

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

In the Matter of)	
)	
Petition for Limited, Expedited Waiver By)	WC Docket No. 15-69
Westelcom Network, Inc. of Section)	
61.26(a)(6) of the Commission’s Rules)	
)	

REPLY COMMENTS OF WESTELCOM NETWORK, INC.

Westelcom Network, Inc. (“Westelcom”) hereby submits this reply to the comments of AT&T Services, Inc. (“AT&T”) filed on April 24, 2015 (“AT&T Comments”) in response to the Public Notice, dated March 25, 2015, issued by the Federal Communications Commission (“Commission” or “FCC”).¹ The *March 25th Public Notice* sought comments on Westelcom’s Petition for Limited, Expedited Waiver of Section 61.26(a)(6) of the Commission’s Rules filed on February 23, 2015 and updated on March 30, 2015 (the “Petition”). For the reasons stated herein and in the Petition, Westelcom respectfully requests that the Commission promptly grant Westelcom the relief it has requested.

I. INTRODUCTION.

Rather than address the fact-specific demonstrations that Westelcom provided, AT&T presents a series of inferences and selective quotes from the *USF/ICC Transformation Order*,² apparently in an effort to divert attention from the actual issues raised in the Petition. AT&T provides no factual or rational public policy basis for delaying the prompt grant by the

¹ See Public Notice, Wireline Competition Bureau Seeks Comment on Westelcom’s Petition for Limited, Expedited Waiver of the Definition of a “Rural CLEC” in Section 61.26(a)(6) of the Commission’s Rules, WC Docket No. 15-69, DA 15-372, released March 25, 2015 (the “*March 25th Public Notice*”).

² See *In the Matter of Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 *et al.*, 26 FCC Rcd 17663 (2011), *aff’d* In Re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014) (“*USF/ICC Transformation Order*”).

Commission of Westelcom's request. To the contrary, the facts that Westelcom demonstrated as the basis for the relief it seeks are not rebutted by AT&T. AT&T does not address Westelcom's demonstrated operations that prioritize the provision of advanced telecommunications services to rural health care providers and, as a consequence, the resulting tension created by those operations in light of the existing Rural CLEC definition³ on the one hand with the nationwide policies at issue in this proceeding that have been adopted by the Commission in the *USF/ICC Transformation Order* and *Healthcare Connect Order*⁴ on the other. The Commission should promptly grant the relief that Westelcom seeks.

II. AT&T'S COMMENTS RAISE MATTERS THAT ARE EITHER ILLOGICAL OR IRRELEVANT TO THE ISSUES RAISED IN THE PETITION.

Because the AT&T Comments raise matters that are either illogical or irrelevant to the issues raised by Westelcom in its Petition, Westelcom is properly concerned that the record could be muddied as the Commission addresses the basis for Westelcom's requested relief. Therefore, Westelcom takes this opportunity to ensure that the record is clear as to what is and is not an issue in the Petition, thus rejecting any suggestion that the misfocused statements within the AT&T Comments can provide any basis for delaying or denying the prompt grant of the Petition.

AT&T infers that the Census Bureau's ("CB") new urbanized area criteria and the reclassification of Watertown, New York, as an urbanized area, was expected or could have been anticipated by either the Commission or by Westelcom.⁵ AT&T's inference is baseless. As described in detail in the Petition, the criteria used by the CB to establish urbanized areas arising

³ See 47 C.F.R. § 61.26(a)(6).

⁴ *In the Matter of Rural Health Care Support Mechanism*, Report and Order, WC Docket No. 02-60, 27 FCC Rcd 16678 (2012) ("*Healthcare Connect Order*").

⁵ See AT&T Comments at 3.

out of the 2010 census were changed substantially from the 2000 census.⁶ AT&T has provided no logical basis to suggest that a substantial change in evaluating urbanized areas by the CB in 2010 could have been foreseen or otherwise rationally anticipated in 2001 when the *CLEC Access Charge Reform Order*⁷ was issued. Thus, whether “the Commission could not have been unaware that changes in the Census could have consequences for this rule”⁸ says nothing about the significant changed circumstances vis-à-vis Westelcom’s operating classification resulting from the application of the CB’s 2010 *new* urbanized area criteria and the fact that the CB warned other administrative agencies that it is proper for such agencies to consider the results arising from rote application of the CB’s classifications based on the purposes of their programs.⁹ That the Commission did not eliminate the opportunity for a waiver for the CLEC access rate standards found in Section 61.26(a)(6)(ii) (which has amply been demonstrated in this instance) also cannot be overlooked.

