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PLEASE RESPOND TO WASHINGTON ADDRESS

June 3, 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 June 1, 2016, James P. Forcier, Chief Executive Officer of Westelcom Network, Inc. ("Westelcom"), Paul F. Barton, President of Westelcom, along with the undersigned, met with Ms. Rebekah Goodheart, Legal Advisor – Wireline, to Commissioner Clyburn. Later that day, Messrs. Forcier and Barton and the undersigned, met with Ms. Amy Bender, Legal Advisor, Wireline, to Commissioner Michael O'Rielly. At these meetings, we provided the attached documents and used them for purposes of our presentation.

As part of the presentation, we urged prompt Commission action granting Westelcom's Petition. This request is entirely consistent with the bi-partisan support for such action reflected in the letter from Senator Kirsten Gillibrand and Senator Chuck Schumer as well as the separate letter filed by Representative Elise Stefanik of the 21<sup>st</sup> District of New York.<sup>1</sup> In this regard, the New York Senators also stated that they "are deeply concerned that the failure to act promptly in this matter will directly harm the rural areas served by Westelcom. . . . It is crucially important that the health and service needs of the constituents" in the Adirondack North Country Area of New York "are not compromised."<sup>2</sup> Westelcom wholeheartedly agrees.

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<sup>1</sup> See Letter from the Honorable Kirsten Gillibrand, United States Senator, and the Honorable Chuck Schumer, United States Senator, to the Honorable Tom Wheeler, Chairman, Federal Communications Commission, dated February 18, 2016 (the "*NY Senators' Letter*"); Letter from the Honorable Elise M. Stefanik, United States Representative from the 21<sup>st</sup> District of New York, to the Honorable Tom Wheeler, Chairman, Federal Communications Commission, dated March 22, 2016 ("*Representative Stefanik's Letter*").

<sup>2</sup> *NY Senators' Letter* at 2.

In its presentations, Westelcom addressed four matters. First, Westelcom noted that it has demonstrated that the unique set of facts and circumstances confronting Westelcom amply supports the conclusion that a grant of its waiver of Section 61.26(a) of the Commission's *tariffing rules* serves the public interest. Moreover, Westelcom indicated that it is not aware of any fact that should alter this conclusion.

Second, Westelcom specifically allayed any concern that its waiver could be viewed as seeking to modify in any way the "reasonable transition" policy contained in the Commission's *USF/ICC Transformation Order*<sup>3</sup> applicable to a rural carrier which, as the facts demonstrate, Westelcom was, is, and remains.<sup>4</sup> Rather, Westelcom noted that it is the *tariffing rule* found in Section 61.26(a)(6) that, when applied to Westelcom, directly conflicts with this Commission's directives that each carrier be afforded a reasonable transition. Application of Section 61.26(a)(6) results in Westelcom suffering an immediate 96% reduction in access revenue arising from the *tariffing rule's* declassification of Westelcom as a "rural CLEC." A grant of the Petition will afford Westelcom the ability to transition its interstate access rates under the same glide path applicable to other rural carriers like the National Exchange Carrier Association, Inc. ("NECA") rural incumbent local exchange carriers. This glide path acknowledges the challenges confronting rural carriers, like Westelcom, with respect to providing service in higher cost rural areas and the recovery challenges associated with those costs.

Moreover, the declassification of Westelcom as a "rural CLEC" does *not* arise from the Commission's "reasonable transition" policies underlying the *USF/ICC Transformation Order* vis-à-vis Westelcom. Rather, the declassification arises from independent action taken by the Census Bureau (the "CB"). As the record in this proceeding unquestionably demonstrates, the CB changed its criteria for classifying urban and rural areas, even though in doing so, the CB acknowledged that agencies relying on the CB's classification (like the Commission) must ensure that the CB's classification results align with the agency's policies and "consider permitting appropriate modifications . . . specifically for the purposes of its program."<sup>5</sup> In this instance, the effect of the CB's new classification criteria as applied to the specific facts and circumstances demonstrated by Westelcom (not the least of which is the fact that the CB reclassification included Fort Drum where Westelcom is not able to self-provision facilities<sup>6</sup>) directly conflicts with the Commission's "reasonable transition" policies.

