

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-07-SE-228
Windstream Corporation	)	Acct. No. 200932100059
	)	FRN No. 0014400220

**ORDER**

**Adopted: May 12, 2009**

**Released: May 14, 2009**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Windstream Corporation (“Windstream”). The Consent Decree terminates investigations by the Bureau into Windstream’s possible violations of Part 4 of the Commission’s rules regarding the reporting of network outages.<sup>1</sup>

2. The Bureau and Windstream have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree which terminates the investigations.

4. Based on the record before us, we conclude that our investigations raise no substantial or material questions of fact as to whether Windstream possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,<sup>2</sup> and sections 0.111 and 0.311 of the Commission’s Rules,<sup>3</sup> the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigations **ARE TERMINATED**.

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<sup>1</sup> 47 C.F.R. § 4.1 *et seq.*

<sup>2</sup> 47 U.S.C. § 154(i).

<sup>3</sup> 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Michael D. Rhoda, Senior Vice President, Windstream Corporation, 4001 Rodney Parham Road, Little Rock, AR 72212, and to Windstream's counsel, David H. Solomon, Esq., Wilkinson Barker Knauer LLP, 2300 N Street, N.W., Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau

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In the Matter of	)	
	)	File No. EB-07-SE-228
Windstream Corporation	)	Acct. No. 200932100059
	)	FRN No. 0014400220

**CONSENT DECREE**

The Enforcement Bureau (the “Bureau”) and Windstream Corporation (“Windstream”), by their respective authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigations into Windstream’s compliance with the Commission’s regulations in 47 C.F.R. Part 4 regarding the reporting of network outages.

**I. DEFINITIONS**

1. For the purposes of this Consent Decree, the following definitions shall apply:
  - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*
  - (b) “Adopting Order” means an order of the Bureau adopting this the terms of this Consent Decree without change, addition, deletion, or modification.
  - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
  - (d) “Commission” or “FCC” means the Federal Communications Commission and all of its bureaus and offices.
  - (e) “Compliance Plan” means the program described in this Consent Decree at paragraph 10.
  - (f) “Effective Date” means the date on which the Bureau releases the Adopting Order.
  - (g) “Investigations” means the investigations initiated by the Bureau’s July 26, 2007 and July 7, 2008 Letters of Inquiry<sup>1</sup> regarding Windstream’s compliance with the Commission’s regulations in Part 4 of its Rules regarding the reporting of network outages through the Effective Date.
  - (h) “Parties” means Windstream and the Bureau.

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<sup>1</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Jeffrey R. Gardner, President, CEO and Director, Windstream Corporation (July 26, 2007); Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Jeffrey R. Gardner, President, CEO and Director, Windstream Corporation (July 7, 2008).

- (i) “Rules” means the Commission’s regulations set forth in Title 47 of the Code of Federal Regulations.
- (j) “Windstream” means Windstream Corporation, its affiliates, its predecessors-in-interest and successors-in-interest.

## II. BACKGROUND

2. Pursuant to Part 4 of the Rules, a wireline communications provider is required to submit to the Commission an electronic Notification within 120 minutes after discovering that it has experienced a network outage of at least 30 minutes duration that: (1) potentially affects at least 900,000 user minutes of either telephony or paging; (2) affects at least 1,350 DS3 minutes; (3) potentially affects any special offices or facilities, as defined by the Rules; or (4) potentially affects a 911 special facility, as defined by the Rules. 47 C.F.R. §§ 4.5, 4.9(f). Within 72 hours after discovering such an outage, a wireline communications provider is required to submit electronically an Initial Communications Outage Report. 47 C.F.R. § 4.9(f).

3. Windstream is a wireline communications provider and is subject to the network outage reporting regulations in Part 4 of the Commission’s Rules.

4. On July 26, 2007, the Bureau issued a Letter of Inquiry (“LOI”) initiating an investigation regarding Windstream’s outage reporting procedures and Windstream’s compliance with the Commission’s outage reporting rules.<sup>2</sup> On August 27, 2007, Windstream submitted a response to the LOI.<sup>3</sup> The Bureau issued an additional LOI on July 7, 2008,<sup>4</sup> and Windstream submitted a response to that LOI on August 1, 2008.<sup>5</sup> The Bureau and Windstream executed a Tolling Agreement on October 2, 2007, and executed subsequent Tolling Agreement Extensions.

## III. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

6. **Jurisdiction.** Windstream agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

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<sup>2</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Jeffrey R. Gardner, President, CEO and Director, Windstream Corporation (July 26, 2007)

<sup>3</sup> Letter from David H. Solomon, Esq., Wilkinson Barker Knauer, LLP, to Ava Holly Berland, Spectrum Enforcement Division, Enforcement Bureau (August 27, 2007).

<sup>4</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Jeffrey R. Gardner, President, CEO and Director, Windstream Corporation (July 7, 2008).

<sup>5</sup> Letter from David H. Solomon, Esq., Wilkinson Barker Knauer, LLP, to Ava Holly Berland, Spectrum Enforcement Division, Enforcement Bureau (August 1, 2008).

