble tickets referenced in your letters to the Iowa Utilities Board dated March 23 and 29, 2013.

To the best of Windstream's knowledge, please see the documentation provided in response to Data Request Number 3.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

5. Does Windstream or any company acting on Windstream's behalf have any records of calls that Frahm attempted to but was unable to complete to the Mediapolis number provider in her complaint? If so, please produce the records.

To the best of Windstream's knowledge, all records available to Windstream regarding these calls have been produced in response to Data Request Numbers 2 and 3.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

6. Please explain what caused or may have caused the alleged failure of calls to complete from Frahm's phone number to the Mediapolis number provided in her complaint.

Windstream cannot speculate as to the cause of any alleged failure of calls made by Ms. Frahm to Mediapolis.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

7. Please produce any internal documents and any correspondence or other record of any communication with any outside parties, including other carriers, that address what caused or may have caused the alleged failure of calls to complete from Frahm's phone number to the Mediapolis number provided in her complaint.

To the best of Windstream's knowledge, please see documentation at Bates Numbers WIN 000074 - WIN 000085.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

8. Please explain what an Out of Territory (OOT) account is, as referenced in your letter to Iowa Utilities Board staff dated April 1, 2013. Please produce any written materials that explain such an account. Was there a name for the type of account Frahm had prior to time she was moved to an OOT account? If so, what was that name? Were there differences in services or features between the two types of accounts? Were there differences in pricing between the two types of accounts? If so, please explain the differences.

Out of Territory is not an “account,” but relates to routing of calls. “Out of Territory” means a customer has Windstream’s service, but the customer’s calls are routed through an OOT network, and not Windstream’s network. Prior to moving Ms. Frahm to OOT, she was routed through Windstream’s long distance network. There are no changes to a customer’s billing, dialing patterns, rates, terms or conditions when routing changes are made.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

9. Are customers given the choice of choosing an OOT account? If so, when and how are they informed of the existence of this type of account? Does Windstream advertise an OOT account? Please provide copies of any notices to consumers or advertising materials regarding the OOT account.

Customers subscribe to long distance service with Windstream, and Windstream determines how best to route calls to ensure completion and how best to provide service to its customers.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

10. On what date was Frahm moved to an OOT account? Was hers the only Iowa account that was moved to an OOT account on or about that date? If not, what other Iowa accounts were moved to an OOT account on or about that date?

Ms. Frahm's account was moved to the Verizon network on or about February 27, 2013. She has experienced no further issues with her services, to Windstream's knowledge, since that date, and Windstream has not changed her account status since February 27, 2013.

There is no way to determine if other customers were moved to another network on or about the same date. Such information is not maintained by Windstream in the ordinary course of business.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

11. Please explain why Windstream concluded that enlisting the help of Verizon or moving Frahm to an OOT account would “ensure there were not any routing problems on their end,” as stated in your letter to Iowa Utilities Board staff dated March 23, 2013. To whom does “their” in this quote refer?

Windstream obviously cannot promise there will be no routing problems on the Verizon network, or any other network when calls are routed through other companies. Windstream leases network options from Verizon, and when issues are noted regarding other companies, Windstream has Verizon as an option. Windstream checked Verizon’s network and found calls were being completed; therefore, it moved Ms. Frahm to Verizon’s network in hopes further alleged issues being averted.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

12. Please produce all internal documents and all communications with outside parties, including but limited to Verizon, that concern or address the movement of Frahm to an OOT account, including the reasons for making this change or the reasons why it might solve the problem.

Please see documents provided in response to Data Request Numbers 2, 3 and 7.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

14. Please describe the complete routing of calls from Frahm's phone number to the Mediapolis number provided in her complaint, immediately before the movement of her account to OOT. Please include in your response the identity of each underlying or intermediate carrier known to Windstream.

Since approximately November 2010, Iowa traffic has been processed by Windstream using the SONUS network, which routes calls to an underlying carrier using the least cost routing (LCR) database. The LCR is determined by the originating and the terminating NPA/NXX. Ms. Frahm's call to the 319-394 NPA/NXX was placed by SONUS onto the Intelepeer network. Windstream has no knowledge of the routing of calls once they pass to the Intelepeer network.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

15. In reference to your response to data request no. 14, is it possible that one or more underlying or immediate carriers whose identity is not known to Windstream were used in the routing of the calls? If so, please explain.

Yes, but Windstream has no knowledge how underlying carriers route calls once they receive the calls. If Windstream hands a call to an intermediate provider, it does not know if the intermediate provider routes the call on its own network or via another provider for termination. Windstream can open trouble tickets with providers with whom it has contracts, and Windstream will monitor and address performance issues with any providers contracted to handle calls for Windstream. If there are performance issues, Windstream can de-route the providers, either at the specific destination level or completely remove them from routing, and/or disconnect their services.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

16. Please describe the complete routing of calls from Frahm's phone number to the Mediapolis number provided in her complaint, immediately after the movement of her account to OOT. Please include in your response the identity of each underlying or intermediate carrier known to Windstream.

Calls now route through Verizon. Windstream has no knowledge if underlying carriers are utilized to route calls, and Verizon would have to address that issue. Windstream can open a trouble ticket with Verizon to address any issues should there be completion issues.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

18. Please state whether any further changes have been made with regard to the routing of calls from Frahm's phone number to the Mediapolis number provided in her complaint, from and after the date given in response to data request no. 10. If so, please describe the changes, provide the date they were made and produce any supporting documents.