AT&T also unnecessarily and improperly cites to language in Section 61.26(a)(6)(i)¹⁰ apparently to suggest that the Commission has somehow ceded its decisional authority regarding waiver requests based on the rote adherence to the CB’s classification regardless of its impact. Section 61.26(a)(6)(i), however, addresses “incorporated place[s] of 50,000 inhabitants or

⁶ See Petition at 8–10. As noted in the Petition, in setting forth classifications arising out of the 2010 census, the CB utilized for the first time the National Land Cover Database to establish the initial urban core area based on territory with a high degree of impervious land cover, which by definition is comprised of “[m]an-made surfaces” and not people. See Petition at 9; 76 Fed. Reg. 53030 at V.B.1.c and V.C.

⁷ *In the Matter of Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262, 16 FCC Rcd 9923 (2001) (“*CLEC Access Charge Reform Order*”).

⁸ AT&T Comments at 2.

⁹ 76 Fed. Reg. 53030 (Aug. 24, 2011).

¹⁰ See AT&T Comments at 2.

more”.¹¹ This rule provision is inapplicable here given that Westelcom’s current non-rural status arises out of the 2012 reclassification of Watertown, New York (a community served by Westelcom) as an urbanized area pursuant to Section 61.26(a)(6)(ii). Ironically, however, if Section 61.26(a)(6)(i) was applicable in this matter, Westelcom would still be entitled to utilize the Rural CLEC definition as the population of Watertown, New York, “based on the most recently available population statistics of the Census Bureau”¹² was 27,023.¹³

AT&T next infers that as a non-Rural CLEC, Westelcom would otherwise be provided with a phase down to bill-and-keep.¹⁴ The facts provided by Westelcom amply demonstrate the illogic of AT&T’s contention. AT&T has failed to explain how an immediate ninety-six percent (96%) reduction in access revenues,¹⁵ occurring half-way through a nine-year transition period applicable to those CLECs using the National Exchange Carrier Association, Inc. rates,¹⁶ is consistent with what the FCC has established as a new, industry-wide policy in the *USF/ICC Transformation Order*. No serious challenge can be made that the Commission established in the *USF/ICC Transformation Order* that all carriers are to have a reasonable transition for the phase-down of its access rates and that such policy expressly sought to “avoid flash cuts”.¹⁷ No rational basis exists to suggest that a ninety-six percent (96%) immediate reduction experienced by Westelcom can be reconciled with these Commission policies.

¹¹ 47 C.F.R. § 61.26(a)(6)(i).

¹² *Id.*

¹³ *See* Petition at 8, n.28 and accompanying text.

¹⁴ *See* AT&T Comments at 3.

¹⁵ *See* Petition at 10, 15, and 19.

¹⁶ *See USF/ICC Transformation Order* at ¶ 801; *see also* 47 C.F.R. §51.909.

¹⁷ *USF/ICC Transformation Order* at ¶ 802.

AT&T similarly infers that if the Commission grants Westelcom's requested waiver that Westelcom will receive a windfall of access revenues.¹⁸ However, the record shows that Westelcom rationally reinvests its revenue from all of the services it offers – local exchange, long distance, advanced services and exchange access services – to support and expand its fiber-based network and the services provided over it.¹⁹ These activities also further the goals of the *USF/ICC Transformation Order* by “promoting a migration to modern IP networks.”²⁰ AT&T has failed to take issue with these facts.

Finally, AT&T suggests that granting the waiver would reintroduce inefficiencies and subsidies²¹ and encourage arbitrage.²² AT&T presents no facts to suggest or support the concept that arbitrage concerns could be raised in the context of the Petition; any such inference must be wholly disregarded. Likewise, the characterization of the rural exemption as a subsidy is misplaced. When the rural exemption was created, the FCC recognized “that a higher level of access charges is justified for certain CLECs serving truly rural areas.”²³ But for the CB action, Westelcom would still be transitioning along a path for carriers serving rural areas. Even if AT&T is correct in its characterization (which the facts demonstrated by Westelcom rejects), the transition would be extended along the same manner as the Rate-of-Return (“ROR”) glide path transition which the Commission found was proper for incumbent ROR carriers serving rural areas.²⁴ Contrary to AT&T's contentions, therefore, if the Commission grants Westelcom's

¹⁸ See AT&T Comments at 3.

¹⁹ See Petition at 6-7, n.25 and accompanying text.

²⁰ *USF/ICC Transformation Order* at ¶ 802.

²¹ See AT&T Comments at 4.

²² See *id.* at 4 and 6, n.30.

²³ See *CLEC Access Charge Reform Order* at ¶ 3.

²⁴ See e.g., *USF/ICC Transformation Order* at ¶ 801; see also 47 C.F.R. § 51.909.

waiver request the goals of the *CLEC Access Charge Reform Order* would remain intact, given that a relevant objective of that order was to reduce access charges to an amount that was “just and reasonable”²⁵ and Westelcom was already on a path to do just that.²⁶

The facts of record presented in the Petition confirm that the relief Westelcom seeks is consistent with the goals of: (1) the *CLEC Access Charge Reform Order* to keep Rural CLEC access rates at reasonable levels; (2) the *USF/ICC Transformation Order* prescribing a reasonable transition for all carriers to reach the end result of bill and keep; and (3) the *Healthcare Connect Order* to encourage deployment of advanced telecommunications services to rural health care providers. AT&T has provided nothing more than a series of inferences which have no basis in fact vis-à-vis Westelcom’s demonstrated operations. AT&T’s contentions, therefore, must be disregarded.

