

United States Senate

WASHINGTON, DC 20510

February 18, 2016

Mr. Tom Wheeler
Chairman, Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler,

We write to urge the Federal Communications Commission (FCC) to grant a limited waiver petition for Westelcom Network, Inc. (Westelcom) with respect to 47 C.F.R. § 61.26(a)(6) of the FCC's rules – which defines rural competitive local exchange carriers (CLECs). Located in the Adirondack North Country of New York, Westelcom services six counties across the region and has been a leader in the deployment of fiber-based broadband in this area. Through their broadband network investments, Westelcom has become a critical source of communication services to medical centers seeking to provide telehealth medicine.

The 2012 Census Bureau reclassified Watertown, New York — one of Westelcom's major service areas — and, for classifications purposes, included the Fort Drum military base within its population total. The inclusion of this military base increased the population associated with the Watertown area and caused it to be reclassified to an "urbanized" area. Under the new classification, Westelcom no longer meets the FCC's definition of a rural CLEC and is no longer eligible to use the "rural exemption" rate for its interstate switched access services. Of course, as anyone who has been there knows, Watertown is far from urban and I urge you to rectify this bureaucratic mistake as soon as possible.

As you know, the FCC's 2011 USF/ICC Transformation Order included a transition period for rural CLECs to phase down access service rates to ensure that rural carriers have an adequate amount of time to maintain their investments, preventing the possibility of a rapid reduction in revenue for those companies. Because of this transition period, rural CLECs have the ability to continue their investments in broadband networks to insure that the needs of these communities continue to be met.

The rapid reclassification of Watertown to an "urbanized area due to the Census Bureau change means that Westelcom will be denied the transition period provided to rural CLECs, and will result in an immediate 96 percent loss in access charge revenue for Westelcom. Without this revenue, Westelcom will not be able to continue its investments into the deployment of the fiber-based network serving specific rural areas of upstate New York such as Malone, Clayton, Elizabethtown, Ticonderoga, Plattsburgh, and Watertown, New York.

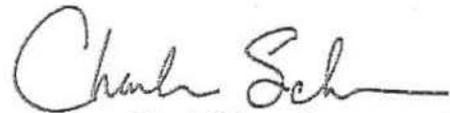
We are deeply concerned that the failure to act promptly in this matter will directly harm the rural areas served by Westelcom. It has been almost a year since Westelcom filed an application for a limited waiver requesting reconsideration for a reasonable transition period. It is crucially important that the health and service needs of the constituents in the Adirondack North County of New York are not compromised. The relief requested in this waiver petition is consistent with the Commission's goal of ensuring the deployment of robust broadband networks in rural America, including the sparsely-populated rural Adirondack North Country region in New York, and the advancement of rural telemedicine networks.

Thank you for your attention to this matter.

Sincerely,



Kirsten Gillibrand
United States Senator



Chuck Schumer
United States Senator

ELISE M. STEFANIK
21ST DISTRICT, NEW YORK

512 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4611
stefanik.house.gov

Congress of the United States
House of Representatives
Washington, DC 20515-3221

HOUSE ARMED SERVICES
COMMITTEE
SUBCOMMITTEE ON READINESS, VICE CHAIRMAN
SUBCOMMITTEE ON MILITARY PERSONNEL
SUBCOMMITTEE ON
EMERGING THREATS AND CAPABILITIES
HOUSE EDUCATION AND THE
WORKFORCE COMMITTEE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS
SUBCOMMITTEE ON HIGHER
EDUCATION AND WORKFORCE TRAINING

March 22, 2016

Tom Wheeler, Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Written *Ex Parte* Presentation: Westelcom Network, Inc.'s Petition for Limited, Expedited Waiver of the Definition of a "Rural CLEC" as per §61.26(a)(6) of the Commission's Rules – WC Docket No. 15-69

Dear Chairman Wheeler,

I am writing to express my support for the petition for limited waiver submitted by Westelcom Network, Inc. (Westelcom) to the Federal Communications Commission (FCC) for the classification of Westelcom as a rural competitive local exchange carrier (CLEC) under the definition found in 47 C.F.R. §61.26(a)(6). Westelcom is a regional leader in fiber-based broadband networks providing services to 6 counties in the Adirondack North Country region of New York, reaching residents, critical community facilities, and healthcare facilities. Their investment in the North Country allows opportunities for business marketing, telemedicine technology, and education for our students.

The 21st Congressional District of New York (NY-21) is the third largest east of the Mississippi River and is predominantly classified as rural. It also includes Watertown, home of the Fort Drum military base. In 2012, Watertown was reclassified by the Census Bureau as an "urbanized area" due to the inclusion of the Fort Drum population and additional surrounding communities. Watertown's rural character remains, regardless of the Census Bureau's changes to administrative procedures determining an area's classification.