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<sup>3</sup> 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*") at para. 802.

<sup>4</sup> See, e.g., *Petition for Limited, Expedited Waiver by Westelcom Network, Inc. of Section 61.26(a)(6) of the Commission's Rules*, WC Docket No. 15-69, filed February 23, 2015 (the "*Petition*") at 3-4, 8.

<sup>5</sup> See 76 Fed. Reg. 53029, 53030 (Aug. 24 2011); see also *Petition* at 16; *NY Senators' Letter* at 1; *Representative Stefanik's Letter* at 1-2.

<sup>6</sup> See *Petition* at 9.

Third, the Company also allayed any concern that a grant of its waiver petition will *not* result in or even raises concerns regarding cross-subsidization. Even if such a cross-subsidization claim existed (which no record fact would support), the result of granting the waiver of Section 61.26(a)(6) of the Commission's *tariffing rules* would put back into place the ability for Westelcom to align its transition to bill and keep as envisioned in the *USF/ICC Transformation Order* with the same transition applicable to other rural service providers – like the NECA rural incumbent carriers – serving rural areas similar to that served by Westelcom. Thus, the Commission already found that a “reasonable transition” using NECA rates was appropriate for these classes of carriers; cross-subsidization, even if it existed, was not an issue.

Finally, Westelcom explained that, just like any typical operating company like Westelcom, *all revenues from all services that the company provides* are then used to recover that company's entire cost of operations, including by way of example only, maintenance, upgrading and deployment of facilities, and the payment of operating expenses that the company such as, but not limited to, payment of salaries and wages related to the jobs that the company provides to its employees. The record reflects that this is how Westelcom operates<sup>7</sup> and the cash flow constrictions associated with the lack of granting the pending waiver request has placed Westelcom's operations on what can best be described as austere budgets.<sup>8</sup>

At bottom, action by the Commission granting Westelcom's petition for waiver of the Commission Section 61.26(a)(6) *tariffing rules* is in the public interest and such action should be accomplished promptly. Any delay in granting the Petition would continue to place additional pressure on Westelcom's ability to maintain its network and to meet increasing customer demand for advanced services (at increasing speeds) in the telemedicine field in the Adirondack North County area where Westelcom operates.

Westelcom has demonstrated in its filings in this proceeding, the attachments hereto and the attachments included in its prior *ex partes* that a grant of Westelcom's Petition is in the public interest and advances the following Commission policies – affording each carrier a reasonable transition under the existing *USF/ICC Transformation Order's* intercarrier compensation regime a reasonable access charge transition and the provision of advanced services, advancement of rural telemedicine. Westelcom respectfully submits that these policies are better achieved by a grant of Westelcom's Petition rather than through the rote application of 47 C.F.R. § 61.26(a)(6). By way of example, no serious question should exist that advancement of telemedicine in rural America is a policy that the Commission is seeking to advance. In fact, just recently, Commissioner Clyburn stated her support for that policy:

Updating our rate of return system adds to the list of universal service reforms that I am proud to say that I have supported since arriving at the FCC, including .

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<sup>7</sup> *See id.* at 6-7.

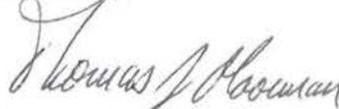
<sup>8</sup> *See Representative Stefanik's Letter* at 2.

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*. . . ensuring that rural health care providers have access to the telecommunications and broadband services their communities need and deserve. Collectively these reforms will help ensure that broadband access is a reality for all parts of our nation.<sup>9</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 the Westelcom Network, Inc.

Attachments

cc: Rebekah Goodheart (via email)  
Amy Bender (via email)  
James P. Forcier (via email)  
Paul F. Barton (via email)

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<sup>9</sup> Statement of FCC Commissioner Mignon L. Clyburn, Senate Committee on Commerce, Science, and Transportation, *Oversight of the Federal Communications Commission*, March 2, 2016 at 1 (emphasis added).