Windstream has not changed the routing of Ms. Frahm's account since February 27, 2013.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

19. From and after August 1, 2012, did Windstream receive any complaints from anyone other than Frahm regarding call completion failure, post dial delay, poor transmission quality or misidentification of calling party on calls or faxes placed to the 319-394 NPA NXX? If so, please give the date of each complaint, the name and address of the complainant, a summary of the complaint, and a description of any action taken in response to the complaint.

Two complaints were filed with the Federal Communications Commission Rural Call Completion Task Force. Responses were filed by Windstream, stating any alleged problems were corrected. Copies of each of the complaints and Windstream's responses are at Bates Numbers WIN 000086 - WIN 000089.

Additionally, please see the attached compilation, at Bates Numbers WIN 000090 - WIN 0000116, of trouble tickets created by Windstream regarding alleged call completion issues in Iowa from January 1, 2011 to January 1, 2014, that is being produced in response to this Data Request and other Data Requests herein. Windstream objects to requests for information concerning poor transmission quality or misidentification of calling party on calls or faxes, as overly broad, vague, unduly burdensome, and not reasonably calculated to lead to relevant evidence, as those are not directly in issue in this matter. This compilation is for internal Windstream purposes only and is being provided to fully respond to the Data Requests. The compilation is not a formal reporting tool or submission. It is confidential and should be afforded confidential treatment and protected from disclosure by OCA.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

21. With respect to any underlying or intermediate carriers identified in response to data request no. 14, had Windstream done any testing regarding its capabilities to complete calls successfully? If so, please explain the testing that was done. Please give the date of each test and the results. Please produce supporting documents.

As outlined in other responses to these Data Requests, Windstream can open trouble tickets with providers with whom it has contracts, and Windstream will monitor and address performance issues with any providers contracted to handle calls for Windstream. If there are performance issues, Windstream can de-route the providers, either at the specific destination level or completely remove them from routing, and/or disconnect their services.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

23. Please describe any performance requirements, metrics or standards that Windstream imposes on underlying or intermediate carriers.

SLAs are included in each contract. An example can be found in the contract between Windstream and Intelepeer, provided in response to Data Request Number 20 and located at Bates WIN 000117 – WIN 000127. These documents should be treated as confidential, proprietary company information, and OCA should protect them from disclosure.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

24. Please describe any sanctions that Windstream can impose on underlying or intermediate carriers for failure to meet performance requirements, metrics or standards.

Windstream can de-route carriers, either at the specific destination level or completely remove them from routing, and/or disconnect their services.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

25. Has Windstream imposed a sanction on an underlying or intermediate carrier for failure to meet performance requirements, metrics or standards based in whole or part on calls or faxes placed to or from Iowa? If so, please identify each such carrier, the sanction and the date the sanction was imposed.

Windstream removed Teliix and All Access from routing in Iowa. Teliix was removed in September or October 2013, and it is unclear when All Access was removed.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

27. Please state whether, from and after January 1, 2011, the Federal Communications Commission has made inquiry of Windstream regarding (i) possible call completion failure, post dial delay, poor transmission quality or misidentification of calling party on any calls or faxes placed to or from Iowa, (ii) general statistical information, either limited to Iowa or including Iowa, regarding the call completion problem, or (iii) relations with underlying or intermediate carriers, including their removal from routes or their sanctioning for failure to meet performance requirements. If so, please produce the Commissions' inquiries, Windstream's responses, and any follow-up communications. Communications not pertinent to calls to or from Iowa may be omitted.

On February 20, 2014, Windstream entered into a Consent Decree with the FCC to resolve an investigation into the company's call completion practices. Please refer to the copy of the FCC's Order, approving the Consent Decree, previously provided to OCA via email on February 21, 2014.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

30. Please list each underlying or intermediate carrier that has a contract with Windstream authorizing the carrier to carry traffic for Windstream to or from Iowa. Please indicate the date each such contract was executed.

Windstream does not have contracts specific to Iowa. Contracts between Windstream and other carriers are national, and any could potentially receive traffic going to or from Iowa.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : December 16, 2013
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

32. Please produce any statistics maintained by Windstream, from and after January 1, 2011, regarding its call completion rates in Iowa, including any breakdown by geographic location or NPA NXX.

Windstream uses several elements to monitor and evaluate performance of terminating carrier trunk groups. Among these are: Answer Seizure Ratio (ASR%), Post Dial Delay (PDD) measurements, and number of Trouble Tickets per Minute of Use terminated. Each of these measurements was calculated at the aggregate level and specific statistics at the NPA-NXX is not available.

CONFIDENTIAL

**These pages (pages 1 through 24 of 24) contain
confidential material.**

(Filed under seal)

CONFIDENTIAL

**These pages (pages 1 through 11 of 11) contain
confidential material.**

(Filed under seal)

Graziano, Craig [OCA]

From: Graziano, Craig [OCA]
Sent: Tuesday, May 06, 2014 10:00 AM
To: Richard W. Lozier (RWLozier@belinmccormick.com)
Cc: Meals, Amanda [OCA]
Subject: Iowa Utilities Board Docket No. FCU-2013-0007. Carolyn Frahm.

Dick:

Thank you, and the same to Windstream, for the responses to data requests provided February 28, 2014. We appreciate the cooperation.

The purpose of this message is to address several issues regarding the responses. We request the following clarification and supplementation.

1. Your transmittal letter indicated that documents WIN 90-116 were being reviewed. I do not think we have those.
2. Data request no. 17 asked "by how much" Windstream's routing cost changed when it switched the account to OOT, i.e., to Verizon. The data request also asked for an explanation of any factors that account for the difference. The focus of these questions is not the customer's rates, terms or conditions but rather the costs to Windstream. Please answer.
3. With respect to Windstream's response to data request no. 23, please state what "SLA" stands for. Please identify the specific provisions in the IntelPeer contract to which reference is made.
4. The response to data request no. 27 is incomplete. Please provide the documents requested. We will work with you if the files are voluminous.
5. Please provide the information requested in data request no. 30. We understand the contracts may not be specific to Iowa.

