

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TERA BLUE, INC.	)	
	)	CASE NO.
COMPLAINANT	)	2009-00058
	)	
V.	)	
	)	
WINDSTREAM COMMUNICATIONS	)	
	)	
DEFENDANT	)	

ORDER TO SATISFY OR ANSWER

Windstream Communications ("Windstream") is hereby notified that it has been named as defendant in a formal complaint filed on February 9, 2009, a copy of which is attached hereto.

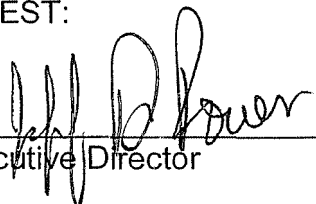
Pursuant to 807 KAR 5:001, Section 12, Windstream is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint within 10 days from the date of service of this Order.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

Done at Frankfort, Kentucky, this 23rd day of February, 2009.

By the Commission

ATTEST:

  
\_\_\_\_\_  
Executive Director

P.2  
McClain  
85

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of: )

TERA BLUE, INC. )

VS. )

WINDSTREAM )  
COMMUNICATIONS )

2009-00058

RECEIVED  
FEB - 9 2009  
GENERAL COUNSEL

RECEIVED

FEB 09 2009

PUBLIC SERVICE  
COMMISSION

Summary

Windstream Communications ("WS") seeks a deposit for alleged poor payment history, when Tera Blue, Inc ("TB") has paid all amounts due in a timely manner while withholding portions represented by incorrect billing such as overcharging and continuing to bill circuits after the disconnect date. Many of these issues have gone on for months. A return of our initial deposit is due, but being withheld. We request that WS return of the initial deposit due with interest, cease all requests for new deposits as there has been a good payment history for all valid invoices, and finally we request WS make a better effort to serve their customers and act promptly when valid and actual complaints are raised.

The most recent incident involves credits due Tera Blue in October in excess of the October invoice due on November 5th. The credits due and the \$3,500.00 deposit plus interest would have also covered invoice due on November 5th plus a substantial portion of what was due on December 5th. Tera had calculated interest to be at approximately \$1,260.00. Credits due at that time would have been \$2,779.40. This would have given an approximate total due to Tera Blue of \$7539.40. At most, \$1,370.62 would be due for the bill due on December 5th.

Tera Blue has requested a refund check on several occasions and Tera Blue has questioned the 1.7% interest rate, as it was our understanding a much higher interest rate would be due on the security deposit of \$3,500.00.

Tera Blue notified Windstream of this billing error initially in October. The billing error was a monthly overcharge beginning in January 3rd, 2008 and continuing until the January 2009 invoice which is due on February 5th. The amount of credit should have exceeded \$3300 over those 12 months. Windstream rejected the validity of the reported error every time it was reported. It took the diligence of Tera Blue to find and locate the engineer who initially worked on the circuit in January 2008, then request that they review the matter as official channels of resolving this matter were all being summarily rejected. Upon review, the engineer agreed with Tera Blue's position and drafted a internal memo in support of Tera Blue. It was only at this time the official channels began to investigate the matter. This wasn't until January 2, 2009.

### Tera Blue, Inc. Allegations

On January 12, 2009 WS had threatened disconnects unless full payment had been received. Beginning on October 30<sup>th</sup>, 2008 and all during November and December 2008, TB had been requesting a valid billing error be corrected and credited. During November TB was just informed that the billing was not in error and there would be no credit pending. TB notified WS of this incorrect billing again on November 20, 2008. Again December 31, 2008, TB was informed the billing was correct and no pending credit was due. TB had to contact the engineer, Dawn Knicely, at Windstream on January 2, 2009 to acquire proof the error was real. This incorrect billing had gone on since the install of the line on January 3, 2008. TB was told credits for a incorrect billing for 12 months would be applied in the next months bill, which is not due until February 5, 2009. The engineer estimated a credit due of approximately \$2,900.00 at the end of December 2008. Once the billed amount exceeded the estimated credit due, TB paid the invoice. On January 9, 2009, a detailed notice of payment had been sent to Sara Goodman, the WS representative for TB for the amount of \$5,664.26. This payment was shorted the amount of credits due, which had been calculated by TB to be \$3,442.24 at time of payment. No response was received back until January 12, 2009 when an Embargo with disconnects was threatened to take effect. After credits were applied for this, TB was told that approximately \$600.00 was still past due and the embargo still stands. TB has not seen the credited amount, but at the time it had been calculated to be \$3,442.24. WS is currently planning disconnects if a new deposit and \$600.00 is not paid.

