COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE COMMISSION

In the Matter of:

MCI COMMUNICATIONS SERVICES, INC., BELL ATLANTIC COMMUNICATIONS, INC., NYNEX LONG DISTANCE COMPANY, TTI NATIONAL, INC., TELECONNECT LONG DISTANCE SERVICES & SYSTEMS COMPANY AND VERIZON SELECT SERVICES, INC.	)	
Complainants	)	
v.	)	**CASE NO. 2007-00503**
WINDSTREAM KENTUCKY WEST, INC., WINDSTREAM KENTUCKY EAST, INC. - LEXINGTON, AND WINDSTREAM KENTUCKY EAST, INC. – LONDON	)	
Defendants	)	

WINDSTREAM'S REPLY TO VERIZON'S OPPOSITION TO WINDSTREAM'S MOTION TO DISMISS

Windstream Kentucky West, LLC and Windstream Kentucky East, LLC (collectively, "Windstream" and individually as "Windstream West" or "Windstream East") submit the following Reply to the Opposition to Windstream's Motion to Dismiss ("Verizon's Opposition") filed on February 20, 2008 with the Kentucky Public Service Commission ("Commission") by MCI Communications Services, Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company, TTI National, Inc., Teleconnect Long Distance Services & Systems Company, and Verizon Select Services, Inc. (collectively, "Verizon" or "Verizon IXCs"):

1. Although Windstream's Motion to Dismiss sets forth sufficient grounds to dispose of this proceeding and to deny Verizon's requested relief, Windstream believes that this Reply is necessary to respond to inaccuracies in Verizon's Opposition.

2. To begin, Verzion attempts to gloss over Windstream's criticism of the inconsistent positions on access reform "across the Verizon corporate footprint" (Verizon's Opposition at p. 2) and states incredibly that Windstream is "inaccurate" when it describes Verizon's positions as inconsistent. (*Id.*) Verizon's contention that its corporate positions are anything but inconsistent belie rationale analysis. Indeed, the only consistency across the Verizon affiliates is that the actions of each in either opposing or supporting intrastate switched access rate reductions targeted at certain companies depend on the anticipated benefit to Verizon's bottom line. Thus, when the Verizon IXCs state they do not "support the same brand of 'reform' Windstream advocates" (Verizon's Opposition at p. 8), they are correct. Windstream advocates comprehensive, meaningful reform - not piecemeal rate reductions exacted purely to the gain of specific Verizon affiliates.

3. Verizon's attempts to dismiss its inconsistent positions as being irrelevant to this Kentucky proceeding are misplaced. Such inconsistencies drive through the heart of any determination in this proceeding. Evidence of Verizon's various state positions reveals Verizon's true motivations in this Kentucky proceeding and further undermines the appropriateness of its requested relief in Kentucky. The Verizon IXCs cannot rationalize why Windstream should have to defend against this Complaint when their Verizon incumbent affiliate sought and received a stay (on similar grounds that Windstream has set forth in this proceeding) of an access proceeding exploring similar relief in Pennsylvania as that sought by the Verizon IXCs in Kentucky. Indeed, Verizon cannot justify why its brand of so-called "reform" (*i.e.*, targeted

access reductions intended only as an expense savings measure for the benefit of the Verizon IXCs) may proceed to the benefit of Verizon IXCs in states like Kentucky where Verizon does not maintain an incumbent local exchange carrier but should not proceed in states where Verizon maintains incumbent affiliates like Pennsylvania and Texas.

4. Additionally, Verizon's repeated factual inaccuracies regarding intrastate switched access rate reductions are inexcusable. Verizon is or should be aware that Windstream East acquired the Kentucky properties in 2002 after the Verizon incumbent determined that it no longer desired to serve local exchange customers in the Commonwealth and that Windstream East inherited the rates of the Verizon incumbent including those intrastate switched access rates reduced extensively by Verizon prior to its exit of the Kentucky market. Yet, Verizon contends incorrectly that Windstream's intrastate non-traffic-sensitive charges appear "to lock in ***1991*** revenue streams." (Verizon's Opposition at p. 5.) Although Windstream does not bear the burden of proof in this matter, Windstream sought assistance from the Commission's administrative staff in conducting an open records search regarding prior Verizon tariff filings which document the millions of dollars in access rate reductions made by the Verizon incumbent predecessor a decade after 1991. Exhibit A attached hereto is one such document obtained through that ongoing search and reflects Verizon's July 23, 2001 NTS revenue requirement reduction in the amount of $10 million annually. The misrepresentations by the Verizon IXCs regarding prior rate reductions provide no basis for their Complaint and are disproved by the public record before the Commission.

5. Moreover, Verizon's Opposition is misleading with respect to Windstream's price-cap petition. Verizon asserts incorrectly that Windstream touted the benefits to consumers of access rate reductions in Windstream Corporation's petition before the Federal Communications

Commission ("FCC") to convert its rate-of-return regulated properties to price-cap regulation ("Windstream Petition").[1] (Verizon's Opposition at p. 4.) Verizon's representations are out of context and irrelevant. First, the CALLS plan is a comprehensive plan that addressed end user charges, access rates and universal service. In that context, Windstream agrees that the price-cap structure of the CALLS plan is beneficial to carriers and customers. In fact, Windstream stated that in order to fully realize the benefits associated with price-cap regulation, continued support from the high cost universal service fund was necessary. (Windstream Petition at p. 27.) Second, the Windstream Petition sought permission to convert all Windstream ILECs' cost study areas currently subject to rate-of-return regulation to price-cap regulation.[2] Again, Windstream's actions demonstrate that these benefits are realized only if reform is addressed in a comprehensive fashion and not the self-serving manner in which Verizon approaches targeted rate reductions in this Kentucky proceeding.

6. Verizon further asserts incorrectly in its Opposition that the Windstream Petition stressed the benefits associated with the elimination of interstate carrier common line charges. (Verizon's Opposition at p. 4.) The Windstream Petition did not contain any such statement and instead stated that Windstream's interstate carrier common line charges were eliminated in 2001 in accordance with the FCC's Multi Association Group ("MAG") Order. (Windstream Petition at pp. 3 and 16.) Again, in the MAG reform proceeding, the FCC took into consideration end user rates, access charges, and universal service and specifically replaced reductions in carrier common line revenues with universal service support. (*Id.* at p. 16.) More importantly, the MAG proceeding was **comprehensive** and applied to all rate-of-return regulated carriers, rather than a selected few. Therefore, all incumbent local exchange carriers ("ILECs") in Kentucky subject to

[1] The FCC released an order granting Windstream's Price-Cap Petition on March 18, 2008.
[2] Twenty-three study areas located in 14 states.

rate-of-return regulation at the FCC have eliminated their interstate carrier common line charges yet continue to recover non-traffic sensitive costs through intrastate access charges. To the extent there are any benefits in reducing intrastate carrier common line charges (although Windstream maintains that Verizon has demonstrated none here as it is required to do as the party which bears the burden of proof in this matter), such reform should be comprehensive and include all ILECs in the Commonwealth. For avoidance of further doubt as to exactly what statements Windstream's affiliates made in the Windstream Petition, Windstream is attaching a copy as Exhibit B.

7. Finally, Verizon states that the Commission has said it will "investigate Windstream's rates upon complaint that they are unfair, unjust, and unreasonable." (Verizon's Opposition at p. 7.) Curiously, Verizon fails to include the part of the referenced Commission's Order where the Commission clarified, "In administrative proceedings, the complaining party bears the burden of proof. As the RLECs contend that tariffed rates are unjust and unreasonable, **they are required to provide substantial evidence and argument to support these claims**." (Footnotes omitted. Emphasis supplied. Commission's Order in Case No. 2007-00004 at pp. 4-5.) Thus, Verizon is required to set forth substantial evidence and argument to support its requested relief. It has failed to do so.

8. Verizon has proffered only evidence and argument that Windstream's intrastate switched access rates are higher than those of AT&T in Kentucky, a fact which has no bearing on whether Windstream's rates are just and reasonable. Verizon set forth no evidence or argument even suggesting that it or other IXCs in Kentucky cannot operate in the current long distance market at existing rates. Verizon set forth no evidence at all demonstrating how its requested relief would benefit Kentucky consumers or how its Complaint is appropriate (a precarious position at best

given Verizon's opposition to similar complaints against Verizon affiliates in other states). Most significantly, Verizon bases the crux of its Complaint on false statements that Windstream's rates have not been reduced since 1991, an argument which is disproved by the public record before the Commission of the Verizon incumbent predecessor's tariff filings.

9. Verizon's Complaint should be dismissed as it fails to set forth substantial evidence or argument necessary to support its claims. At a minimum, Verizon's Kentucky Complaint should be stayed pending resolution of comprehensive federal reform just as the proceeding involving Verizon's incumbent affiliate in Pennsylvania was stayed on the same bases, including that the intrastate switched access rates of the Verizon Pennsylvania incumbent (like those of Windstream East) were the subject of significant prior reductions.

WHEREFORE, Windstream requests that the Commission dismiss, or in the alternative stay, Verizon's Complaint in its entirety and grant all other necessary and proper relief to which Windstream may be entitled.

Respectfully submitted,

WINDSTREAM KENTUCKY EAST, LLC
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon Douglas F. Brent and C. Kent Hatfield, Stoll, Keenon Ogden, PLLC, 2000 PNC Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202, Dulaney L. O'Roark III, Vice President and General Counsel - Southern Region, Verizon, 5055 North Point Parkway, Alpharetta, Georgia 30022, John N. Hughes, 124 West Todd Street, Frankfort, Kentucky, 40601 and Mary K. Meyer, General Counsel/AT & T Kentucky, 601 West Chestnut Street, Room 407, Louisville, Kentucky, 40203, by placing same in the U.S. Mail, postage pre-paid, this the 20th day of December, 2007.