We will also be sending additional discovery requests, probably later today.

Happy to discuss any concerns. Thank you.

Craig F. Graziano, Attorney
Office of Consumer Advocate
Iowa Department of Justice
1375 East Court Avenue, Room 63
Des Moines, Iowa 50319-0063
Telephone (direct): 515-725-7223
Telephone (office): 515-725-7200
Fax: 515-725-7221

Graziano, Craig [OCA]

From: Graziano, Craig [OCA]
Sent: Tuesday, May 06, 2014 2:10 PM
To: Richard W. Lozier (RWLozier@belinmccormick.com)
Cc: Meals, Amanda [OCA]
Subject: FCU-2013-0007. Carolyn Frahm.

Dick,

Could we also please get a copy of Attachment 2 to the contract between Verizon and Windstream and any subsequent attachments? Sorry for this straggler. Thanks.

Craig F. Graziano, Attorney
Office of Consumer Advocate
Iowa Department of Justice
1375 East Court Avenue, Room 63
Des Moines, Iowa 50319-0063
Telephone (direct): 515-725-7223
Telephone (office): 515-725-7200
Fax: 515-725-7221

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : May 6, 2014
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

36. Please state whether any route changes were made in response to the trouble ticket dated February 27, 2013, as referenced in Windstream's letter to Iowa Utilities Board staff dated March 23, 2013. If so, please explain the changes. Please include in the explanation, to the extent known to Windstream, the routing path before the changes and the routing path after the changes.

Please see the response to Data Request #10, Data Request #14, Data Request #15, and Data Request #16, previously provided.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : May 6, 2014
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

37. Please explain the route changes made on February 27, 2013, as referenced at WIN 63 top row. Please include in the explanation, to the extent known to Windstream, the routing path before the changes and the routing path after the changes. Please explain what is meant by “mrs calls.”

Again, Please see the response to Data Request #10, Data Request #14, Data Request #15, and Data Request #16, previously provided. The notes reflect “route changes made.... mrs. calls are completing”. In this statement, ‘mrs calls’ refers to the customer, and is the abbreviation to the word mistress and commonly used in place of madame.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : May 6, 2014
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

38. Please state whether any route changes were made in response to the trouble ticket dated March 1, 2013, as referenced in Windstream's letter to Iowa Utilities Board staff dated March 23, 2013. If so, please explain the changes. Please include in the explanation, to the extent known to Windstream, the routing path before the changes and the routing path after the changes.

Please see response to Data Request #18, previously provided.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : May 6, 2014
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

40. Please explain the route changes made on March 4, 2013, as referenced at WIN 63 bottom row. Please include in the explanation, to the extent known to Windstream, the routing path before the changes, and the routing path after the changes.

Windstream has provided copies of the documentation and information it has available to address this issue. To our best knowledge and belief, this issue was addressed with the route changes that occurred on February 27, 2013, and no additional route changes were made on March 4, 2013. The trouble tickets noted are likely those of the call center represented who recognized that the issues were already corrected by the previous routing changes made.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : May 6, 2014
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

41. Windstream's letter to Iowa Utilities Board staff dated March 23, 2013, states that Windstream enlisted the help of Verizon on March 7, 2013, upon receipt of a third complaint. Windstream's response to data request no. 10 states that Ms. Frahm's account was moved onto the Verizon network on or about February 27, 2013. Please explain what appears to be a discrepancy regarding the date when Windstream enlisted the help of Verizon. Please include an explanation why, if routing was through Verizon began on February 27, 2013, Windstream was corresponding with IntelePeer on the matter on March 1, 2013 (WIN 74-79).

Windstream objects to Data Request # 41 on the grounds that it seeks information that is not relevant and not calculated to lead to the discovery of admissible evidence. Without waiver of the foregoing objection, Windstream does not know why there may be a discrepancy. The call notes and the information are provided in a condensed, short-hand version. From the investigation, Windstream worked with both Verizon and Intelepeer in efforts to correct the issues and provide the best service possible. Route changes were made, and ongoing communications with both companies were necessary to discuss the corrections made and issues causing the interruptions.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : May 6, 2014
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

42. The correspondence between Windstream and Verizon at WIN 82-85 shows Verizon updating ticket status to “clean/no errors.” Was there prior correspondence between Windstream and Verizon on the matter? If so, can that be produced? If not, why not? Is there a Windstream trouble ticket associated with this correspondence? Is so, has it been produced? If not, please produce.

All trouble tickets notated and available between Windstream and Verizon regarding Carolyn Frahm’s telephone number have been produced.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : May 6, 2014
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

43. Does Windstream agree with Verizon's response to OCA data request no. 3? If not, in what respects does it disagree?

Windstream has not seen Verizon's response to OCA's Data Request No. 3 and can neither agree nor disagree with the response.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : May 6, 2014
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

44. Please explain the information at WIN 62-73 in plain English. Please exclude any information or explanation that is not relevant to Ms. Frahm's complaints regarding the failure of telephone calls to complete to Mediapolis or the actions that were taken to remediate that complaint.

Windstream objects to Data Request # 44 on the grounds that it is overly broad and burdensome, seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence and is vague and ambiguous. Windstream has provided the documentation for review and answered the questions associated with the documentation in the best form possible.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : May 6, 2014
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

45. Please identify by name and position the person or persons at Windstream with knowledge of the responses to data requests nos. 36-44.

