

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of David Sankey, ) Application No. 911-078/  
State Director of the 911 ) DC-104/C-5596  
Department of the Nebraska )  
Public Service Commission, )  
 )  
Complainant, ) COMPLAINT  
v. )  
 )  
Windstream Nebraska, Inc. )  
 )  
Respondent. )  
 ) Entered: July 3, 2024

COMES NOW David Sankey, Director of the 911 Department ("Complainant") of the Nebraska Public Service Commission ("Commission"), in complaint against Windstream Nebraska, Inc. ("Respondent"). In support of this Complaint, the Department alleges as follows:

1. Respondent is a provider of telecommunications services in Nebraska which includes 911 services.
2. At all times relevant to this Complaint, Respondent has held certificates of authority in Nebraska as a local exchange carrier and an interexchange carrier.
3. At all times relevant to this Complaint, Respondent has held designation in Nebraska as an Eligible Telecommunications Carrier ("ETC") pursuant to 291 Neb. Admin. Code § 5-009 and in 47 C.F.R. § 54.201.
4. Respondent, as an ETC, is required to certify on an annual basis its compliance with the Federal Communications Commission Rules, which the Nebraska Public Service Commission utilizes to determine ongoing eligibility for ETC and Nebraska ETC designation.
5. The principal place of business for the Respondent is Little Rock, Arkansas.
6. The Complainant is the State Director of the 911 Department as further identified in Neb. Rev. Stat. § 86-1026, a department of the Nebraska Public Service Commission.
7. Pursuant to Neb. Rev. Stat. § 86-123, the Commission has the authority to regulate the quality of telecommunications service provided by telecommunications companies and shall

investigate and resolve subscriber complaints concerning quality of telecommunications service, subscriber deposits, and disconnection of telecommunications service.

8. Pursuant to Neb. Rev. Stat. § 86-324(2)(a), the Commission has the authority and power to subject NETCs to service quality, customer service, and billing regulations.
9. Pursuant to Neb. Rev. Stat. § 75-132.01, the Commission has exclusive original jurisdiction over any action concerning a violation of the Nebraska Telecommunications Regulation Act, the Emergency Telephone Communications Systems Act, the Enhanced Wireless 911 Services Act, and the Nebraska 911 Service System Act.
10. Pursuant to Neb. Rev. Stat. § 75-156, the Commission may administratively fine any person who violates any rule, regulations, or order of the Commission issued under the Commission's authority.

#### I. 911 SERVICE OUTAGES

11. Paragraphs 1-10 are realleged and incorporated as if fully set forth herein.
12. Commission regulations require that exchange carriers provide adequate access line service. A determination as to whether access line service is adequate includes, but is not limited to, consideration of the adequacy of the carrier's plant and equipment, the number and nature of service interruptions, trouble reports, customer complaints and held applications, the nature of access line service offered by the carrier, and the nature of the access line services desired by the public served. 291 Neb. Admin. Code § 5-002.02A.
13. Exchange carriers are required to employ appropriate engineering and administrative procedures to determine the adequacy of access line service provided to their customers. 291 Neb. Admin. Code § 5-002.02D.
14. Exchange carriers are required to continually review their operations to ensure that the access line service provided is adequate. 291 Neb. Admin. Code § 5-002.02H.
15. Exchange carriers are required to make all reasonable efforts to prevent interruptions of access line service.

When interruptions occur, the exchange carrier shall re-establish access line service with the shortest possible delay consistent with the physical conditions encountered, the available work forces, and with normal safety practices. 291 Neb. Admin. Code § 5-002.03A.

16. The Federal Communications Commission has adopted regulations establishing minimum requirements for safety and reliability for 911 Communications. Title 47, *Code of Federal Regulations* Part 9, Subpart H.
17. On or about September 2, 2023, Respondent's exchange network failed, preventing wireline customers from reaching Public Safety Answering Points ("PSAPs") for several hours.
18. On or about November 28, 2023, Respondent's exchange network failed, preventing wireline customers from reaching PSAPs for approximately one hour or less.
19. On or about January 13, 2024, Respondent's exchange network failed, preventing wireline customers from reaching PSAPs for approximately less than two hours.
20. Between the dates of September 2, 2023, and January 14, 2024, the Department received dozens of informal customer complaints relating to 911 outages in wireline service provided by the Respondent.
21. Respondent's engineering and administrative procedures failed to ensure their access service lines were adequate by failing to identify insufficient redundancy resulting in single points of failure, failing to identify insufficient power back-up systems, failing to test back-up systems and equipment, and failing to test network alarm procedures in violation of 291 Neb. Admin. Code § 5-002.02D.
22. Respondent failed to continually review their operations to ensure that their access service lines, specifically related to 911, were adequate by failing to identify insufficient redundancy in portions of their wireline service, ensuring software used to support the network was working appropriately in violation of 291 Neb. Admin. Code § 5-002.02H.
23. Respondent failed to make all reasonable efforts to prevent interruptions of access line service and, as a result of failures to ensure sufficient back-up power was available

and sufficient network alarms were working appropriately, failed to ensure the shortest possible delay consistent with the physical conditions in violation of 291 Neb. Admin. Code § 5-002.03A.