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RECEIVED
JUL 23 2001
PUBLIC SERVICE COMMISSION

July 23, 2001

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

Re: Verizon South Inc. Tariff Filing to Implement $12 Million Rate Reduction

11400

Dear Mr. Dorman:

Verizon South Inc. ("Verizon"), pursuant to its discussions with Kentucky Public Service Commission ("Commission") Staff and in keeping with its commitment to the Commission, is filing rate reductions totaling $12 million annually. As documented in Mr. Aaron Greenwell's July 19, 2001 letter to Ms. Lori Macklin, with this filing Verizon is reducing its NTS revenue requirement by $10.0 million annually, effective retroactively to January 1, 2001, and reducing B1/CentraNet rates by $2.0 million annually, effective August 1, 2001. Enclosed are an original and three copies of the tariff pages to implement these reductions.

Following are the tariff pages being submitted for review and approval by the Kentucky Public Service Commission:

VERIZON SOUTH INC.
<u>GENERAL CUSTOMER SERVICES TARIFF, P.S.C. KY. NO. 2</u>
Section 12 - First Revised Page 4

VERIZON SOUTH INC. d/b/a VERIZON KENTUCKY
<u>ACCESS SERVICE</u>
Section 3 - First Revised Page 12

VERIZON SOUTH INC.
FACILITIES FOR INTRASTATE ACCESS
<u>TARIFF P.S.C. KY. No. 6</u>
Section 3 - First Revised Pages 2-5
First Revised Pages 22 - 31
Second Revised Pages 142 - 144
First Revised Page 154
Section 13 First Revised Page 25

Also enclosed, please find the revenue analysis which supports the $12 million annual reduction, and a schedule showing the estimated annual NTSRR access reduction by carrier.

EXHIBIT
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Please bring this filing to the attention of the Commission, and should you have any questions, please do not hesitate to contact me. Upon approval by the Commission, please provide us with a stamped copy of the tariff filing.

Very truly yours,

Larry D. Callison

Larry D. Callison

LDC/ret

Enclosures

STAMP & RETURN

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief	)	WC Docket No. 07-___
	)	

FILED/ACCEPTED
AUG - 6 2007
Federal Communications Commission
Office of the Secretary

WINDSTREAM PETITION FOR CONVERSION TO PRICE CAP REGULATION AND FOR LIMITED WAIVER RELIEF

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Dated: August 6, 2007

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief	)	WC Docket No. 07-___
	)	

WINDSTREAM PETITION FOR CONVERSION TO PRICE CAP REGULATION AND FOR LIMITED WAIVER RELIEF

Windstream Corporation, on behalf of its incumbent local exchange carrier subsidiaries ("Windstream"), requests authority to convert its rate-of-return ("ROR") cost study areas to price cap regulation no later than July 1, 2008, and, to the extent necessary, limited waivers of the applicable pricing and universal service high-cost support mechanisms to enable Windstream's successful conversion.[1] Establishing a reasonable pathway for this conversion is in the public interest as it will, among other things: increase consumer welfare by enhancing competition; reduce the overall size of the universal service fund; hold steady or reduce access rates; and provide well established and tested regulatory incentives to encourage Windstream to maintain and enhance efficient operations. Windstream proposes a reasonable approach for conversion to price cap regulation that relies to the largest extent possible upon the framework already

[1] Because of the close interrelationship between the Commission's price cap rules and universal service rules, Windstream requests that the Commission grant this Petition as a unified whole. As such, Windstream's request to convert to price cap regulation is conditioned on a grant of the specific pricing and universal service waivers requested herein.

established in the *CALLS Order* ("CALLS plan" or "CALLS").[2] As such, the requested waiver relief will merely put Windstream in a similar regulatory position to other comparable price cap carriers and would be consistent with the Commission's longstanding policy and practice of promoting efficient forms of regulation. The requested relief is a necessary interim step until the Commission establishes a pathway for conversion in its rules and while it contemplates comprehensive intercarrier compensation and universal service reform.[3]

I. INTRODUCTION AND SUMMARY OF PETITION

The markets that Windstream serves are primarily rural and often are subject to fierce competition. Accordingly, Windstream's focus over the long term is on running its operations efficiently in order to compete effectively rather than on maximizing universal service and regulated access revenues over the short term. As a result of this focus, Windstream's existing special access rates are below those of the typical CALLS company and many of its switched access rates are equivalent to or below the primarily rural price cap target rate prescribed by CALLS.[4] Over time, however, ROR regulation does not provide appropriate incentives for an

[2] *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers*, Sixth Report and Order, 15 FCC Rcd 12962 (2000) ("*CALLS Order*"), *aff'd in part, rev'd in part and remanded in part, Texas Office of Public Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), *on remand,* 18 FCC Rcd 14976 (2003).

[3] *See, e.g., Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005) ("*Intercarrier Compensation FNPRM*"); *Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) ("*Special Access NPRM*"); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122 (2004) ("*Second MAG Further Notice*"); FCC Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, 21 FCC Rcd 9292 (WCB 2006) ("*Reverse Auction PN*").

[4] *CALLS Order*, 15 FCC Rcd at 13036-35.

efficient carrier such as Windstream. Furthermore, Windstream currently spends considerable resources complying with the requirements of both ROR and price cap regulation. Approval of this Petition will enable Windstream to consolidate these activities and gain additional efficiencies that will permit Windstream to maintain its low access rates.

Windstream's conversion entirely to a price cap regime will advance Commission goals and serve the public interest in a number of ways. Efficient access pricing mechanisms like price cap regulation generate incentives to optimize a carrier's cost structure and promote competition. The price cap rate structure is far more conducive to efficiency and competition than the ROR rate structure, and price cap regulation accordingly is the Commission's preferred mode of regulation. Because Windstream is an efficient carrier, price cap regulation will benefit its customers and provide Windstream with a regulatory structure that delivers appropriate incentives.

Windstream was formed in July 2006 through the spin-off by Alltel Corporation ("Alltel") of its wireline business and the merger of those wireline assets with VALOR Communications Group ("VALOR").[5] Windstream provides voice, broadband, and entertainment services to customers in largely rural areas in 16 states.[6] About 60 percent of Windstream's approximately 3.2 million access lines are subject to ROR regulation.[7]

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[5] FCC Public Notice, *Wireline Competition Bureau Grants Consent for Transfer of Control of Valor Communications Group, Inc. and Its Subsidiaries From Valor Communications Group, Inc. to New Valor, and the Transfer of Control of ALLTEL Holding Corp. and Its Subsidiaries From ALLTEL Corp. to New Valor*, 21 FCC Rcd 516 (WCB/CPD 2006).

[6] *See* Windstream Company Overview, *at* http://www.windstream.com/about/overview.aspx (last visited Aug. 3, 2007).

[7] Of the 32 Windstream study areas and 3.2 million access lines, 23 study areas are subject to ROR cost regulation. *See* Attachment A, Declaration of William F. Kreutz at ¶ 5 ("Kreutz Declaration").

Notwithstanding the rural characteristics of Windstream's ROR study areas,[8] Windstream and its predecessors have managed their ROR operations efficiently. Windstream has responded to increasing intermodal and intramodal competition by streamlining its operations over the past several years, thereby reducing its rates under ROR regulation. Therefore, Windstream is well positioned to convert entirely to price cap regulation.[9]

A. Windstream Proposes To Convert To A Total Company Price Cap Structure Under The CALLS Framework.

Section 61.41(a)(3) of the Commission's rules unambiguously permits incumbent local exchange carriers ("ILECs") to elect price cap regulation.[10] Nonetheless, the *CALLS Order*, which promulgated the existing regulatory framework for price cap carriers, does not leave a clear path for a carrier to convert to price cap regulation at this juncture. In fact, the Commission has suggested that CALLS is closed to new carriers.[11] The *CALLS Order* dockets remain open, however, and the Commission is considering related intercarrier pricing and universal service reform issues in a variety of proceedings.[12] Still, it is uncertain when, or whether, one or more of these dockets will clarify how ROR carriers can elect and implement price cap regulation.

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[8] All but one of Windstream's ROR study areas meet the definition of "rural telephone company" under 47 U.S.C. § 153(37).

[9] The only exceptions are Windstream's two average schedule study areas, as discussed in note 23, *infra.*

[10] 47 C.F.R. § 61.41(a)(3). *See Policy and Rules Concerning Rates for Dominant Carriers,* Second Report and Order, 5 FCC Rcd 6786 (1990) ("*LEC Price Cap Order*") (subsequent history omitted).

[11] *Second MAG Further Notice*, 19 FCC Rcd at 4163-64.

[12] *See, e.g., Intercarrier Compensation FNPRM; Special Access NPRM*; *Second MAG Further Notice*; *Reverse Auction PN.* The CALLS dockets are *Access Charge Reform*, CC Docket No. 96-262; *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1; *Low*

Pending such clarification, this Petition establishes a reasonable path for Windstream to convert its ROR study areas to a form of price cap regulation that is consistent with the Commission's evolving price cap rules. Windstream does not propose to increase its switched or special access rates in any of the converted study areas as of July 1, 2008.[13] Moreover, the path proposed in this Petition will not burden interstate access support ("IAS"), the explicit universal service support mechanism created in the *CALLS Order*.[14] In fact, the Windstream proposal would result in an overall reduction in the amount of universal service support Windstream receives and a corresponding reduction in the overall size of the high-cost fund.

Because the path to price cap regulation and availability of necessary universal service support to a new price cap carrier remain unclear after the *CALLS Order*, Windstream proposes a reasonable approach to its conversion to price cap regulation that relies to the largest extent possible upon the existing CALLS framework. As part of the conversion, however, Windstream will need limited waivers of one of the CALLS price cap rules and the universal service support mechanisms to facilitate the conversion of most of its ROR study areas to a reasonable pricing regime adapted to a largely rural carrier electing price cap regulation post-CALLS. The proposed waivers would provide interim relief until such time as the Commission clarifies in a rulemaking how a rural ROR carrier can convert to price cap regulation.

Volume Long Distance Users, CC Docket No. 99-249; and *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45.

[13] The only possible exception may be the initializing of Windstream Ohio's rates to meet its authorized ROR before they are converted to the price cap structure. *See* Sec. IV.D, *infra*.