Windstream objects to Data Request # 45 on the grounds that it is overly broad and burdensome, seeks information that is not relevant and not calculated to lead to the discovery of admissible evidence. Windstream has over 13,000 employees with professional skills in many different positions within the company who could have knowledge of the information regarding call completion. If it is necessary to designate a corporate representative for further discovery, Windstream will do so.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : May 6, 2014
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

46. Please provide a list of providers that Windstream has, at any time from and after January 1, 2011, de-routed at a specific destination level, as stated in response to data request nos. 15, 21 and 24. Please indicate the date of removal, the specific destination and the reason for removal. Please exclude instances in which the destinations were outside Iowa. Please produce any notices or correspondence regarding the removal.

Windstream objects to Data Request # 46 on the grounds that it is overly broad and burdensome, seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence and is vague and ambiguous.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : May 6, 2014
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

47. Please provide a list of providers that Windstream has, at any time from and after January 1, 2011, completely removed from the routing and/or disconnected their services, as stated in response to data request nos. 15, 21 and 24. Please indicate the date of removal or disconnection and the reason for removal or disconnection. Please produce any notices or correspondence regarding the removal.

Windstream objects to Data Request # 47 on the grounds that it is overly broad and burdensome, seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence and is vague and ambiguous.

Without waiver of the foregoing objection, as stated in response to data request no. 15, underlying carriers route calls to other carriers as well, and Windstream has no knowledge of those calls once they are passed to any third party.

Response to data request No. 25 lists the carriers Windstream has removed specifically from routing in Iowa.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : May 6, 2014
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

48. Please provide the specific elements used by Windstream to monitor and evaluate performance of terminating carrier trunk groups, as referenced in response to data request no. 32, including Answer Seizure Ratio (ASR%), Post Dial Delay (PDD) measurements, and number of Trouble Tickets per Minute of Use terminated. Please explain how these elements are measured and how Windstream uses them.

Windstream objects to Data Request # 48 on the grounds that it is overly broad and burdensome, seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence and is vague and ambiguous.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : May 6, 2014
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

49. Please identify the Compliance Officer designated pursuant to section 14, and produce the Compliance Plan developed pursuant section 15, of the consent decree between Windstream and the FCC approved February 20, 2014, together with any Noncompliance Reports and any Compliance Reports pursuant to sections 16 and 17 of the same consent decree.

Windstream objects to Data Request # 49 on the grounds that the identity of the Compliance Officer is irrelevant and not calculated to lead to the production of admissible evidence. If it becomes necessary for Windstream to designate a corporate representative for purposes of discovery, it will do so.

Windstream objects to the production of the Compliance Plan, Noncompliance Reports and Compliance Reports on the grounds that such documents, to the extent they exist, are not public documents and contain information and documents that are proprietary to Windstream. In addition, Windstream needs to confirm with the FCC whether the Compliance Plan and Reports are considered to be confidential and not subject to public disclosure.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : May 6, 2014
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

50. Paragraph 15(e) of the consent decree between Windstream and the FCC approved February 20, 2014 provides: “If complaints, testing, or data collected in accordance with the Rural Call Completion Order show that an Intermediate Provider has sustained inadequate performance on a particular route, as reasonably determined by the Company, the Company will cease using the Intermediate Provider on that route, provided that other Intermediate Providers offer commercially reasonable options for reaching that location.” Paragraph 16(d)(iii) of the consent decree between Level 3 Communications, LLC, and the FCC approved March 12, 2013 provides: “If an Intermediate Provider demonstrates sustained inadequate performance (as reasonably determined by Level 3 in light of its obligations under this Consent Decree), Level 3 shall remove that Intermediate Provider from all routes, provided other commercially reasonable Intermediate Provider options exist to the routes served by that Intermediate Provider and such removal is commercially reasonable.” What is the rationale for continuing to use an intermediate provider on one route after the intermediate provider has shown a sustained inadequate performance on another route? Were there communications between Windstream and the FCC addressing this issue? If so, please produce.

Windstream objects to Data Request # 50 on the grounds that it calls for speculation. The terms of the consent decrees speak for themselves, and Windstream does not know why the terms vary from one consent decree to another. Windstream further objects on the grounds that negotiations and communications between Windstream and the FCC leading to the settlement are privileged and confidential and not subject to discovery.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : May 6, 2014
DOCKET NO. : FCU-2013-0007
COMPANY : Windstream

51. Are there differences between the ways Windstream routes long distance calls or makes use of intermediate carriers as between its Legacy PAETEC Network and its Legacy Windstream Network that explain why the FCC's investigation ultimately focused on the former? See consent decree between Windstream and the FCC approved February 20, 2014, ¶ 8. Please explain. Prior to February 27, 2013, did calls placed from Ms. Frahm's number utilize the Legacy PAETEC Network or the Legacy Windstream Network?

Windstream objects to Data Request # 51 on the grounds that it calls for speculation of the FCC's motives in conducting its investigation.

Without waiver of the foregoing objection, Windstream states that prior to February 27, 2013 calls placed from Ms. Frahm's number utilized the SONUS Network.

Please see Windstream's response to data request no. 14, previously provided. The SONUS network is a Legacy Nuvox Network. Windstream migrated all calls to the SONUS Network during October and November of 2010.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

Graziano, Craig [OCA]

From: Graziano, Craig [OCA]
Sent: Monday, June 16, 2014 4:49 PM
To: Richard W. Lozier (RWLozier@belinmccormick.com)
Subject: Iowa Utilities Board Docket No. FCU-2013-0007. In re Complaint of Carolyn Frahm.
Attachments: Verizon 3.pdf

Dear Mr. Lozier:

We received responses to data requests no. 36-51 on June 11, 2014. The purpose of this letter is to attempt to resolve a discovery dispute without the need for the involvement of the Board or the presiding officer. Happy to discuss any concerns. Please respond no later than June 27, 2014. Thank you.

