

LINCOLN OFFICE  
SUITE 500  
301 SOUTH 13TH STREET  
LINCOLN, NEBRASKA 68508-2578  
TELEPHONE 402-437-8500  
FAX 402-437-8558

WOODS & AITKEN  
L \* L \* P

DENVER OFFICE  
SUITE 525  
8055 EAST TUFTS AVENUE  
DENVER, COLORADO 80237-2835  
TELEPHONE 303-606-6700  
FAX 303-606-6701

OMAHA OFFICE  
SUITE 525  
10250 REGENCY CIRCLE  
OMAHA, NEBRASKA 68114-3754  
TELEPHONE 402-898-7400  
FAX 402-898-7401

THOMAS J. MOORMAN  
DIRECT: (202) 944-9502  
EMAIL: TMOORMAN@WOODSAITKEN.COM  
WWW.WOODSAITKEN.COM  
ADMITTED TO PRACTICE ONLY IN THE DISTRICT OF COLUMBIA

WASHINGTON OFFICE  
SUITE 310  
5151 WISCONSIN AVENUE, N.W.  
WASHINGTON, D.C. 20016-4124  
TELEPHONE 202-944-9500  
FAX 202-944-9501

PLEASE RESPOND TO WASHINGTON ADDRESS

February 26, 2016

**Via Electronic Filing**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Notice of Ex Parte Presentation:  
WC Docket No. 15-69, Petition for Limited, Expedited Waiver By Westelcom  
Network, Inc. of Section 61.26(a)(6) of the Commission's Rules

Dear Ms. Dortch:

On February 24, 2016, James P. Forcier, Chief Executive Officer of Westelcom Network, Inc. ("Westelcom" or the "Company"), Paul F. Barton, President of Westelcom, along with the undersigned, met with Ms. Stephanie Weiner, Senior Legal Advisor, Wireline, to Chairman Tom Wheeler. Later that day, Messrs. Forcier and Barton and the undersigned, met with Ms. Amy Bender, Legal Advisor, Wireline, to Commissioner Michael O'Rielly. In both meetings the attached documents were provided – "Ex Parte Presentation, February 24<sup>th</sup>, 2016, Westelcom Network, Inc., Pending Waiver Request" and a copy of the joint letter from Senator Kirsten Gillibrand and Senator Chuck Schumer (supporting a grant of the relief Westelcom is seeking). These documents and the reasons set forth in them were used to summarize Westelcom's operation in the rural Adirondack North Country area and the Company's positions regarding the need for prompt grant of Westelcom's Petition for Limited, Expedited Waiver filed in this proceeding.

During the meetings we specifically noted the Census Bureau ("CB") new standards announced in March of 2012 that resulted in Watertown, New York being reclassified as an "urbanized area."<sup>1</sup> In referencing the CB's action, we specifically noted that the CB indicated that agencies relying on such CB classifications should make sure that the CB action was consistent with that agency's purposes, *i.e.*, policies, "of its program."<sup>2</sup> In that regard, Westelcom contended that among the underlying policies at issue in this proceeding are the following: the establishment of reasonable transitions of certain terminating interstate switched

---

<sup>1</sup> See Petition for Limited, Expedited Waiver by Westelcom Network, Inc. of Section 61.26(a)(6) of the Commission's Rules (updated), WC Docket No. 15-69, filed March 30, 2015 (the "*Petition*") at 8-9.

<sup>2</sup> See *id.* at 16; see also 76 Fed. Reg. 53030 (August 24, 2012).

access rate elements to bill and keep;<sup>3</sup> the deployment of fiber-based networks capable of providing advanced services (including broadband) to rural areas of the country; and the advancement of and encouragement of rural telemedicine/telehealth services.<sup>4</sup> The Company explained its position that these policies are better achieved by a grant of the waiver rather than through the rote application of 47 C.F.R. § 61.26(a)(6).