24. In support of the allegations contained herein, the attached affidavit, identified as Attachment A, is alleged and incorporated in its entirety.

REMEDIES REQUESTED

25. Paragraphs 1-24 are realleged and incorporated as if fully set forth herein.
26. The Commission has the authority, pursuant to Neb. Rev. Stat. §§ 75-111, 75-133, and 75-156, to investigate and administratively fine any person who violates Commission regulations, including 291 Neb. Admin. Code §§ 5-002.02D, 5-002.02H, and 5-002.03A.
27. Respondents have operated in violation of Neb. Rev. Stat. §§ 75-111, 75-133, and 75-156 and 291 Neb. Admin. Code §§ 5-002.02D, 5-002.02H, and 5-002.03A.
28. Respondent's failure to comply with state and federal requirements regarding operation, maintenance, reliability, and functionality of 911 services, residents of the State of Nebraska were denied access to 911 services on three separate occasions and eroded public trust in the 911 system in Nebraska.

WHEREFORE, Complainant prays that this Commission take the following action including, but not limited to, imposing administrative penalties on Respondents for an amount up to, but not exceeding, \$10,000 per violation per day and not exceeding \$2 million dollars per violation per year consistent with Neb. Rev. Stat. § 75-156; revoke the certificates of public convenience and necessity issued to the Respondent; revoke the eligible telecommunications carrier designation issued to the Respondent; and to take any and all other action consistent with Commission regulations and state and federal law that it deems appropriate. A public hearing on this matter is requested.

Respectfully Submitted,



Sara Hulac, #23648  
Agency Legal Counsel  
Nebraska Public Service Commission  
300 The Atrium Building, 1200 N Street  
Lincoln, Nebraska 68509  
(402) 471-0253  
sara.hulac@nebraska.gov



VERIFICATION

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

David Sankey, being first duly sworn, deposes and states that he is the duly appointed and qualified State Director of 911 Department of the Nebraska Public Service Commission; that he is the Complainant in the foregoing pleading; that he has read the allegations contained therein and understands them to be true to the best of his knowledge and belief.



David Sankey, Complainant

SUBSCRIBED AND SWORN to before me on this 3rd day of July, 2024.

  
Notary Public

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above Complaint was sent by United States Certified Mail, postage prepaid, and by email, on July 3, 2024 to the Respondents at the following addresses:

Director Tim Loken  
Windstream Services  
4005 N. Rodney Parham Road  
Little Rock AR 72212  
[WIN.Director.Tim.Loken@windstream.com](mailto:WIN.Director.Tim.Loken@windstream.com)

David Avery  
Windstream Services  
4005 N. Rodney Parham Road  
Little Rock AR 72212  
[David.Avery@windstream.com](mailto:David.Avery@windstream.com)

Steven Bogdan  
Windstream Services  
4005 N. Rodney Parham Road  
Little Rock AR 72212  
[Steven.bogdan@windstream.com](mailto:Steven.bogdan@windstream.com)

Gail Gauthier  
Windstream Services  
4005 N. Rodney Parham Road  
Little Rock AR 72212  
[Gail.gauthier@windstream.com](mailto:Gail.gauthier@windstream.com)

Nicole Winters, Sr. Counsel  
Windstream  
4005 N. Rodney Parham Road  
Little Rock AR 72212  
[Nicole.winters@windstream.com](mailto:Nicole.winters@windstream.com)

Mary Vaggalis  
Bruning Law Group  
1125 Q Street, Suite 501, Lincoln NE 68508  
[Mary@bruninglawgroup.com](mailto:Mary@bruninglawgroup.com)



Sara Hulac, #23648

N O T I C E

1. Pursuant to 291 Neb. Admin. Code § 1-005.09, the Respondent(s) is hereby notified that an answer to this complaint is required to be filed and shall admit or deny each material allegation of the complaint. The answer shall assert any affirmative defenses which the Respondent may assert. The answer is required to be filed with the Commission within twenty (20) days after service of the complaint. Except for good cause shown, failure to answer will be construed as an admission of the allegations in the complaint. Failure to file an answer or to appear at the hearing allows the Commission to (a) immediately enter an order assessing a civil penalty as provided by law; or (b) to proceed with the hearing and receive evidence of the alleged violation and to assess a civil penalty as provided by law.

2. Pursuant to 291 Neb. Admin. Code. §§ 10-007.01, 1-027.02, and Neb. Rev. Stat. § 75-156, the Commission may impose an administrative penalty for the violations alleged in this Complaint not to exceed ten thousand dollars (\$10,000) per violation, per day, up to two million dollars (\$2,000,000) per violation, per year. Failure to pay any civil penalty determined by the Commission may result in collection in a civil action in the District Court of Lancaster County.