Data requests nos. 36-42 and 44-45.

The records provided in response to data requests nos. 1-35, insofar as they respond to questions asking about the routing changes made in response to Ms. Frahm's complaints, are not self-explanatory. The chronology of the routing changes as set forth in the initial discovery responses is also discrepant with the chronology set forth in Windstream's letter to the Iowa Utilities Board dated March 23, 2014, as explained in data request no. 41. Data requests nos. 36-42 and 44 are intended (i) to assist our office, and ultimately the Board, in understanding what these records show in terms of the routing changes that were made in response to Ms. Frahm's complaints and (ii) to clarify the chronology of these changes. Data request no. 45 asks for the name and position of the person or persons at Windstream with knowledge of the subject matter of these responses.

The responses to data requests nos. 36-42 are largely uninformative. For the most part, they merely cross-reference the earlier non-self-explanatory records that prompted the questions in the first place. Windstream then objects to data request no. 45: rather than identifying the person or persons with knowledge of the subject matter, Windstream offers to designate a "corporate representative" for further discovery. Data request no. 44 does not seek information that is irrelevant: it specifically states: "Please disregard any information or explanation that is not relevant to Ms. Frahm's complaints regarding the failure of telephone calls to complete to Mediapolis or the actions that were taken to remediate that complaint." We are trying to understand the routing changes that were made in response to her complaints.

Our office needs either direct answers to the questions posed in data requests nos. 36-42 and 44 or the name and position not of a corporate representative who has reviewed the materials second-hand but of the individual or individuals who have first-hand knowledge of the routing changes that were made in response to Ms. Frahm's complaints, *i.e.*, the person or persons who made the changes, who noted the changes in a condensed short-hand version in Windstream's records, who directed the changes, and who corresponded with Verizon and IntelPeer concerning the changes.

Data request no. 43.

Verizon's response to OCA data request no. 3 to Verizon is attached. Please update your response to data request no. 43.

Data requests no. 46-47.

We disagree with the objections to data requests nos. 46-47. A burdensome objection requires more than a summary allegation, and it is not apparent why providing the requested information would be burdensome. The requests, seeking the identity of intermediate carriers that Windstream has "de-routed at a specific destination level" inside Iowa and that

Windstream has “completely removed from the routing and/or disconnected their services,” are both relevant and reasonably calculated to lead to the discovery of admissible evidence. They are probative of whether Windstream has developed and enforced adequate standards to ensure that intermediate carriers complete calls. There is nothing vague in these terms. They are quoted from Windstream’s initial discovery responses. We ask that Windstream reconsider the objection and respond to the inquiry.

Data request no. 48.

We disagree with the objection to data request no. 48. A burdensome objection requires more than a summary allegation, and it is not apparent why providing the requested information would be burdensome. The request, which seeks the specific elements used by Windstream to monitor and evaluate performance of terminating trunk groups, including Answer Seizure Ratio (ASR%), Post Dial Delay (PDD) measurements, and number of Trouble Tickets per Minute of Use terminated, are both relevant and reasonably calculated to lead to the discovery of admissible evidence. The docketing order specifically references a need for inquiry into “what standards Windstream imposes on underlying carriers to ensure that calls complete.” There is nothing vague in these terms. They are quoted from Windstream’s initial discovery responses. If the terms were vague, Windstream would be the proper party to clarify them, as data request no. 38 also requests. We ask that Windstream reconsider the objection and respond to the inquiry.

Data request no. 49.

We disagree with the objection to data request no. 49. Data request no. 49 asks for the compliance plan referenced in Windstream’s settlement agreement with the FCC, together with the identity of the compliance officer and any compliance reports or noncompliance reports. These materials are relevant and reasonably calculated to lead to the discovery of admissible evidence. Because the FCC and the Iowa Board are conducting parallel investigations within their respective jurisdictions with respect to the same rural call completion problem, the work of the federal authorities is relevant and reasonably calculated to lead to the discovery of admissible evidence. There is no good reason why federal and state authorities should have to duplicate each other’s work. The federal compliance plan may well contain provisions that will be helpful in crafting a solution at the state level. Windstream’s concerns regarding the claimed confidentiality and proprietary character of these materials are appropriately addressed in the letter OCA has already sent to Windstream regarding OCA procedures with respect to materials claimed to be confidential. We ask that Windstream reconsider the objection and respond to the inquiry.

Data request no. 50.

We disagree with the objection to data request no. 50. Data request no. 50 asks (i) for the rationale for continuing to use an intermediate provider on one route after the intermediate provider has shown a sustained inadequate performance on another route and (ii) whether there were communications between Windstream and the FCC regarding a difference between the FCC’s settlement with Level 3 and the FCC’s settlement with Windstream on this point. Neither question asks Windstream to speculate. The answer to the second question is either yes or no. If the answer to the second question is yes, OCA respectfully disagrees with the assertion that the communications are privileged. The objection does not identify the claimed privilege. The attorney-client privilege would not extend to communications sent to or received from an outside party such as the FCC. We ask that Windstream reconsider the objection and respond to the inquiry.

Data request no. 51.

We disagree with the objection to data request no. 51. The request does not ask for speculation. It asks for a specific fact. Please clarify whether the Legacy Nuvox Network is (a) a part of the Legacy PAETEC Network or (b) a part of the Legacy Windstream Network or (c) neither a part of the Legacy PAETEC Network nor a part of the Legacy Windstream Network.

Outstanding questions on earlier data request responses.