Multiple reasons as to why granting the Company's requested limited waiver is in the public interest and advances Commission policies have been provided in the submissions made by Westelcom in this proceeding. In the referenced meetings, the Company specifically noted the following examples as to why the rote application of Section 61.26(a)(6) of the Commission's rules is contrary to existing Commission policies: (1) common sense supports the conclusion that a ninety-six (96%) flash cut reduction in its interstate switched access revenue arising from the CB's reclassification of Watertown as an urbanized area is not a reasonable transition that avoid flash cuts, even though the Commission in the *USF/ICC Transformation Order* enunciated that policy standard for all carriers;<sup>5</sup> the reduction of the Company's interstate switched access service revenue stream has resulted in Westelcom not being able to expand its current fiber-based network to new areas seeking advanced services such as broadband (although current customer needs are able to be met) resulting in the Company not being able to expand its ability to meet the needs of its significant rural critical care facility customers (e.g., hospitals and supporting entities in the rural Adirondack North Country area).<sup>6</sup>

Moreover, the Company noted its view that the CB's inclusion of the Fort Drum military base in the reclassification of Watertown as an urbanized area provided no rational relief to Westelcom. Only nationwide carriers are able to serve the base with their own trunking facilities,<sup>7</sup> and Westelcom's operations are limited to a specific rural geographic region of New York – the Adirondack North Country area, resulting in, by way of example, higher transport costs for both voice and internet traffic that such service area entails.

---

<sup>3</sup> See, e.g., *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 (10<sup>th</sup> Cir. 2014) (“*USF/ICC Transformation Order*”) at ¶ 802; see also Petition at 13--14, 15.

<sup>4</sup> See *In the Matter of Rural Health Care Support Mechanism, Report and Order*, WC Docket No. 02-60, 27 FCC Rcd 16678 (2012) at ¶¶ 34, 39; see also *In the Matter of Technology Transitions, et al., Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative*, GN Docket No. 13-5, et al., 29 FCC Rcd 1433 (2014) at ¶¶ 16 and 18 (identifying the deployment of fiber-based networks as one of the “three key technology transitions that significantly affect customers.”); Petition at 14-15.

<sup>5</sup> See Petition at 13-14, quoting *USF/ICC Transformation Order* at ¶ 802; Petition at 10.

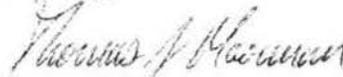
<sup>6</sup> See Petition at 14, 15, 10-11.

<sup>7</sup> See *id.* at 9 and n. 33.

Finally, the Company discussed potential concerns of “me-too” requests being submitted. Westelcom noted that it was unaware of any other entity that could provide the specific, fact-rich request that it had filed regarding the impact on the Company’s operations of the CB’s reclassification of Watertown, New York as an “urbanized area.” In that regard, Westelcom noted that in comments otherwise opposing the Petition, AT&T Services, Inc. (“AT&T”) nevertheless stated that “[t]o the extent the Commission is persuaded to grant Westelcom’s request, the Commission should carefully craft the language of any waiver order to avoid opening a significant loophole and potentially encouraging arbitrage.”<sup>8</sup> The Company notes that in its reply comments in this proceeding, it amply rebutted the contentions that AT&T argues supported its opposition to the Petition (including the fact that no arbitrage concerns exist in this case).<sup>9</sup> The Company is confident that the Commission and its Staff can draft an order granting the Petition that is intended to be limited to the specific factual circumstances that Westelcom has provided to the Commission.<sup>10</sup>

This letter is being filed pursuant to Section 1.1206 of the Commission’s rules. Please direct any inquiries regarding this matter to the undersigned.

Sincerely,



Thomas J. Moorman  
Counsel to Westelcom Network, Inc.

Attachments

cc: Stephanie Weiner (via email)  
Amy Bender (via email)

---

<sup>8</sup> Comments of AT&T Services, Inc., WC Docket No. 15-69, filed April 24, 2015 at 6, n.30.

<sup>9</sup> See generally Reply Comments of Westelcom Network, Inc., WC Docket No. 15-69, filed May 11, 2015 (“Westelcom Reply Comments”).

<sup>10</sup> See also Petition at 17-18; see also Westelcom Reply Comments at 8.