[14] *See CALLS Order*, 15 FCC Rcd at 13039-63.

B. Full Price Cap Regulation Will Allow Windstream To Continue Efficient Operations In A Changing Market.

Windstream is already operating efficiently, and the proposals in this Petition will match a more appropriate form of regulation to Windstream's operations. One of Windstream's predecessors, Alltel, operated as a ROR carrier serving rural areas, and later acquired price cap operations from other ILECs. Alltel was granted waivers of the "all-or-nothing" rule in order to keep its acquired operations under price cap regulation and its original operations under ROR regulation, with the exception of Georgia operations acquired from GTE, which Alltel was allowed to convert to ROR regulation.[15] Alltel also was granted an all-or-nothing waiver to convert Aliant Communications Inc. ("Aliant") to ROR regulation after the two companies merged in 1999.[16] Alltel never acted on that waiver, however, and kept Aliant under price cap regulation.[17] VALOR, Windstream's other predecessor, was formed in 2000 with the acquisition of rural price cap properties from GTE Southwest.[18] All of Windstream's price cap study areas -- the former Aliant, Kentucky Alltel, and VALOR operations -- were part of CALLS and are eligible for IAS.

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[15] *See, e.g., ALLTEL Service Corp., Petition for Waiver of Section 61.41(c) of the Commission's Rules*, 8 FCC Rcd 7054, 7054-55 (CCB 1993) ("*ALLTEL Waiver Order*"). The all-or-nothing rule provides that "[i]f a telephone company, or any one of a group of affiliated telephone companies, files a price cap tariff in one study area, that telephone company and its affiliates, except its average schedule affiliates, must file price cap tariffs in all their study areas." 47 C.F.R. § 61.41(b).

[16] *ALLTEL Corp.; Petition for Waiver of Section 61.41 of the Commission's Rules and Applications for Transfer of Control*, 14 FCC Rcd 14191 (CCB 1999) ("*Aliant Waiver Order*").

[17] *ALLTEL Corp., Petition for Waiver of Section 61.41 of the Commission's Rules*, 16 FCC Rcd 12407, 12408 (CCB 2001) ("*Aliant Waiver Extension*"). *See also ALLTEL Corp., Petition for Waiver of Section 61.41; ALLTEL Corp., Petition to Extend Interim Waiver of Section 61.41 of the Commission's Rules*, 17 FCC Rcd 27694, 27701-02 (CCB 2002).

[18] *See Valor Telecommunications of Texas, LP And GTE Southwest Inc.*, 15 FCC Rcd 15816, 15819-21 (CCB 2000).

Upon the merger of the Alltel wireline operations with VALOR, Windstream (then named New Valor) was granted a waiver of the all-or-nothing rule in order to maintain the pre-merger regulatory treatment -- ROR or price cap regulation -- in each of its study areas.[19] Previously, as a condition of its prior all-or-nothing waivers, Alltel was required to seek approval to convert its ROR operations to price cap regulation, and that condition was applied to New Valor's all-or-nothing waiver in 2006.[20] Accordingly, Windstream must now seek prior approval to convert its ROR study areas to price cap regulation.

About three-quarters of Windstream's access lines are served by affiliates that meet the definition of "rural telephone company" in the Communications Act.[21] Approximately 60 percent of Windstream's access lines are subject to ROR regulation, and 40 percent operate under price cap regulation. All but one of Windstream's ROR study areas are served by affiliates that qualify as rural telephone companies, and almost half of its price cap access lines are served by rural telephone company affiliates, subjecting its business planning to unnecessary complexity and regulatory tension.[22] This complexity imposes unnecessary costs on Windstream that its competitors do not bear. Based upon Windstream's long experience with both types of

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[19] *Valor Communications Group, Inc., (New Valor); Petition for Waiver*, 21 FCC Rcd 859 (WCB 2006) ("*New Valor Waiver Order*").

[20] *Id.* at 863. At one time, Alltel considered converting entirely to price cap regulation but decided that the *CALLS Order* made conversion infeasible. *Aliant Waiver Extension*, 16 FCC Rcd at 12408. Subsequently, New Valor cited the Commission's tentative conclusion that new price cap carriers would not receive IAS funding as justification for an all-or-nothing waiver. *New Valor Waiver Order*, 21 FCC Rcd at 862.

[21] 47 U.S.C. § 153(37). In addition, many of Windstream's study areas that do not qualify as "rural" in fact have the same density and other characteristics of rural study areas. *See* Kreutz Declaration at ¶ 7.

[22] Windstream Ohio, Inc. is the only Windstream ROR company that is non-rural. Of Windstream's 1.2 million price cap access lines and 7 study areas, approximately 544,000 access lines and 5 study areas qualify as rural. *See* Kreutz Declaration at ¶ 6.

regulation, Windstream has concluded that price cap regulation will better enable it to continue operating efficiently, promising greater rewards for both the consumer and the carrier going forward. The administrative simplicity afforded by a single regulatory regime also strongly favors conversion of Windstream's ROR properties to price cap regulation. Eliminating this complexity will reduce Windstream's costs, positioning it to compete more effectively and better maintain competitive rates for its customers.

C. Windstream Price Cap Regulation Conversion Proposal

With the requested waivers, the main elements of the proposed pricing and universal service regime are as follows:

- **Price Cap Structural Rules:** As of the effective date, which should be no later than July 1, 2008, the proposed price cap regulatory structure that would apply to Windstream's converted study areas would be based on the structural rules established in the *CALLS Order*, but Windstream would not "join" the pricing and universal service support regime applied to price cap carriers in the *CALLS Order*.[23]

- **Switched Access:** For the ROR study areas to be converted to price cap regulation, Windstream will convert its ROR switched access rates to the price cap switched access rate structure established in the *CALLS Order* and, for those converted study areas with average traffic sensitive ("ATS") switched access rates (the sum of the local switching and transport components) higher than the "primarily rural price cap" carrier target under the *CALLS Order* of $0.0095 per minute, will reduce those ATS rates to that target level using a transition process consistent with other CALLS companies.[24] Converted study area ATS rates currently below $0.0095 per minute, however, would remain at their existing rates. Windstream's composite ATS rates in the study areas to be converted already equate to

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[23] This Petition does not include Windstream's two small ROR average cost schedule study areas, Windstream Accucomm Telecom, Inc. ("WAT") and Windstream Georgia Telephone, Inc. ("WGT"), which together account for only slightly more than one-third of one percent of Windstream's access lines companywide. Consistent with the exception in § 47 C.F.R. 61.41(b), Windstream would leave those study areas under ROR regulation as average schedule companies participating in National Exchange Carrier Association ("NECA") tariffs.

[24] *CALLS Order*, 15 FCC Rcd at 13021-22, 13035-36; 47 C.F.R. § 61.3(qq)(2). *See* Kreutz Declaration at ¶ 10. The low-density carriers for which the *CALLS Order* prescribed a $0.0095 target ATS rate will be referred to throughout as "primarily rural price cap" carriers, consistent with the usage in the *CALLS Order*. *CALLS Order*, 15 FCC Rcd at 13035-36.

$0.0091 per minute and will be reduced further by transition of above target rates to the $0.0095 target level. Thus, overall, Windstream's switched access rates under a price cap regime will likely be lower than if Windstream remains partly under ROR regulation because of declining access demand and flat revenue requirements.[25]

- **Special Access:** Windstream will initialize its price cap rates for special access services in the converted study areas at current ROR levels. Unlike the price cap carriers that were initially part CALLS, and that were permitted to freeze their special access rates in 2004, Windstream's ROR special access rates have declined steadily over the past few years. As a result, its standard monthly special access rates are now lower than the standard special access rates charged by the typical CALLS company and are significantly lower than the special access rates that Windstream would be charging currently had it participated in the CALLS plan from the start.[26] Further reductions are not required by the current price cap rules and would unnecessarily penalize Windstream.

- **Universal Service:** Conversion to price cap regulation would not be feasible without the continued availability of reasonable universal service support consistent with the CALLS plan. Windstream proposes to continue to receive interstate common line support ("ICLS") for the converted study areas, but the level of support will be calculated like IAS and set at a per line amount. Importantly, Windstream's total IAS-like funding for those study areas will be less than the total ICLS funding it would otherwise have received as a ROR carrier. Unlike ICLS support under ROR regulation, the IAS-like support Windstream will receive for a given access line will be lost entirely when it loses a line.[27]

II. WINDSTREAM'S CONVERSION TO PRICE CAP REGULATION IS IN THE PUBLIC INTEREST.

As the Commission explained in the *LEC Price Cap Order*, price cap regulation "permit[s] LECs to migrate their rates toward a set of prices that enhances efficiency," as opposed to ROR regulation, under which "regulators dictate prices on the basis of fully

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[25] Windstream proposes to treat its sole non-rural ROR study area, Windstream Ohio, Inc., differently. Currently, Windstream Ohio is Windstream's only ROR cost study area participating in the NECA traffic sensitive pool. Rather than adapting those rates to the price cap rate structure, Windstream will initialize Windstream Ohio's rates to meet its authorized ROR and then adapt those rates to the price cap rate structure.

[26] Rate comparisons to typical CALLS companies are based on month-to-month DS1 and DS3 rates using one channel termination and 10 miles of transport. Windstream's current ROR DS1 and DS3 weighted average composite rates are 24.3 percent and 23.3 percent lower, respectively, than what they would have been under the CALLS plan. *See* Kreutz Declaration at ¶ 13.

[27] Alternatively, the Commission could increase the IAS target over the $650 million currently in the rules to accommodate Windstream's participation in IAS.

distributed costing principles,"[28] which penalizes efficient carriers like Windstream. Price cap regulation rewards "companies that become more productive and efficient."[29] This productivity and efficiency ultimately benefits consumers.