By e-mail dated May 6, 2014, we asked the following follow-up questions to earlier data requests:

1. Your transmittal letter indicated that documents WIN 90-116 were being reviewed. I do not think we have those.
2. Data request no. 17 asked "by how much" Windstream's routing cost changed when it switched the account to OOT, i.e., to Verizon. The data request also asked for an explanation of any factors that account for the difference. The focus of these questions is not the customer's rates, terms or conditions but rather the costs to Windstream. Please answer.
3. With respect to Windstream's response to data request no. 23, please state what "SLA" stands for. Please identify the specific provisions in the IntelPeer contract to which reference is made.
4. The response to data request no. 27 is incomplete. Please provide the documents requested. We will work with you if the files are voluminous.
5. Please provide the information requested in data request no. 30. We understand the contracts may not be specific to Iowa.
6. Could we also please get a copy of Attachment 2 to the contract between Verizon and Windstream and any subsequent attachments?

We have received no response to any of these questions. Again, please provide responses no later than June 27, 2014. Thank you.

Craig F. Graziano, Attorney
Office of Consumer Advocate
Iowa Department of Justice
1375 East Court Avenue, Room 63
Des Moines, Iowa 50319-0063
Telephone (direct): 515-725-7223
Telephone (office): 515-725-7200
Fax: 515-725-7221

Graziano, Craig [OCA]

From: Graziano, Craig [OCA]
Sent: Wednesday, July 02, 2014 4:23 PM
To: 'Richard W. Lozier'
Cc: Moody, Kristi; Wittenburg, Jamee
Subject: RE: Iowa Utilities Board Docket No. FCU-2013-0007. In re Complaint of Carolyn Frahm.

Dick,

Thank you. We need a response to my June 16 e-mail no later than July 9, 2014.

Craig

Craig F. Graziano, Attorney
Office of Consumer Advocate
Iowa Department of Justice
1375 East Court Avenue, Room 63
Des Moines, Iowa 50319-0063
Telephone (direct): 515-725-7223
Telephone (office): 515-725-7200
Fax: 515-725-7221

From: Richard W. Lozier [mailto:RWLozier@belinmccormick.com]
Sent: Wednesday, July 02, 2014 1:56 PM
To: Graziano, Craig [OCA]
Cc: Moody, Kristi; Wittenburg, Jamee
Subject: RE: Iowa Utilities Board Docket No. FCU-2013-0007. In re Complaint of Carolyn Frahm.

Craig

I anticipated we would be able to respond to your email by close of business today, but because of conflicting schedules, I have not been able to confer with my client to finalize our responses. We will try to discuss them tomorrow, but because of the holiday, it may be early next week before we can respond. I'll keep you advised.

Richard W. Lozier, Jr.
BELINMCCORMICK, P.C.
ATTORNEYS AT LAW

The Financial Center
666 Walnut St., Suite 2000
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From: Graziano, Craig [OCA] [mailto:Craig.Graziano@oca.iowa.gov]
Sent: Tuesday, July 01, 2014 8:54 AM
To: Richard W. Lozier
Cc: Moody, Kristi; Wittenburg, Jamee
Subject: RE: Iowa Utilities Board Docket No. FCU-2013-0007. In re Complaint of Carolyn Frahm.

Dick,

Could you please advise when I can expect these responses? Thank you.

Craig

Craig F. Graziano, Attorney
Office of Consumer Advocate
Iowa Department of Justice
1375 East Court Avenue, Room 63
Des Moines, Iowa 50319-0063
Telephone (direct): 515-725-7223
Telephone (office): 515-725-7200
Fax: 515-725-7221

From: Richard W. Lozier [mailto:RWLozier@belinmccormick.com]
Sent: Friday, June 27, 2014 3:23 PM
To: Graziano, Craig [OCA]
Cc: Moody, Kristi; Wittenburg, Jamee
Subject: RE: Iowa Utilities Board Docket No. FCU-2013-0007. In re Complaint of Carolyn Frahm.

Craig

I want to let you know that we are finalizing our responses to your email below, but we will not be able to complete them by close of business today. I expect we will be able to respond early next week.

Richard W. Lozier, Jr.
BELINMCCORMICK, P.C.
ATTORNEYS AT LAW

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Graziano, Craig [OCA]

From: Richard W. Lozier <RWLozier@belinmccormick.com>
Sent: Thursday, July 10, 2014 10:37 AM
To: Graziano, Craig [OCA]
Cc: Moody, Kristi; Wittenburg, Jamee
Subject: FW: Iowa Utilities Board Docket No. FCU-2013-0007. In re Complaint of Carolyn Frahm.

Craig

Please see our responses to the first part of your June 16 email below. I will provide you with a response to the second part of your email shortly.

Richard W. Lozier, Jr.
BELINMCCORMICK, P.C.
ATTORNEYS AT LAW

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From: Graziano, Craig [OCA] [<mailto:Craig.Graziano@oca.iowa.gov>]
Sent: Monday, June 16, 2014 4:49 PM
To: Richard W. Lozier
Subject: Iowa Utilities Board Docket No. FCU-2013-0007. In re Complaint of Carolyn Frahm.

Dear Mr. Lozier:

We received responses to data requests no. 36-51 on June 11, 2014. The purpose of this letter is to attempt to resolve a discovery dispute without the need for the involvement of the Board or the presiding officer. Happy to discuss any concerns. Please respond no later than June 27, 2014. Thank you.

Data requests nos. 36-42 and 44-45.