III. AT&T’S CONTENTIONS AND CONCERNS REFLECT ONLY HALF OF THE STORY AND AT&T OTHERWISE FAILS TO PROVIDE FACTS THAT WOULD SUGGEST “ME TOO” REQUESTS ARE IMMINENT.

AT&T’s sound-bite contentions regarding what the FCC has stated, tell only half of the story and incorrectly divert attention away from the tension, based on Westelcom’s operations, that results from the decision reached in 2001 to address CLEC access rates, on the one hand,²⁷ with the current policies of the FCC to provide reasonable transitions for all carriers to reach bill-and-keep on the other,²⁸ while, at the same time, also encouraging the deployment of networks capable of delivering advanced services to rural areas and in particular rural health care

²⁵ *CLEC Access Charge Reform Order* at ¶ 2.

²⁶ See Petition at 7.

²⁷ See generally, *CLEC Access Charge Reform Order*.

²⁸ See generally, *USF/ICC Transformation Order*.

providers.²⁹ These latter two new policies – reasonable access rate transitions and encouraging the deployment of advanced networks for use and in particular for rural health care use – are frustrated by the application of Section 61.26(a)(6)(ii) to Westelcom. The creation of these latter two, industry-wide policies coupled with the fact-intensive nature of the Petition present the special circumstances that make the waiver of the application in this instance of the 2001-era Section 61.26(a)(6)(ii) to Westelcom proper and in the public interest.

While Westelcom has supported its Petition with ample evidence that granting its waiver request serves the public interest, AT&T has failed to recognize or demonstrate that the companion rationale arising out of the *USF/ICC Transformation Order* -- that any reductions in access charges should flow through to the benefit of the consumer – has occurred in Watertown.³⁰ AT&T's quotes regarding the transition miss the FCC's quid pro quo – consumer benefits -- which has been demonstrated in this case to exist only if Westelcom is permitted to return to the ROR access glide path to which it was previously subject before the CB changed its criteria for classification of urbanized areas. AT&T has failed to demonstrate any commitment similar to the focus of Westelcom's overall operations to invest in fiber optic infrastructure in order to serve the Watertown and surrounding Adirondack North Country areas. The only facts associated with the benefits to consumers in the record were those provided by Westelcom and they arise as a result of the use by Westelcom of revenues, including access revenues, to deploy its advanced, fiber-based network with a focused effort to serve rural health providers.³¹ Thus, the record reflects that consumer benefits in Watertown and surrounding Adirondack North County locations will continue to be achieved by a grant to Westelcom of waiver of Section

²⁹ See *Healthcare Connect Order* at ¶¶ 34 and 39.

³⁰ See *id.* at ¶¶ 748-751.

³¹ See Petition at 5-7.

61.26(a)(6)(ii) that it seeks. Furthermore, AT&T's unsupported concerns about purported and imminent "me too" waiver requests³² should be rejected for several reasons. First, the Commission's reliance on the specific, fact-rich nature of the Petition when reaching its decision can amply guard against any improper expansion of the precise relief that Westelcom seeks. Second, taking AT&T's position to its logical conclusion the Commission could never grant a waiver for any purpose, because, according to AT&T, other entities may try to obtain the same relief. The waiver standard itself mitigates that risk because it requires the demonstration of special circumstances that warrant a deviation from the rule and that granting the waiver would serve the public interest.³³ Thus, by granting Westelcom's petition for waiver the Commission would not lower the bar on what facts must be demonstrated to justify a grant of a waiver of Section 61.26(a)(6)(ii), particularly if any such petitioner provides facts that are not as compelling as what Westelcom has demonstrated are applicable to its operations..

Finally, AT&T's concern regarding "me too" requests is devoid of any demonstration by AT&T with respect to the extent that other carriers may seek the relief that Westelcom has shown should be granted to it. If AT&T was truly concerned regarding "me-too" requests one would logically have anticipated that AT&T, as a nationwide carrier, would have presented some information to justify its concern. AT&T's silence in this regard discounts its concerns considerably, particularly since the Commission, when issuing its decision granting Westelcom's requested relief, can provide the specific basis for that decision based on the unrebutted facts that Westelcom has presented.

³² See AT&T Comments at 6.

³³ See, e.g., *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

IV. CONCLUSION.

As set forth herein, AT&T provides no basis for the Commission to deny Westelcom's Petition and the Commission should promptly grant the relief that Westelcom seeks.

Respectfully submitted,

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