TB has asked many times for the return of a \$3,500.00 deposit which was made to WS for TB over 3 years ago on July 25, 2005. TB asked about this deposit on December 1, 2008, and was only told that it would be on file. TB was then informed that this deposit was being held plus the new deposit required. When asked about the interest, WS told TB that all past interest had been sent to TB in a check. TB informed WS that there is no such record of any check or credit applied. WS informed TB the amount of \$180.82 is the total of 3 years worth of interest. Based on information at the time of the deposit, TB calculates the interest to be approximately \$1260.00.

WS is now requiring a deposit of

\$6,716.28 (Due on January 28, 2009) (Extended to February 9, 2009)  
\$6,716.28 (Due on February 11, 2009)  
\$3,696.56 (The recalculated amount due on February 5, 2009) (This payment has already been sent.)

Windstream was notified twice in 2008 to change the e-mail address for all communication to Sondra Oliver who was to be the new point of contact for Tera Blue. Information about Tera Blue billing has been sent to a Tera Blue customer that she no longer has any direct affiliation. WS was informed to cease communicating with third parties about TB issues, but failed to cease communicating. This was finally corrected after threatening to file the issue with the PSC.

**Other Allegations against Windstream**

A customer migrated a DS3 service access line from WS to TB on September 18, 2008. TB was informed by the customer that the billing from Windstream stated that the cross connect was to NEW SOUTH (an unrelated company.) TB was helped by the customer to identify and correct billing issues with the customers bill after the move.

This was billed as the NEW SOUTH line on a customer of Tera Blue.

NEWSOUTH Cross Connect

Open World account:

Account No.  
Invoice No.  
Process Date: Nov 11, 2008  
Bill Date Nov 5, 2008  
Page 5

CHARGE FOR ACCESS SERVICE ADDED			
FROM SEP 18 08 THRU NOVE 5 08			
CXCN3	1	NEWSOUTH CROSS CONNECT DS3	38.14
HC2NR	1	HC TERM NRC 1/2 RATE (INSIDE MOVE)	225.00
NET EFFECT OF SO 0641555 PON 81508			
	PER MONTH	FRACTIONAL	ONE-TIME
BILLED AMOUNT	23.84	38.14	225.00
			263.14

Windstream has a history of providing barriers to entry. Windstream initially quoted every T1/DS1 out of TB's colocation with a service access line on both sides (one for the customer as expected and one for the colocation in violation of the tariff.) This issue had to be escalated and eventually they began quoting circuits that agree in pricing with the tariffed rates. This issue was resolved around May 2008 after several months of effort including providing copies of the tariffs WS filed to WS.

Beginning in April 2008 a customer wished to move a T3/DS3 circuit from Windstream provided circuit to a Tera Blue provided circuit. Tera Blue started working with Windstream to move the T3/DS3 circuit. Windstream informed Tera Blue the only way to provide the service was for Windstream to charge Tera Blue the cost of providing the circuit to the customer without providing the service access line, which Windstream expected Tera Blue to provide. Tera Blue informed Windstream their tariff did not provide for that charge, and a tariff conference call was held on May 9, 2008 with Jimmy Dolan, James Taylor, Daniel Logsdon, and several others who are Windstream employees. During this call, a section in the tariff that explicitly allows for circuits to be built with a service access line provided by Windstream or alternately with a circuit built by a third party. In this particular situation, Tera Blue was the third party wishing to provide said service access line. The circuit was finally installed on September 18, 2008. But as stated before, the customer reported the billing from Windstream reported NEW SOUTH (an unrelated company in Kentucky) as the provider of the circuit. NEW SOUTH is unrelated to Tera Blue in any way. The customer also reported it took several months for Windstream to correct billing on the customer's invoices. This took six (6) months to get the order in the system and another month to complete the move.