The records provided in response to data requests nos. 1-35, insofar as they respond to questions asking about the routing changes made in response to Ms. Frahm's complaints, are not self-explanatory. The chronology of the routing changes as set forth in the initial discovery responses is also discrepant with the chronology set forth in Windstream's letter to the Iowa Utilities Board dated March 23, 2014, as explained in data request no. 41. Data requests nos. 36-42 and 44 are intended (i) to assist our office, and ultimately the Board, in understanding what these records show in terms of the routing changes that were made in response to Ms. Frahm's complaints and (ii) to clarify the chronology of these changes. Data request no. 45 asks for the name and position of the person or persons at Windstream with knowledge of the subject matter of these responses.

We have previously responded that we don't know why there is a discrepancy in the dates to which you refer. We have also responded that there are likely to be many people employed by Windstream with knowledge of some or all of the subject matter of Windstream's responses, and we have objected to having to identify all of them as you request. We will identify a corporate representative to respond to specific discovery requests if that is necessary.

The responses to data requests nos. 36-42 are largely uninformative. For the most part, they merely cross-reference the earlier non-self-explanatory records that prompted the questions in the first place. Windstream then objects to data request no. 45: rather than identifying the person or persons with knowledge of the subject matter, Windstream offers to designate a "corporate representative" for further discovery. Data request no. 44 does not seek information that is irrelevant: it specifically states: "Please disregard any information or explanation that is not relevant to Ms. Frahm's complaints regarding the failure of telephone calls to complete to Mediapolis or the actions that were taken to remediate that complaint." We are trying to understand the routing changes that were made in response to her complaints.

We don't think our responses to DR 36 – 42 are uninformative at all, and we believe our prior responses are complete and accurate.

Our office needs either direct answers to the questions posed in data requests nos. 36-42 and 44 or the name and position not of a corporate representative who has reviewed the materials second-hand but of the individual or individuals who have first-hand knowledge of the routing changes that were made in response to Ms. Frahm's complaints, *i.e.*, the person or persons who made the changes, who noted the changes in a condensed short-hand version in Windstream's records, who directed the changes, and who corresponded with Verizon and IntelPeer concerning the changes.

If we can identify the people who made changes, noted changes, directed changes and corresponded with Verizon and Intelpeer regarding the changes, we don't believe their names are relevant to any issue involved in this case; nor would their names lead to the discovery of admissible evidence.

Data request no. 43.

Verizon's response to OCA data request no. 3 to Verizon is attached. Please update your response to data request no. 43.

Windstream has no reason to dispute the accuracy of Verizon's response to OCA's Data Request No. 3. Windstream was not required to follow step 3 as described in Verizon's response to DR No. 3.

Data requests no. 46-47.

We disagree with the objections to data requests nos. 46-47. A burdensome objection requires more than a summary allegation, and it is not apparent why providing the requested information would be burdensome. The requests, seeking the identity of intermediate carriers that Windstream has "de-routed at a specific destination level" inside Iowa and that Windstream has "completely removed from the routing and/or disconnected their services," are both relevant and reasonably calculated to lead to the discovery of admissible evidence. They are probative of whether Windstream has developed and enforced adequate standards to ensure that intermediate carriers complete calls. There is nothing vague in these terms. They are quoted from Windstream's initial discovery responses. We ask that Windstream reconsider the objection and respond to the inquiry.

Ms. Frahm's complaint is that Windstream failed to complete calls in March 2013. DRs No. 46-47 asks for de-routed providers from January 1, 2011, well before any allegation of rural call completion failure. On that basis, it is

overly broad and burdensome, as well as irrelevant and not calculated to lead to the discovery of admissible evidence. Your statement above indicates that what you want to know is whether Windstream has developed and enforced adequate standards to ensure that intermediate carriers complete calls. The Consent Decree entered by the FCC ensures the development and compliance with adequate standards.

Data request no. 48.

We disagree with the objection to data request no. 48. A burdensome objection requires more than a summary allegation, and it is not apparent why providing the requested information would be burdensome. The request, which seeks the specific elements used by Windstream to monitor and evaluate performance of terminating trunk groups, including Answer Seizure Ratio (ASR%), Post Dial Delay (PDD) measurements, and number of Trouble Tickets per Minute of Use terminated, are both relevant and reasonably calculated to lead to the discovery of admissible evidence. The docketing order specifically references a need for inquiry into “what standards Windstream imposes on underlying carriers to ensure that calls complete.” There is nothing vague in these terms. They are quoted from Windstream’s initial discovery responses. If the terms were vague, Windstream would be the proper party to clarify them, as data request no. 38 also requests. We ask that Windstream reconsider the objection and respond to the inquiry.

The specific elements used by Windstream to measure performance of underlying carriers were identified in response to DR No. 32.

Data request no. 49.

We disagree with the objection to data request no. 49. Data request no. 49 asks for the compliance plan referenced in Windstream’s settlement agreement with the FCC, together with the identity of the compliance officer and any compliance reports or noncompliance reports. These materials are relevant and reasonably calculated to lead to the discovery of admissible evidence. Because the FCC and the Iowa Board are conducting parallel investigations within their respective jurisdictions with respect to the same rural call completion problem, the work of the federal authorities is relevant and reasonably calculated to lead to the discovery of admissible evidence. There is no good reason why federal and state authorities should have to duplicate each other’s work. The federal compliance plan may well contain provisions that will be helpful in crafting a solution at the state level. Windstream’s concerns regarding the claimed confidentiality and proprietary character of these materials are appropriately addressed in the letter OCA has already sent to Windstream regarding OCA procedures with respect to materials claimed to be confidential. We ask that Windstream reconsider the objection and respond to the inquiry.

We agree that there is no good reason why federal and state authorities should have to duplicate each other’s work. The federal compliance plan is a comprehensive, nation-wide plan that includes Iowa. The FCC made it clear in its rules that its jurisdiction includes intrastate as well as interstate traffic. There is no need to try to superimpose a state solution over the existing federal solution.