Price cap regulation produces these public interest benefits while using fewer regulatory and administrative resources to police carriers than are required to prevent the misallocation of costs under ROR regulation.[30] As the Commission discussed in the *LEC Price Cap Order*:

> Previous orders in this docket have articulated the pressures that a rate of return system places on cost allocation systems. . . . Indeed, given the incentives rate of return creates for companies to misallocate costs, thereby threatening our policy of ensuring that rates are based on their fully distributed costs, we spend a great deal of our regulatory resources policing our cost allocation systems. Under incentive regulation, prices would no longer be set by reference to a set of fully distributed costs. . . . Incentive regulation, by in large measure removing the incentive to misallocate costs between services, may mitigate misallocation as a regulatory concern.[31]

Price cap regulation also stimulates residential and business customer demand for telecommunications services.[32] More efficient use of and greater demand for the nationwide telecommunications network, in turn, contributes to overall economic growth by reducing the cost of telecommunications services that are used by other industries to produce goods and services.[33]

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[28] *LEC Price Cap Order*, 5 FCC Rcd at 6791.

[29] *Id.* at 6787.

[30] *See id.* at 6788.

[31] *Id.* at 6791.

[32] *See id.* at 6792.

[33] *Price Cap Performance Review for Local Exchange Carriers*, First Report and Order, 10 FCC Rcd 8961, 8965 (1995).

These factors also facilitate the development of competition. As the Commission explained:

> In the case of the LECs' interstate services, the optimal form of regulation would largely replicate the competitive outcome. . . . The current LEC price cap plan represents, in large part, a program of improving consumer welfare by introducing profit incentives and price constraints that more closely replicate the operation of competition than traditional, rate-of-return regulation.[34]

The public benefits of price cap regulation are especially evident in the post-CALLS environment. The *CALLS Order* greatly improved the economic benefits of price cap regulation by imposing a cost causative rate structure that drives down usage rates by forcing carriers to recover non-traffic sensitive costs with fixed rates.[35] By reducing implicit subsidies and making them explicit, the post-CALLS rate structure "will be more apparent to the end user," thus encouraging competitive entry and thereby promoting local and long distance competition and more rational investment decisions.[36]

In the case of Aliant, a Windstream predecessor, the Commission specifically noted the benefits of price cap regulation. The Commission found that "[u]nder price cap regulation, the Aliant exchanges have reformed their access charges and, therefore, have a more cost causative interstate rate structure," to the benefit of Aliant's customers.[37] A price cap rate structure

[34] *Id.* at 9002.

[35] *CALLS Order*, 15 FCC Rcd at 13017 (discussing the *Access Charge Reform Order*, in which the FCC, "[r]ecognizing that a significant portion of local switching costs...do not vary with usage, [] required that such non-traffic sensitive costs be recovered on a flat-rated, rather than usage sensitive basis." *See Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, 16034 (1997) (subsequent history omitted)).

[36] *CALLS Order*, 15 FCC Rcd at 12964, 12980, 12990-94, 12997-98.

[37] *Aliant Waiver Extension*, 16 FCC Rcd at 12409.

similarly would enable Windstream to continue operating efficiently and to respond quickly to competitive pressures, thereby promoting competition.

In spite of its sparsely populated service area, with fewer than 2000 access lines in the vast majority of its exchange areas, Windstream's efficient operations have resulted in special access rates that are comparable to or lower than those of most rural and mid-size price cap carriers and even RBOC rate levels.[38] Windstream's competitive rates are a direct result of its continual efforts to optimize its cost structure.

In 2006, Windstream installed 1,620 new broadband sites and 3,320 digital subscriber line access multiplexers ("DSLAMs"). As of the first quarter of 2007, Windstream has approximately 715,000 broadband subscribers.[39] Any savings generated by the efficiencies of price cap regulation will better enable Windstream to continue upgrading its network and extending its widespread broadband deployment. Converting to price cap regulation thus will promote competition and enhance Windstream's provision of services, including broadband services, to its customers.

These public benefits will not be fully realized if Windstream continues to operate under two regulatory regimes. The administrative difficulties associated with pricing under dual regulatory systems will only increase going forward. Moreover, the uneconomic incentives imposed by rate-of-return regulation place pressures on carriers to raise their rates in order to meet authorized rates of return as competition increases from wireless and VoIP providers. As a result, at a time when carriers might need to reduce rates to stay competitive, ROR regulation produces incorrect economic incentives to increase rates. Therefore, Windstream's business

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[38] *See* note 26, *supra.*

[39] Windstream Communications SEC Form 10-Q for the period January 1, 2007 to March 31, 2007 at 25 (filed May 10, 2007).

planning will become increasingly difficult as it is pulled in different directions by contradictory regulatory incentives. Conversion to price cap regulation under the conditions spelled out in this Petition will allow Windstream to continue to optimize its cost structure, thereby maximizing efficiency, promoting competition and creating ongoing incentives for Windstream's network investment.

In requiring Windstream's predecessor, Alltel, to request prior approval before converting to price cap regulation, the Commission noted concerns as to potential "gaming" if Alltel sought price cap regulation on a companywide basis.[40] The prior approval requirement was extended to Windstream after the merger of Alltel's wireline operations with VALOR,[41] but these concerns are not relevant to Windstream's circumstances in the context of this Petition. Because Windstream is planning to convert all of its ROR cost study areas to price cap regulation, improper cost-shifting between ROR and price cap affiliates will not be possible. Similarly, any strategy of shifting back and forth between the two types of regulation can be discounted.[42] Because the great majority of Windstream's operations have always been under ROR regulation, any purported strategy of "shifting back and forth" between regulatory regimes,

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[40] *See Aliant Waiver Order*, 14 FCC Rcd at 14202. The Commission's concern was that if a carrier were allowed to switch back and forth between ROR regulation and price cap regulation, it could "'game the system'" by "building up a large rate base under rate of return regulation, then opt for price caps again and cut its costs to an efficient level." *Policy and Rules Concerning Rates for Dominant Carriers*, Order on Reconsideration, 6 FCC Rcd 2637, 2706 (1991). The Commission's gaming concerns are reflected in the all-or-nothing rule in Section 61.41(c) of the Commission's rules and in Section 61.41(d), which prohibits carriers from switching back to ROR regulation after electing price cap regulation. *See Aliant Waiver Order*, 14 FCC Rcd at 14198-99, 14202.

[41] *New Valor Waiver Order*, 21 FCC Rcd at 863.

[42] *See ALLTEL Waiver Order*, 8 FCC Rcd at 7054. Other than the Georgia properties acquired from GTE by the former Alltel, all of Windstream's or its predecessors' ROR operations have always been under ROR regulation, at least while under their ownership. Aliant was a price cap carrier prior to its merger with Alltel.

which Windstream has no intention of doing, makes no sense. The competitive and other public benefits to be generated by Windstream's conversion to price cap regulation outweigh any hypothetical gaming concerns.[43]

III. BACKGROUND: THE COMMISSION'S RULES ALLOW CARRIERS TO CONVERT FROM RATE-OF-RETURN TO PRICE CAP REGULATION.

A. The Commission's Rules Allow Carriers To Convert From Rate-Of-Return To Price Cap Regulation, But Fail To Provide A Pathway To Do So.

The Commission's price cap rules, adopted in 1990, unambiguously permit an ILEC to elect price cap regulation (or, in Windstream's case, to request approval to convert to price cap regulation).[44] The subsequent *CALLS Order*, however, does not identify how a ROR carrier, or, more precisely, how ROR study areas, can be converted to price cap regulation. Significant elements of the CALLS scheme, such as the industry-wide initial \$2.1 billion switched access rate reduction and the creation of the \$650 million IAS fund, were based on the participation of all price cap ILECs as of June 30, 2000.[45] The *CALLS Order* does not expressly address a glide path for ILECs that might elect price cap regulation after that date.[46] Moreover, the pending

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[43] *See, e.g., New Valor Waiver Order*, 21 FCC Rcd at 863 (benefits from proposed transaction "outweigh any threat of cost shifting or gaming the system").

[44] 47 C.F.R. § 61.41(a)(3). *See New Valor Waiver Order*, 21 FCC Rcd at 863 (extending to New Valor the requirement already applicable to Alltel to seek prior Commission approval before electing price cap regulation).

[45] *See CALLS Order*, 15 FCC Rcd at 12983-84; 47 C.F.R. § 54.801(a) (IAS fund for "areas served by price cap local exchange carriers as of June 30, 2000, is targeted to be \$650 million per year"); 47 C.F.R. § 61.48(l)(1) (price cap ILECs required to achieve a total switched access rate reduction of \$2.1 billion in their July 1, 2000 annual access tariff filings, relative to their June 30, 2000 rates).

[46] The *CALLS Order* notes that Valor and Iowa Telecom were under contract to acquire price cap properties "and will be subject [to] this Order." *CALLS Order*, 15 FCC Rcd at 13072 n.589.

Second MAG Further Notice tentatively found that the CALLS plan was not designed to be open to new ILECs or study areas.[47]

Even if CALLS is closed, however, the Commission's rules permit ROR carriers to elect, or (in the case of Windstream) request, price cap regulation. As recently as 2006, in waiving the all-or-nothing rule, the Commission expressly gave Windstream's immediate predecessor, New Valor, the opportunity to submit a request for price cap regulation.[48] Moreover, the Commission has never suggested that the price cap election provision, which remains in the Commission's rules, has been limited or modified.[49]

In Windstream's case, this issue can be remedied by allowing Windstream to elect a form of price cap regulation utilizing the current post-CALLS price cap rate structure but revising one of the CALLS rate level components, through appropriate waiver relief, to accommodate Windstream's unique circumstances. Windstream's conversion to price cap regulation would serve the public interest and achieve the goals of the pricing and universal service policies implemented in the *CALLS Order*.

B. The *CALLS Order* Reformed The Price Cap Rate Structure And Reduced Access Rates.

The *CALLS Order* modified the existing price cap regulations -- while leaving the price cap election provision intact -- and referred to the modified rules as the "CALLS Proposal price cap rules."[50] The Commission's recent order dismissing a petition to reconsider the *CALLS*

[47] *Second MAG Further Notice*, 19 FCC Rcd at 4163-64.