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

8. **Termination of Investigations.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its Investigations without any finding of liability on the part of Windstream. In consideration for the termination of said investigations, Windstream agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence that suggests any misrepresentation or lack of candor by Windstream in connection with the Investigations, it will not use the facts developed in the investigations through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, or refer to the Commission, any new proceeding, formal or informal, or take on its own motion, or refer to the Commission, any action against Windstream for possible violations of Part 4 of the Commission's rules regarding the reporting of network outages that were subject to these investigations prior to the Effective Date. The Bureau also agrees that it will not institute, on its own motion or in response to third-party objection, or refer to the Commission, any new proceeding, formal or informal, or take or refer to the Commission any action on its own motion against Windstream for possible past violations of Part 4 of the Commission's rules regarding the reporting of network outages prior to the Effective Date. Windstream represents that it has no knowledge of any failure to disclose reportable outages to the Commission during the period between the network outages that were the subject of the investigations and the Effective Date. The Bureau further agrees that it will not use the facts developed in the investigations through the Effective Date, or the existence of this Consent Decree, to institute on its own motion, or refer to the Commission, any proceeding, formal or informal, or take on its own motion, or refer to the Commission, any action, against Windstream with respect to Windstream's basic qualifications, including its character qualifications, to be a Commission licensee.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, Windstream agrees that it will develop, within thirty (30) calendar days from the Effective Date, an internal Compliance Plan to ensure Windstream's future compliance with the Commission's regulations in Part 4 of its Rules regarding the reporting of disruptions to communications. The Compliance Plan will include, at a minimum, the following components:

- (a) **Compliance Training Program.** Windstream shall establish and maintain an FCC outage reporting training program, as detailed below, for all employees who are responsible for analyzing technical information regarding Windstream's network outages, entering information into any Windstream database(s) and/or record(s) that form the basis of Windstream's reporting of network outages to the Commission, and compiling and/or submitting Windstream's outage reports to the Commission.<sup>6</sup>

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<sup>6</sup> Under this provision, Windstream will not be required to provide outage reporting compliance training to employees other than those whose responsibilities include analyzing technical information regarding Windstream's network outages, entering information into Windstream's database(s) and/or record(s) that form the basis of Windstream's reporting of network outages to the Commission, and compiling and/or submitting Windstream's outage reports to the Commission.

- i. Windstream's Compliance Training Program shall address, at a minimum, the FCC's Rules governing the reporting of network outages, the information and calculations necessary to determine whether an outage is reportable under the FCC's Rules, and the time periods during which notifications and reports of reportable outages must be submitted to the FCC. Windstream's Compliance Training Program shall also address the methods and procedures adopted by Windstream to identify and report those network outages that satisfy the FCC's reporting criteria in order to ensure compliance with the FCC's outage reporting Rules. The training program shall also include information on the potential internal and regulatory consequences of failing to comply with Windstream's methods and procedures and/or the FCC's outage reporting requirements.
  - ii. Windstream shall provide the foregoing outage reporting training within six months of the Effective Date and will update the training at least annually for employees who are responsible for analyzing technical information regarding Windstream's network outages, entering information into any Windstream database(s) and/or record(s) that form the basis of Windstream's reporting of network outages to the Commission, and compiling and/or submitting Windstream's outage reports to the Commission. Windstream will also provide training to new employees responsible for these activities.
  - iii. Windstream shall update and enhance the foregoing training regarding the FCC's outage reporting requirements as appropriate and necessary.
- (b) **Compliance Reports.** Windstream will file compliance reports with the Commission ninety (90) days after the Effective Date, twelve (12) months and twenty-four (24) months after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of Windstream, stating that the officer has personal knowledge that Windstream has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All compliance reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554. All reports shall also be submitted electronically to Kathryn S. Berthot, Chief, Spectrum Enforcement Division at [kathy.berthot@fcc.gov](mailto:kathy.berthot@fcc.gov) and Ava Holly Berland at [holly.berland@fcc.gov](mailto:holly.berland@fcc.gov).
- (c) **Termination.** The provisions of this paragraph shall remain in effect for two (2) years from the Effective Date.

10. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act against Windstream or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Windstream with the Act, the Rules, or Commission Orders.

11. **Voluntary Contribution.** Windstream agrees that it will make a voluntary contribution to the United States Treasury, in the amount of two hundred thousand dollars (\$200,000). The payment will be made within thirty (30) days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission.

The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Windstream will also send electronic notification on the date said payment is made to [Kathy.Berthot@fcc.gov](mailto:Kathy.Berthot@fcc.gov) and [Holly.Berland@fcc.gov](mailto:Holly.Berland@fcc.gov).

12. **Waivers.** Windstream waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order adopting the Consent Decree without change, addition, modification, or deletion. Windstream shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Windstream nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Windstream shall waive any statutory right to a trial *de novo*. Windstream, however, may present evidence that it has not violated the Consent Decree. In addition, nothing in this Consent Decree shall preclude Windstream from petitioning the Commission for relief as to future obligations under Part 4 of the Commission's Rules. Windstream hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

13. **Invalidity.** In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

14. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Windstream does not expressly consent), that provision will be superseded by such Commission Rule or Order.

15. **Successors and Assigns.** Windstream agrees that the provisions of this Consent decree shall be binding on its successors, assigns, and transferees.

16. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Windstream does not admit or deny noncompliance, violation or liability for violating the Act or the Rules in connection with the matters that are the subject of this Consent Decree.

17. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

18. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

19. **Authorized Representatives**. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

20. **Counterparts**. This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

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Kris Anne Monteith  
Chief  
Enforcement Bureau

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Date

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Michael D. Rhoda  
Senior Vice President  
Windstream Corporation

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Date