### **More Allegations against Windstream**

Beginning in April 2008, Tera Blue attempted to order Frame-Relay T1/DS1 service at three addresses. Windstream reported these addresses (all in the 911 database) were without facilities to provide service and the cost would be \$168,000 to build out the addresses from Jimmy Dolan yet each address today has DSL and each address is within 1000 feet of a Windstream remote building in a residential or business neighborhood. To this date, we have been unable to order Frame-Relay services. Internally, Windstream cannot provide DSL service without T1/DS1 or T3/DS3 to backhaul the data to their central switching centers. So the statement that they can not provide T1/DS1 services at these addresses appears to be a fabrication. It is now 10 months since the initial request, and Tera Blue does not yet have Frame-Relay lines on order as requested.

As of January 30, 2009 when there is a dispute before the Public Service Commission, Vicki Tompkins, an employee of Windstream, has threatened disconnection again. This has been extended to February 9, 2009 due to the weather and problems in Kentucky currently.

**Tera Blue, Inc. Proposed Resolution**

WS must return the \$3,500 deposit with interest for 3 years in a timely manner within the next few weeks.

WS provides the amount of the credit calculated and applied for the billing error immediately along with an explanation of how the calculated differs from our calculation. The original calculated left \$600 remaining due. This did not include the \$3,500.00 deposit and interest due. WS then provided a different amount that TB can not reconcile with the existing bills and payments. Additionally, TB has not been willing or able to provide documentation for the difference in amounts.

TB will pay any valid outstanding amounts due immediately. At this time there are no known amounts past due.

TB has overnighted payment for the invoice due on February 5<sup>th</sup>, 2009.

TB will pay all future amounts on time, shorting payment for any pending credits due.

Since Windstream Communications has made it so difficult to receive the credit due and deposit plus interest returned, Tera Blue, Inc has been forced to bring these issues up to the Public Service Commission for a decision.

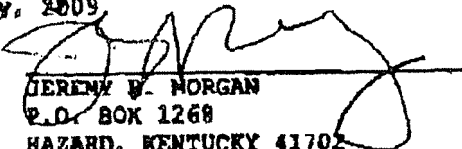
Tera Blue, Inc  
Sondra Oliver, Owner  
859-595-1136  
304 Winterberry Dr  
Winchester, KY 40391

2009-02-06 16:46

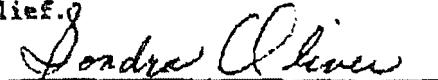
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P.2/2

This the 6<sup>th</sup> day of February, 2009.

  
JEREMY W. MORGAN  
P.O. BOX 1268  
HAZARD, KENTUCKY 41702  
Telephone: (606) 439-0522  
Facsimile: (606) 439-0540

I, Sondra Oliver, on behalf of Tera Blue, Inc., do hereby confirm that the information contained herein is true and correct to the best of my knowledge and belief.


  
Sondra Oliver

COMMONWEALTH OF KENTUCKY )

COUNTY OF Jayette )

Subscribed and sworn to before me by Sondra Oliver, on this the 6<sup>th</sup> day of February, 2009.

My commission expires: Nov 30, 2010

  
Notary Public



**Tera Blue, Inc.**  
**304 Winterberry Dr**  
**Winchester, KY 40391**  
**Fax: 859-280-3882**

<b>To :</b>	Virginia Smith	<b>Fax:</b>	502-564-7397
<b>From:</b>	<b>Tera Blue, Inc.</b>	<b>Date:</b>	2/6/09
<b>Re:</b>	Sondra Oliver	<b>Pages:</b>	7, including cover
<b>CC:</b>			



Daniel Logsdon  
Vice President-External Affairs  
Windstream Communications  
130 West New Circle Road  
Suite 170  
Lexington, KY 40505

Sondra Oliver  
Owner  
304 Winterberry Drive  
Winchester, KY 40391