[48] *New Valor Waiver Order*, 21 FCC Rcd at 863.

[49] 47 C.F.R. § 61.41(a)(3)

[50] *CALLS Order*, 15 FCC Rcd at 13025.

Order observed that those rules remain in effect.[51] Although the CALLS plan has reached the end of its original five-year term, it will continue in effect until it is replaced.[52]

The *CALLS Order* made the CALLS *rate structure rules* (*e.g.*, Subscriber Line Charge ("SLC") caps, elimination of the residential and single business line Presubscribed Interexchange Carrier Charge ("PICC"), and the separate special access price basket) mandatory for all price cap ILECs.[53] The Commission also required price cap ILECs to choose, within 60 days of release of the *CALLS Order*, whether to accept the CALLS *rate level components* or submit a forward-looking cost study for the reinitialization of rates.[54] The rate level components included each carrier's share of the industry-wide "up-front reduction" of $2.1 billion in switched access charges, the "X-factors" used to reduce rates, and the switched access usage rate "target" levels for different categories of carriers.

At this time, the CALLS 60-day option period, which was extended briefly, has long since passed.[55] Moreover, some of the CALLS rate level components could not be applied to Windstream at this time in any event. For example, the most significant component, price cap carriers' up-front reduction in switched access rates in 2000, was partly achieved through reductions in carrier common line ("CCL") charges. Windstream's CCL charges were eliminated in 2001 when the ICLS fund was established in the *MAG Order* to replace the support

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[51] *See Access Charge Reform,* CC Docket No. 96-262, DA 07-2968, at ¶ 2 n.8 (rel. Jul. 3, 2007).

[52] *Special Access NPRM*, 20 FCC Rcd at 1995.

[53] *CALLS Order*, 15 FCC Rcd at 12984.

[54] *Id.* at 12984-85.

[55] *Access Charge Reform*, 15 FCC Rcd 23435, 23437-38 (CCB 2000) (extending 60-day deadline from July 31, 2000 to September 14, 2000).

provided by CCL revenues.[56] The CALLS up-front reduction also was designed to total $2.1 billion for the entire industry, with each price cap carrier absorbing its share.[57] With this reduction entirely implemented in 2000, neither the *CALLS Order* nor the price cap regulations require any similar "up-front" switched access rate reductions at a later time by a new price cap carrier. Nevertheless, as explained below, Windstream proposes to enhance the consumer benefits of its conversion to price cap regulation by reducing its switched access rates for study areas where the converted ATS rates are above the $0.0095 target rate established in the *CALLS Order* for the very low-density primarily rural price cap ILECs.

IV. WINDSTREAM'S INITIAL PRICE CAP RATES SHOULD BE BASED ON ITS CURRENT RATE-OF-RETURN RATES.

The X-factors established in the *CALLS Order* operated to reduce switched access usage rates to specified target levels and to reduce special access rates over a set period of time. Under the price cap rules, price caps were set at GDP-PI (a measure of the rate of inflation), minus the X-factor. Once switched access rates reached the targets, the CALLS switched access X-factor was adjusted to an inflation offset, effectively freezing switched access rates under the price cap rules. Similarly, on July 1, 2004, the special access X-factor was adjusted to an inflation offset, effectively freezing special access rates.[58]

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[56] *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613, 19620, 19642, 19644-46 (2001) ("*MAG Order*") (subsequent history omitted) (eliminating CCL charges and replacing CCL revenue with interstate common line support). *See* Kreutz Declaration at ¶ 9.

[57] *CALLS Order*, 15 FCC Rcd at 12983-84.

[58] *Id.* at 13019-21.

A. No Further Reduction In Windstream's Already Reduced Rate-Of-Return Special Access Rates Is Necessary Or Required.

Because the *CALLS Order* froze price cap special access rates in 2004, Windstream would not be required by the current price cap regulations to reduce its special access rates any further upon conversion to price cap regulation. Moreover, unlike price cap carriers, Windstream has steadily reduced its ROR special access rates, including for the period after 2003. In fact, its standard monthly ROR special access rates are now below the typical CALLS company standard monthly special access rates after the CALLS participants' four year special access reductions under CALLS.[59] Further, Windstream's standard monthly ROR special access rates are approximately 24 percent lower than what they would have been at this juncture if its ROR study areas initially had been part of CALLS.[60] Thus, Windstream's current special access rates are lower than rates that were deemed reasonable under the *CALLS Order* and should not be reduced any further upon the conversion to price cap regulation.

B. Windstream's Rate-Of-Return Switched Access Rates Are Being Reduced To An Optimum Level For A Primarily Rural Price Cap Carrier With Windstream's Cost Characteristics.

Windstream's actual ROR switched access charge cumulative reductions since 1999 have totaled $64.6 million, an amount that, by any plausible measure, is far more than the "up-front" reductions that would have been required under CALLS for these study areas if they had been

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[59] Rate comparisons to average CALLS companies are based on month-to-month DS1 and DS3 rates using one channel termination and 10 miles of transport.

[60] Windstream's current ROR study area DS1 and DS3 weighed average composite rates are 24.3 percent and 23.3 percent lower, respectively, than what would have been charged under the CALLS Plan. *See* Kreutz Declaration at ¶ 13.

original participants in the CALLS plan.[61] The switched access X-factor under the CALLS plan was initially set at 6.5 percent, and was applied to ATS switched access rates until the ATS rate reached the target for each CALLS category of carrier. For primarily rural price cap ILECs (those with an average of less than 19 access lines subject to SLCs per square mile), the ATS target was set at $0.0095 per minute.[62] Overall, Windstream currently averages about 20.5 switched access lines per square mile companywide, which could further diminish based on industry trends.[63] In converting Windstream's ROR switched access rates to the CALLS rate structure, some study areas would have ATS rates significantly higher than the primarily rural price cap carrier ATS target rate of $0.0095 per minute and some would have lower ATS rates. The weighted average of the ATS rates for all of the ROR study areas is approximately $0.0091 per minute.[64]

In the converted study areas with ATS rates higher than the target, Windstream proposes to transition those rates down, consistent with the approach taken with regard to the other

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[61] *See* Kreutz Declaration at ¶ 9. The *CALLS Order* required participating price cap carriers to make required reductions partially through reductions in CCL charges. Windstream's predecessors eliminated CCL charges in their ROR study areas in 2001 pursuant to the FCC's *MAG Order* for ROR carriers.

[62] *CALLS Order*, 15 FCC Rcd at 13035.

[63] This figure is lower than the number of lines per square mile in some of Windstream's recent public statements. *See, e.g.,* Letter from Eric N. Einhorn, Vice President - Federal Government Affairs, Windstream Communications, Inc., to Commissioner Deborah Taylor Tate, FCC, at 2, WC Docket No. 05-337; CC Docket No. 96-45 (Apr. 2, 2007) (25 lines per square mile). The higher figure includes all categories of access lines. The measure of 19 lines per square mile in the *CALLS Order* was limited to access lines on which a SLC is charged (*see CALLS Order*, 15 FCC Rcd at 13022 n.304, 13029), which excludes special access and other lines on which no SLC is charged.

[64] This composite ATS rate of $0.00910 is made up of an average switched rate per minute of $0.00505, an average transport rate of $0.00326, and an average flat rated transport of $0.00079, with half of the companies below the target rate of $0.0095. *See* Kreutz Declaration at ¶ 11.

CALLS companies, to the primarily rural price cap target of $0.0095 per minute, while leaving lower ATS rates in other study areas unchanged. Under this proposal, the weighted average ATS rate in the converted study areas would be approximately $0.0085, a seven percent reduction from the current ROR switched access rates,[65] once the target rate is reached. In order to implement this pro-consumer overall rate reduction, Windstream will need limited relief from the CALLS pricing rules.

C. Treatment of Windstream As A Primarily Rural Price Cap Carrier Meeting The ATS Target Threshold Of 19 Lines Per Square Mile Would Serve The Public Interest.

Because Windstream's cost characteristics are so similar to those of primarily rural price cap carriers, the public interest would be served by waiving Section 61.3(qq)(2) of the Commission's rules, which codifies the 19 lines per square mile threshold established in the *CALLS Order* for primarily rural price cap carriers.[66] This relief would allow Windstream to reduce its ATS rate in each ROR study area to the primarily rural price cap target level of $0.0095 per minute or, in those study areas where the converted ATS rate would be lower than that target, to maintain the lower ATS rate.

1. Good Cause Exists For A Waiver Of Section 61.3(qq)(2) Of The Commission's Rules To Allow Windstream To Set The ATS Rates For Its Converted Study Areas At Or Below $0.0095 Per Minute.

Waiver of the Commission's rules is permitted upon a showing of "good cause."[67] Specifically, "[t]he FCC may exercise its discretion to waive a rule where particular facts would

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[65] *See* Kreutz Declaration at ¶ 12.

[66] 47 C.F.R. § 61.3(qq)(2).

[67] *See* 47 C.F.R. § 1.3.

make strict compliance inconsistent with the public interest,"[68] or, alternatively, where "special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest."[69] In determining whether to grant a waiver, the Commission may take into account special considerations of equity or "more effective implementation of overall policy" on an individual basis.[70]

In these circumstances, strict compliance with the 19 line threshold would be inconsistent with the public interest and would undermine the policy goals of post-CALLS price cap regulation. Windstream's density and related cost characteristics more closely resemble primarily rural price cap carriers with fewer than 19 switched access lines per square mile than the typical carrier subject to the lower ATS targets of $0.0055 for RBOCs and $0.0065 for other non-rural carriers.[71] In establishing the "multi-tier target rate system" and a target ATS rate of $0.0095 per minute for primarily rural price cap carriers, the *CALLS Order* explained:

> Due to the nature of their service areas, primarily rural price cap LECs experience costs that are significantly higher than other price cap LECs of their size, and are unable to spread those costs over a large subscriber base. Therefore, we agree that the higher level is appropriate for primarily rural price cap LECs.[72]

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[68] *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*"); *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation,* 7 FCC Rcd 4355, 4364 n.118 (1992) (subsequent history omitted) ("*Payphone Compensation*").