Data request no. 50.

We disagree with the objection to data request no. 50. Data request no. 50 asks (i) for the rationale for continuing to use an intermediate provider on one route after the intermediate provider has shown a sustained inadequate performance on another route and (ii) whether there were communications between Windstream and the FCC regarding a difference between the FCC’s settlement with Level 3 and the FCC’s settlement with Windstream on this point. Neither question asks Windstream to speculate. The answer to the second question is either yes or no. If the answer to the second question is yes, OCA respectfully disagrees with the assertion that the communications are privileged. The objection does not identify the claimed privilege. The attorney-client privilege would not extend to communications sent to or received from an outside party such as the FCC. We ask that Windstream reconsider the objection and respond to the inquiry.

(i) Windstream has not investigated why the terms of some consent decrees are different from others, and Windstream cannot speculate as to the reasons for any differences.

(ii) There is Iowa case authority holding that negotiations leading to settlement are privileged. *Miller v. Component Homes, Inc.* 356 N.W.2d 213. Rule of Evidence 5.408 provide that conduct and statements made in compromise negotiations are not admissible.” In addition, IAC 199 - 7.18(7) provides: “Any discussion, admission, concession, or offer to settle, whether oral or written, made during any negotiation on a settlement shall be privileged to the extent provided by law, including, but not limited to, Iowa R. Evid. 5.408.

In addition the FCC has held that the Enforcement Bureau and parties under investigation have a legitimate interest in keeping the investigative phase of a proceeding confidential.

Data request no. 51.

We disagree with the objection to data request no. 51. The request does not ask for speculation. It asks for a specific fact. Please clarify whether the Legacy Nuvox Network is (a) a part of the Legacy PAETEC Network or (b) a part of the Legacy Windstream Network or (c) neither a part of the Legacy PAETEC Network nor a part of the Legacy Windstream Network.

DR No. 51 asks why the FCC investigation focused on one system. Windstream doesn't know why or whether the FCC focused on one system to the exclusion of another. The SONUS network was part of Nuvox. When Windstream acquired Nuvox, it also acquired the SONUS network.

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Graziano, Craig [OCA]

From: Richard W. Lozier <RWLozier@belinmccormick.com>
Sent: Thursday, July 10, 2014 1:49 PM
To: Graziano, Craig [OCA]
Subject: RE: Discovery responses

Craig

Here are responses to the second part of your June 16 email. Please contact me if you want to discuss these or other matters.

Richard W. Lozier, Jr.
BELIN MCCORMICK, P.C.

ATTORNEYS AT LAW

The Financial Center
666 Walnut St., Suite 2000
Des Moines, Iowa 50309
Telephone: 515-283-4636
Facsimile: 515-558-0636
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1. Your transmittal letter indicated that documents WIN 90-116 were being reviewed. I do not think we have those.

Those documents are being finalized and will be provided separately.

2. Data request no. 17 asked "by how much" Windstream's routing cost changed when it switched the account to OOT, i.e., to Verizon. The data request also asked for an explanation of any factors that account for the difference. The focus of these questions is not the customer's rates, terms or conditions but rather the costs to Windstream. Please answer.

Windstream has an open account with Verizon, and it is not possible to isolate the cost of a call on a call by call or account by account basis. The per call cost is based on traffic volume. In some circumstances there may be a very small cost increase to Windstream on a per call basis when calls are routed to Verizon.

3. With respect to Windstream's response to data request no. 23, please state what "SLA" stands for. Please identify the specific provisions in the IntelPeer contract to which reference is made.

SLA is service level agreement. To the best of our knowledge there is no separate agreement, and the term "SLA" refers to standards of service.

4. The response to data request no. 27 is incomplete. Please provide the documents requested. We will work with you if the files are voluminous.

None of the inquiries, responses and follow up communications was limited to calls to or from Iowa. The outcome of any inquiry is in the Consent Decree. Documents produced in negotiation of the settlement are privileged and confidential. See response to DR 50 previously provided.

5. Please provide the information requested in data request no. 30. We understand the contracts may not be specific to Iowa.

There are numerous contracts that Windstream has with intermediate carriers. None of them is state specific to Iowa. Your request that we identify each of them is overly broad and burdensome and would require extensive research of Windstream's records to respond. Further any list of carriers would not be relevant or calculated to lead to the discovery of admissible evidence.

6. Could we also please get a copy of Attachment 2 to the contract between Verizon and Windstream and any subsequent attachments?

We have searched for Attachment 2 to the contract between Verizon and Windstream and have not been able to locate it.

This email has been scanned for email related threats and delivered safely by Mimecast.
For more information please visit <http://www.mimecast.com>

Graziano, Craig [OCA]

From: Richard W. Lozier <RWLozier@belinmccormick.com>
Sent: Thursday, July 10, 2014 2:37 PM
To: Graziano, Craig [OCA]
Subject: FCU-2013-0007 Discovery Responses
Attachments: Lowry (01888748).PDF

Craig

Attached is a spread sheet with documents that had originally been designated as WIN 000090 – WIN 000116. We have renumbered them WIN 000090 – WIN 000093 and marked them confidential. In our Bates stamping, WIN00094 – WIN 000116 will remain vacant.

The spread sheet contains information about Windstream's blocked calls in Iowa from January 1, 2013 to January 31, 2014. Data regarding blocked calls prior to January 1, 2013 are not relevant and not calculated to lead to the discovery of admissible evidence.

Richard W. Lozier, Jr.
BELINMCCORMICK, P.C.

ATTORNEYS AT LAW

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