[69] *Northeast Cellular*, 897 F.2d at 1166.

[70] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied,* 409 U.S. 1027 (1972) ("*WAIT Radio*").

[71] *CALLS Order*, 15 FCC Rcd at 13021-22.

[72] *Id.* at 13036.

The Commission specifically noted that "because VALOR and Citizens have fewer lines per square mile of service area than non-rural price cap LECs, their lines must run farther, and the cost of exchanges is distributed among fewer end users."[73]

Overall, Windstream typifies the "primarily rural price cap" LECs described in the *CALLS Order*.[74] All but one of Windstream's ROR study areas, as well as five of its seven price cap study areas, qualify as rural under the statutory definition of "rural telephone company," and over 75 percent of its companywide access lines are served by its rural operating companies.[75] Sixty-nine percent of its exchanges serve 2,000 access lines or fewer, and almost half serve 1,000 lines or fewer.[76] As the Commission explained in the *CALLS Order*, these measures describe a high-cost area characterized by longer loops and fewer access lines over which to spread switch and other central office investment costs.

Windstream's companywide service area is sparsely populated, with only about 20.5 switched access lines per square mile. This is very close to a "teledensity" of 19 switched access lines per square mile, which, according to the Rural Task Force, is the average rural carrier's teledensity.[77] The Rural Task Force also observed that the average non-rural carrier has an average teledensity of 128 switched access lines per square mile, more than six times

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[73] *Id.* at 13036 n.389.

[74] *CALLS Order*, 15 FCC Rcd at 13035-36.

[75] *See* 47 U.S.C. § 153(37).

[76] Of Windstream's 1,074 exchanges, 516 serve 1,000 or fewer access lines and 226 serve between 1,000 and 2,000 access lines. *See* Kreutz Declaration at ¶ 7.

[77] *See* Rural Task Force White Paper 2, *The Rural Difference* at 33 (Jan. 2000), *available at* http://www.wutc.wa.gov/rtf/old/RTFPub_Backup20051020.nsf/?OpenDatabase (follow "RTF White Paper #2" hyperlink) ("*Rural Difference Paper*").

Windstream's teledensity.[78] Indeed, all price cap carriers subject to the $0.0065 ATS target rate have teledensities exceeding 100 switched access lines per square mile.[79] Because the Rural Task Force's teledensity data was the basis for the 19 line threshold in the *CALLS Order*, Windstream's sparsely populated service area and comparable teledensities to rural carries should be given decisive weight in determining whether it should be treated like a primarily rural price cap carrier under the CALLS Plan.[80]

Given Windstream's low teledensity, it is not surprising that, even after the $64.6 million reduction in its ROR switched access rates since 1999, the current weighted average of those rates is approximately equivalent to an ATS rate of about $0.0091 per minute, only slightly under the primarily rural price cap CALLS target rate.[81] This further demonstrates that Windstream more closely resembles the cost characteristics of primarily rural price cap carriers and therefore its target ATS rate under CALLS should be $0.0095 per minute, which the *CALLS Order* found reasonable for this class of carriers.

If Windstream did not qualify for the $0.0095 ATS rate as a primarily rural price cap carrier, its low teledensity and related cost characteristics would make any conversion to price

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[78] *Id.*

[79] *See* Kreutz Declaration at ¶ 10.

[80] The *CALLS Order*, 15 FCC Rcd at 13022 n.304, relied on a letter from John T. Nakahata, Counsel to the Coalition for Affordable Local and Long Distance Service, to Magalie Roman Salas, Secretary, FCC, CC Docket Nos. 96-262, 94-1, 96-45, 99-249 (Apr. 14, 2000) ("Coalition Letter"), for the 19 line threshold. The Coalition Letter attached a letter from Anne K. Bingaman, Chairman and CEO, VALOR Telecommunications Southwest, LLC, and John T. Nakahata, Counsel to the Coalition for Affordable Local and Long Distance Service, to Larry Strickling, Chief, Common Carrier Bureau, FCC, CC Docket Nos. 96-262, 94-1, 96-45, 99-249 (Apr. 14, 2000) ("VALOR Letter"), which cited the *Rural Difference Paper* for the 19 line threshold. VALOR Letter at 1 n.1.

[81] *See* Kreutz Declaration at ¶¶ 9, 11.

cap regulation problematic.[82] The loss of the public interest benefits of conversion resulting from denial of a waiver of the 19 line threshold "would make strict compliance [with the rule] inconsistent with the public interest."[83]

Because Windstream's overall cost characteristics resemble those of a primarily rural price cap carrier, and because authorization to charge ATS rates meeting or lower than the primarily rural price cap target will enable Windstream to convert to price cap regulation, "special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest."[84] Windstream's switched access rates in the converted study areas will be lower than they are now or, in those areas where the converted ATS rate is already below $0.0095 per minute, no higher than they are now. The conversion to a price cap rate structure and lower average ATS rates facilitated by a waiver will directly benefit Windstream's customers and promote competition. Accordingly, waiver of the 19 line threshold in Section 61.3(qq)(2) would provide for a "more effective implementation of overall policy"[85] and should be granted.

2. Only Limited Reductions In Windstream's Switched Access Rates Are Required.

Once a primarily rural price cap carrier's ATS rates are reduced to its proper target level, CALLS requires no further reduction in those rates.[86] Windstream's efficient operations have

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[82] *See CALLS Order*, 15 FCC Rcd at 13029 (target ATS rates for non-rural carriers -- $0.0065 and $0.0055 per minute -- are much lower than the primarily rural price cap target ATS rate).

[83] *Payphone Compensation,* 7 FCC Rcd at 4364 n.118.

[84] *Northeast Cellular*, 897 F.2d at 1166.

[85] *WAIT Radio*, 418 F.2d at 1159.

[86] *CALLS Order*, 15 FCC Rcd at 13022, 13029-30.

already brought many of its ROR switched access rates down to or below the proper ATS-equivalent target rate under CALLS. With a waiver of Section 61.3(qq)(2), most of Windstream's converted study areas will be charging the appropriate ATS rates. For those converted study areas with ATS rates above the primarily rural price cap target of $0.0095 per minute, the ATS rates will be reduced using a transition process consistent with the ATS reductions implemented by the other CALLS companies, starting with the tariff filing to become effective July 1, 2008.

After a primarily rural price cap carrier's ATS rates were reduced to the target rate of $0.0095 per minute under CALLS, the switched access X-factor was then applied to its CCL charges until they were eliminated or until June 30, 2004, whichever was earlier.[87] At that point, the X-factor was set at GDP-PI, thereby effectively freezing switched access rates.[88] Windstream, however, has eliminated its CCL charges. Moreover, the one-time $2.1 billion industry-wide switched access reduction was fully implemented in 2000. With the requested waiver, the current price cap rules accordingly do not require any further reduction in Windstream's switched access rates in the converted study areas once its ATS rates all reach $0.0095 per minute or less.

Coupled with the reductions in ICLS funding under Windstream's requested universal service waiver relief explained herein, it would be especially unreasonable to require further reductions in Windstream's switched access rates below those reductions proposed above.[89] Because ICLS replaced ROR carriers' CCL revenue, the reduction in Windstream's ICLS

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[87] *Id.* at 13022.

[88] *Id.*

[89] *See* Sec. V, *infra*.

funding that will result from its conversion to price cap regulation and requested universal service waiver relief is equivalent to an additional reduction in its switched access charges.[90]

D. Because Windstream Ohio Will Still Be Part Of NECA In June 2008, Its Access Rates Should Be Initialized Based On The Authorized Rate Of Return Before Conversion To Price Cap Regulation.

One Windstream ROR cost study area, Windstream Ohio, will still be a member of the NECA traffic-sensitive pool as of June 2008.[91] Because Windstream Ohio's rates have not been based on its own costs, unlike Windstream's other ROR operations, Windstream proposes to initialize Windstream Ohio's access rates based on the authorized ROR and then adapt them to the CALLS rate structure. Once Windstream Ohio's standard monthly special access rates are initialized to meet the authorized ROR, they will fall in line with other CALLS company rates.

In the case of Windstream Ohio's switched access rates, Windstream proposes a further reduction. Although Windstream Ohio's initial switched access usage rate would result in an estimated ATS rate of $0.014 per minute, Windstream proposes to transition that rate further to the primarily rural price cap target of $0.0095 per minute. At that point, there will be no need for any further access charge reductions under the rationale of the *CALLS Order*. As in the case of the other study areas, Windstream Ohio's converted switched access rates will be reduced to the appropriate ATS rate, and its special access rates will be lower than typical post-CALLS special access rates.

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[90] *See MAG Order*, 16 FCC Rcd at 19664-88 (eliminating CCL charges and replacing ROR carriers' CCL revenue with ICLS funding).

[91] Two other NECA study areas, Windstream Standard, Inc. and Kerrville Telephone Co., were withdrawn from the NECA traffic sensitive pool effective July 1, 2007. The remaining two NECA study areas, WAT and WGT, are not covered by this petition and will remain average schedule companies in the NECA pool. *See* note 23, *supra.*

V. TARGETED PARTIAL RELIEF FROM CERTAIN UNIVERSAL SERVICE RULES WOULD SERVE THE PUBLIC INTEREST BY REDUCING WINDSTREAM'S LEVEL OF SUPPORT.

Although Windstream is less reliant on universal service support than the typical rural ILEC,[92] this support remains important. The network expenditures discussed in this Petition depend, in significant part, on continued high-cost support. Windstream's successful conversion to price cap regulation is inherently intertwined with the efficiencies generated by continued network investment. Windstream will require continued high-cost universal service fund ("USF") support, albeit at reduced levels, in order to realize all of the public interest benefits, discussed above, that will follow its conversion to price cap regulation. Moreover, the network upgrades that depend on USF support will enable Windstream to continue its deployment of broadband services to rural consumers.[93] Finally, the Commission long ago recognized the need for explicit universal service to replace the implicit support that was originally part of interstate access charges.[94]

A. Windstream Seeks Partial Relief From Certain USF Rules That Will Result In Continued Support At A Lower Level.

Existing universal service rules do not clearly address whether Windstream could continue to receive high-cost universal service support to cover interstate access costs (*i.e.,* IAS

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[92] As of year end 2006, Windstream received less than one percent of its total annual revenue from high-cost loop and model support, and less than three percent of its total annual revenue from all Federal high-cost support combined. *See* Kreutz Declaration at ¶ 14.

[93] Although broadband is not a supported service, the FCC has recognized that "the network is an integrated facility that may be used to provide both supported and non-supported services," and has committed itself to "ensuring that appropriate policies are in place to encourage the successful deployment of infrastructure capable of delivering advanced and high-speed services." *Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, 18 FCC Rcd 15090, 15095-96 (2003).

[94] *See, e.g., CALLS Order*, 15 FCC Rcd at 13043.

or ICLS) if it converts to price cap regulation. As a price cap carrier, under the Commission's rules, Windstream would no longer be eligible for ICLS.[95] The Commission also has tentatively concluded, however, that new carriers converting to price cap regulation will not have access to the $650 million IAS fund established in CALLS.[96] Accordingly, to secure the required high-cost USF support that will assist Windstream in its continued efforts to invest, upgrade and maintain its largely rural properties, Windstream requests waiver relief in order to continue its support from the ICLS fund, although as a price cap carrier.

Windstream, however, requests only partial relief from the relevant USF rules in order that it receive *a level of support no higher than the IAS funding that Windstream would receive per line* if IAS were available to it in 2007 and no higher in the future than that per line level. For administrative convenience and simplicity, Windstream proposes that the level of per line IAS support for 2007 be calculated only once and then carried forward until the CALLS plan is replaced as part of broader universal service and intercarrier compensation reform.

1. Windstream's Proposed Approach Would Further The Goals Of Price Cap Regulation And The High-Cost USF Program.

Under the partial waiver relief proposed by Windstream, it would receive the same level of high-cost USF support for interstate access costs that any other price cap carrier would receive for 2007 in the same circumstances by virtue of its membership in CALLS, and no more than that level of support going forward. Windstream would therefore have the same incentives as other price cap carriers, which are eligible for IAS, to become more efficient while investing in its network. Importantly, this approach will not burden the IAS fund, will reduce the level of

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[95] *See* 47 C.F.R. § 54.901(a) (ICLS is available only to ROR carriers).

[96] *Second MAG Further Notice*, 19 FCC Rcd at 4163.

support to Windstream, and will reduce the overall size of the USF. Windstream seeks only a continuation of a portion of its ICLS funding, to be calculated in the same manner as IAS. Those two high-cost funds would remain separate.[97] Windstream urges the Commission to support this ROR carrier's efforts to switch to the more efficient price cap regime and to ensure that this conversion does not result in unreasonable reductions in high-cost USF support.

Windstream's proposed approach to continued support at a lower level will have an overall beneficial effect on the high-cost program as a price-cap carrier. Over time, Windstream would receive significantly less ICLS funding than it would if it had remained partly a ROR carrier.[98] The savings to the USF program proposed in this Petition are an additional significant public interest benefit.[99]

2. Windstream's Request Is Consistent With Commission Precedent.

This request is consistent with Commission precedent granting partial waiver relief from USF and other rules and determining the level of the partial relief. In the *NECA USF Waiver Order*, for example, the Commission granted a partial waiver of Commission Rule 69.104(q), which provides that if a ROR carrier does not assess the maximum SLC on a line, it may not

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[97] *See* 47 C.F.R. §§ 54.802(d), 54.903(b) (separately requiring USAC to collect and distribute IAS funds and ICLS funds).

[98] *See* Kreutz Declaration at ¶ 15. Windstream's rural and non-rural high cost loop support will be unaffected by its conversion to price caps or by this request. *See* 47 C.F.R. §§ 36.601 *et seq.* (high-cost loop support available to rural carriers); 47 C.F.R. § 54.309 (high-cost model support available to non-rural carriers).

[99] It should also be noted that, unlike IAS, ICLS is not capped, although a reduction in Windstream's ICLS may result in a reduction in the ICLS per line received by a competitive eligible telecommunications carrier serving any of Windstream's converted study areas. *See* 47 C.F.R. § 54.901(b).

recover the foregone amount of SLC revenue from the ICLS fund.[100] The Commission partially waived the rule to allow ROR carriers to assess only five SLCs on the 24 channels in a T-1 circuit without foregoing ICLS funding for all 24 channels.[101]

Similarly, in granting partial relief from certain construction requirements in the *Intek Waiver Order*, the Wireless Bureau staff crafted a unique set of criteria for Intek that blended criteria applicable to different categories of licenses.[102] These cases demonstrate that the Commission's waiver authority permits it to craft specific requirements in granting partial waiver relief to address a party's special circumstances.

3. Windstream Requests Partial Relief From Sections 54.901 and 54.903 Of The Commission's Rules.

As described above, Commission Rule 54.901(a) makes ICLS "available" only "to a rate-of-return carrier."[103] Windstream seeks a partial waiver of that eligibility rule in order to qualify for ICLS as a price cap carrier. It seeks only a partial waiver so that the amount of support it receives equals the amount of IAS that it would have received in 2007 if it qualified for IAS for the converted lines in 2007. The measure of partial relief -- the amount of IAS it would have received in 2007 -- is analogous to the 19 SLCs that carriers were excused from assessing for

[100] *National Exchange Carrier Association Petition to Amend Section 69.104 of the Commission's Rules*, 19 FCC Rcd 13591, 13604-07 (2004) ("*NECA USF Waiver Order*"). *See* 47 C.F.R. § 69.104(q).

[101] *Id.*

[102] *Intek License Acquisition Corp.*, 16 FCC Rcd 16431 (WTB 2001) ("*Intek Waiver Order*"). *See also Lojack Corp.*, 20 FCC Rcd 20497 (WTB 2005) (expanding scope of permitted uses of stolen vehicle recovery system operations through waiver).

[103] 47 C.F.R. § 54.901(a).

every T-1 circuit, while still qualifying for ICLS for all 24 channels, in the *NECA USF Waiver Order*, or the *ad hoc* construction requirements created in the *Intek Waiver Order*.

To ensure that Windstream's ICLS as of July 1, 2008 is calculated in the same manner as any other price cap carrier's IAS funding for 2007, Windstream also requests partial waiver relief from the remainder of the ICLS reporting and support calculation rules set forth in Sections 54.901 and 54.903 of the Commission's rules.[104] Without a waiver of those rules, Windstream's ICLS would continue to be calculated in the same manner it is now, rather than in the same manner as IAS. The IAS rules that govern the calculation of support for price cap carriers should then be applied to Windstream's ICLS to determine the amount of per line support that would have been appropriate for Windstream in 2007 if it had been receiving IAS this year for the converted lines. Thus, in granting the partial relief requested, the Commission should require the Universal Service Administrative Company ("USAC") to calculate Windstream's ICLS in the same manner as the other price cap carriers' IAS for 2007.[105]

4. Windstream Requests Partial Relief From Sections 54.802 Through 54.806 Of The Commission's Rules.

Throughout the IAS rules there is language that could be read to limit their application to the IAS fund, such as, *e.g.*, Section 54.802(d)(2) (USAC shall "[p]ublish the results of these calculations showing [IAS] Per Line available in each price cap [LEC] study area...."); Section 54.803(a) ("The zones used for determining [IAS] shall be ...."); Section 54.806(a) (USAC,

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[104] 47 C.F.R. §§ 54.901-54.903. Windstream does not seek relief from the certification requirement in 47 C.F.R. § 54.904 applicable to recipients of ICLS. That provision does not affect the calculation of the amount of ICLS funding to be distributed.

[105] *See NECA USF Waiver Order*, 19 FCC Rcd at 13606 (requiring ROR carriers to calculate their line counts "in a manner consistent with this order" when filing line count data with NECA and USAC; Commission did not separately waive the line count reporting rules to implement this instruction).

"based on the calculations performed in … 54.804 and 54.805, shall calculate the [IAS] for areas served by price cap [LECs] according to the following methodology….").[106] These phrases might be interpreted to preclude the application of the IAS rules to the calculation of Windstream's ICLS funding. In order to ensure that Windstream receives support calculated in the same manner as IAS, Windstream requests a waiver of these and similar phrases in Sections 54.802 through 54.806 to the extent that they appear to limit the support being provided or calculated to IAS so that these rules can be applied to cover the ICLS provided to or calculated for Windstream.[107]

B. The Public Interest Benefits From Windstream's Conversion to Price Cap Regulation Justify Waiver Of These Universal Service Rules.

Because Windstream cannot feasibly convert its ROR study areas to price cap regulation if it would face unreasonable reductions in universal service funding as a result, it requires partial relief from the universal service rules. This relief will enable Windstream to generate all of the public benefits resulting from its conversion to price cap regulation and to continue its aggressive network investment program, which is necessary for expanded broadband deployment.

In light of Windstream's need for continued partial ICLS funding in order to convert its ROR study areas to price cap regulation, partial waiver of the ICLS requirements in Sections 54.901 and 54.903 of the Commission's rules, as well as a partial waiver of the IAS rules in Sections 54.802 through 54.806, "will serve the public interest" due to the efficiency and

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[106] 47 C.F.R. §§ 54.802(d)(2), 54.803(a), 54.806(a).

[107] As part of this request, Windstream does not seek a waiver of Section 54.801(a), which codifies the $650 million target on total IAS funding. In Section V.C. below, Windstream requests such a waiver in the alternative.

competitive benefits to be generated by Windstream's conversion.[108] Conversely, strict compliance with those rules, thereby cutting off a significant source of high-cost USF support to Windstream as a price cap carrier and forcing it to reconsider its decision to move to a fully price cap regime, would be "inconsistent with the public interest."[109]

This waiver would result in a "more effective implementation of overall policy."[110] Specifically, the requested partial waiver would enable Windstream to receive high-cost support equivalent to that provided to price cap carriers under the mechanism established in the *CALLS Order*, alleviate at least some of the burden on the high-cost USF program, and to provide the competitive and consumer benefits of price cap regulation. Accordingly, Windstream has demonstrated good cause for a partial waiver of the universal service rules in order to continue receiving ICLS funding as a price cap carrier but calculated in the same manner as IAS funding.

C. In The Alternative, Windstream Requests A Waiver Of The IAS Target Of $650 Million.

In the event that the Commission does not grant partial waiver relief enabling Windstream to continue receiving ICLS funding as a price cap carrier, Windstream requests, in the alternative, a partial waiver of the $650 million target in Sections 54.801 and 54.806 of the Commission's rules so that it can receive the same amount of IAS funding it would have received as a price cap carrier for 2007 without affecting other price cap carriers' IAS funding. The good cause showing set forth above for continued ICLS funding justifies the same level of USF support from the IAS fund. Windstream's conversion to price cap regulation, and the

[108] *Northeast Cellular*, 897 F.2d at 1166. Rule 54.902, regarding the calculation of ICLS for transferred exchanges, is not relevant to Windstream.

[109] *Id.*

[110] *WAIT Radio*, 418 F.2d at 1159.

public interest benefits accruing therefrom, depend on continued USF support, whether out of the ICLS fund or IAS fund. Because the level of support would be exactly the same in either case, the total impact on the high-cost program would be the same. Whether the source of funding is ICLS or IAS, Windstream's total high-cost USF support will be less than it is now, which is another tangible public benefit from the requested relief.

In order to ensure the same public interest balance as the requested waiver of the ICLS rules, Windstream's alternative USF waiver request is framed to preclude any impact on other recipients of IAS funding. Thus, as part of this alternative request, in addition to a waiver of the $650 million target in Section 54.801(a) of the rules, Windstream also requests a waiver of the $650 million target insofar as it affects the calculation of IAS funding in Section 54.806 of the rules.[111] As in the case of the requested waiver of the ICLS rules, this alternative request also seeks only partial waiver relief, so that Windstream receives only the amount of IAS funding going forward that it would have received in 2007 ("2007 Level") had it been a price cap carrier in 2007.

Accordingly, as an alternative to the partial waiver of the ICLS rules requested above, Windstream requests partial waiver of the IAS rules to make it possible for it to receive IAS funding at a 2007 Level without affecting other IAS recipients. Such partial waiver "will serve the public interest" due to the public benefits resulting from the conversion to price cap regulation facilitated by such waiver relief.[112]

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[111] 47 C.F.R. § 54.806.

[112] *Northeast Cellular*, 897 F.2d at 1166.

VI. CONCLUSION

Conversion of Windstream's ROR study areas to price cap regulation under the terms proposed above will promote efficiency, encourage network investment and competition, and reduce its average switched access rates. Because the pricing and USF waiver relief requested will make it possible for Windstream to complete its conversion, this relief, and any other waiver relief the Commission may deem necessary, should be granted in order to generate the resulting substantial public benefits.

Respectfully submitted,

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Dated: August 6, 2007

dc-483768

ATTACHMENT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief	)	WC Docket No. 07-___
	)	

DECLARATION OF WILLIAM F. KREUTZ

I, William F. Kreutz, hereby declare the following:

1. I am the Vice President of Regulatory Strategy for Windstream Communications, Inc. ("Windstream"). Under the direction of the Senior Vice President of Government Affairs, I am responsible for establishing regulatory policy, and assuring Windstream's compliance with applicable federal and state regulatory rules including costing and tariffs. I am familiar with the Federal Communications Commission's ("FCC's") *CALLS Order*, the FCC's *MAG Order*, the work of the Rural Task Force, rate-of-return ("ROR") regulation as it applies to Windstream, and price cap regulation as it applies to Windstream.[113]

2. I have worked in the telecommunications business since 1973. I have worked for Windstream (or its predecessors) from 2004 to the present.

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[113] *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers*, Sixth Report and Order, 15 FCC Rcd 12962 (2000) ("*CALLS Order*"), *aff'd in part, rev'd in part and remanded in part, Texas Office of Public Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), *on remand,* 18 FCC Rcd 14976 (2003); *see Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613 (2001) ("*MAG Order*") (subsequent history omitted).

3. In support of the above captioned Petition, I describe characteristics of Windstream's business organization, its operating and rural characteristics, its switched and special access rates, and the universal service support, including Interstate Common Line Support ("ICLS"), that it receives.

Business Organization:

4. Windstream was formed in July 2006 through the spin-off by Alltel Corporation of its wireline business and the merger of those wireline assets with VALOR Communications Group ("Windstream's predecessors"). Through its affiliated operating companies ("affiliates"), Windstream provides voice, broadband, and entertainment services to customers in largely rural areas in 16 states.

Operating and Rural Characteristics:

5. Windstream operates in 32 study areas. It has about 3.2 million total access lines. Twenty-five of Windstream's study areas and about 1.9 million of its access lines are subject to ROR regulation. Twenty-three of these study areas are subject to the "cost" form of ROR regulation, and the other two are subject to the "average schedule" form of ROR regulation. All of the Windstream affiliates serving these ROR study areas, with the exception of Windstream Ohio, Inc., qualify as "rural telephone companies" as defined in the Communications Act of 1934, as amended.

6. Seven of Windstream's study areas and approximately 1.2 million of its access lines are subject to price cap regulation. Of these price cap study areas, the Windstream affiliates serving 5 study areas with approximately 544,000 access lines qualify as "rural telephone companies." In addition to the approximately 3.1 million lines associated with its ROR and price

cap study areas, Windstream has about 100,000 lines associated with competitive local exchange carrier operations.

7. Overall, Windstream exemplifies the profile of the "primarily rural price cap" LECs described in the *CALLS Order*. Over 75 percent of Windstream's access lines are served by its rural telephone companies. Of Windstream's 1,074 exchanges, 516 serve 1,000 or fewer access lines and 226 serve between 1,000 and 2,000 access lines. These measures indicate that Windstream operates in a high-cost service area, requiring numerous central office locations and fewer access lines over which to spread switch and other central office investment costs.

8. By the measure used in the *CALLS Order*, Windstream's companywide service area has about 20.5 switched access lines per square mile,[114] which is very close to a "teledensity" of 19 switched access lines per square mile, which, according to the Rural Task Force, is characteristic of the average rural carrier.

Access Rates and Comparison to CALLS Rate Targets:

9. *Switched Access:* Windstream's actual ROR switched access charge cumulative reductions since 1999 have totaled $64.6 million, an amount that by any plausible measure is far more than the reductions that would have been required under the *CALLS Order* for these study areas if they had been original participants in the CALLS plan. The *CALLS Order* required participating price cap carriers to make required reductions partially through reductions in carrier common line ("CCL") charges. Windstream's predecessors eliminated CCL charges in their ROR study areas in 2001 pursuant to the FCC's *MAG Order* for ROR carriers.

114 The measure of lines per square mile in the *CALLS Order* was limited to access lines on which a SLC is charged, which excludes special access and other lines on which no SLC is charged. *See CALLS Order*, 15 FCC Rcd at 13022 n.304, 13029.

10. The *CALLS Order* also set an average traffic sensitive ("ATS") target rate of $0.0095 per minute for primarily rural price cap carriers, i.e., those with an average of fewer than 19 access lines per square mile. Lower cost price cap carriers have an ATS target rate of $0.0065 per minute. All price cap carriers subject to the $0.0065 ATS target rate have teledensities exceeding 100 switched access lines per square mile, based on calculations from publicly available data.

11. For the Windstream ROR study areas that are the subject of the Petition, the current weighted average of those rates is equivalent to an ATS rate of about $0.0091 per minute, based on an average switched rate per minute of $0.00505, an average transport rate of $0.00326, and an average flat-rated transport rate of $0.00079. Half of Windstream's study areas that are the subject of this Petition currently have an ATS rate below the *CALLS Order* ATS target rate for primarily rural price cap carriers of $0.0095 in the *CALLS Order*.

12. In comparing Windstream's ROR switched access rates to the *CALLS Order* ATS target rate of $0.0095 per minute, some study areas have an ATS rate significantly higher than $0.0095 per minute and some have lower ATS rates. In the converted study areas with ATS rates higher than the target, Windstream proposes to reduce those rates to the target rate of $0.0095 per minute, while leaving lower ATS rates in other study areas unchanged. Under this proposal, the weighted average ATS rate in the converted study areas would become $0.0085, a seven percent reduction from the current ROR switched access rates.

13. *Special Access:* Windstream has already reduced its special access rates to levels comparable to or lower than those of most price cap carriers participating in CALLS. Windstream's standard monthly ROR special access rates are now below the average standard monthly special access rates of CALLS participants, and this is after the CALLS participants'

special access reductions over a period of four years pursuant to the *CALLS Order*. These rate comparisons are based on month-to-month DS1 and DS3 rates using one channel termination and 10 miles of transport. Windstream's current ROR DS1 and DS3 weighted average composite rates are 24.3 percent and 23.3 percent lower, respectively, than what they would have been if Windstream had participated in the CALLS Plan.

Universal Service:

14. As of year end 2006, Windstream received less than 1% of its total annual revenue from high-cost loop and model support, and less than 3% of its total annual revenue from all Federal high-cost support combined.

15. Windstream is requesting that it continue to receive ICLS as a price cap carrier, but calculated in the same manner as the interstate access support ("IAS") that it would have received in 2007 ("2007 Level") had it been a price cap carrier in 2007. Windstream proposes to receive no more than this 2007 Level IAS-like support on a per-line basis going forward. Set in this manner, Windstream expects to receive less ICLS support going forward than it otherwise would if it had received all of the ICLS funding that would have been distributed to it as a ROR carrier.

I declare under penalty of perjury that the foregoing is true and correct.

William F. Kreutz

William F. Kreutz

Executed: August 6, 2007