The "rural exemption" rule found in 47 C.F.R. §61.26(a)(6) effectively permits rural CLECs to charge higher switched access service rates to offset the higher delivery costs associated with being a rural CLEC. In 2011, the FCC issued their USF/ICC Transformation Order (the Transformation Order) to provide rural CLECs a transition period for these higher

GLENS FALLS
136 GLEN STREET
GLENS FALLS, NY 12801
(518) 743-0964

PLATTSBURGH
23 DURKEE STREET
SUITE C
PLATTSBURGH, NY 12901
(518) 561-2324

WATERTOWN
120 WASHINGTON STREET
SUITE 200
WATERTOWN, NY 12801
(315) 782-3150

rates to phase down to zero. As a rural CLEC, Westelcom, has utilized these revenues to continue expanding and investing in broadband services in underserved rural areas.

Westelcom operated its business under rural CLEC status until Watertown was reclassified by the Census Bureau as an urbanized area. Following this reclassification, Westelcom lost its rural CLEC status. The company is now excluded from this phase down opportunity afforded to rural CLECs, resulting in an abrupt loss of access service revenue. It is my understanding that as a result, Westelcom has had to implement an austere budget and revise their original business plan, making it difficult to maintain, expand, or continue to improve their network.

Rural regions like NY-21 do not always have access to broadband networks, and without companies like Westelcom, broadband would be far less accessible. Many essential societal services now require broadband connectivity. The medical field, for example, increasingly relies on broadband access for communication, efficiency, and organization. Healthcare professionals now rely on broadband to transfer and move electronic data such as medical records, tests, and images.

Telemedicine has also proven an invaluable resource made possible by broadband connectivity, especially in regions where medical services are difficult to obtain. Many of my constituents have been positively impacted by telemedicine, from our aging population to our veterans. For example, many veterans rely on the Veterans Administration (VA) for all of their medical care. In NY-21, these veterans contend with geographic obstacles, and may spend over two hours traveling to and from these appointments – each way. Clinics administered by the VA are more accessible, but quite often are not staffed with full-time medical specialists or doctors. Some of these clinics now offer telemedicine. This availability reduces the burdens of travel, employs cost-saving measures for both veterans and the VA, and expands access to care.

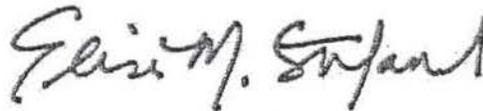
Telemedicine and engaging in medical information sharing are difficult or impossible to implement without broadband connectivity. Westelcom's work in the rural Adirondack North Country area has made them a leading provider of these communications services to our smaller health care facilities by interconnecting a significant number of hospitals, clinics and practices. Westelcom provides mission-critical services to two major telemedicine networks, more than 120 health care facilities, and eight regional hospitals in NY-21. This company is making investments in rural communities where larger broadband carriers appear unwilling to make the same commitment.

I was pleased to see a recent letter from your office responding to concerns Senator Robert Casey presented regarding a potential issue facing his state. The FCC's aspiration to "ensure that all Americans have access to vital communications services...[and] affordable

access to high-speed broadband”¹ is something I ardently support. Furthering these goals is vital to the North Country, and Westelcom’s contribution advances this objective. Broadband expansion is vital to connecting with and competing in today’s world, making its availability a necessity for our students, businesses, and greater community. In a district where several counties are completely devoid of broadband access, it would be devastating if a telecommunications company that is working to expand this network can no longer invest in our community.

I respect the FCC’s duty to make decisions consistent with their standards and objectives; however, I ask that you give Westelcom’s petition for limited waiver your most serious consideration. Approval of this petition would allow Westelcom the opportunity to continue providing services to my district while growing their network and expanding broadband access. Thank you for your attention to this matter.

Sincerely,



ELISE STEFANIK
Member of Congress

ES/rm

¹ Letter from FCC Chairman Wheeler, 21 Jan. 2016, to Senator Robert Casey in response to Sen. Case’s letter dated 20 Nov. 2015 regarding Mobile Citizen and Mobile Beacon.



Westelcom Family of Companies

Ex Parte Presentation
June 1st, 2016
Westelcom Network, Inc.
Pending Waiver Request

- History of Proceeding and Status
- Waiver Standards & Commission Discretion
- Effective Implementation of Policy is Advanced by a Grant of Westelcom's Waiver
- The Facts at Issue Stand Unrebutted
- Issues for Resolution
- Conclusion



History of Proceeding and Status

- Westelcom filed a Petition for Limited, Expedited Waiver of Section 61.26(a)(6) of the Commission's Rules on February 23, 2015 ("Petition").
- Public Notice of the Petition was issued on March 25, 2015 (WC Docket No. 15-69, DA 15-372) and was established as a "permit-but-disclose" proceeding for *ex parte* purposes.
- Westelcom filed an updated Petition on March 30, 2015, pursuant to the March 25, 2015, Joint Protective Order issued in this proceeding (DA 15-373).
- The only comments on the Petition were filed on April 24, 2015 by AT&T Services, Inc.; CTL's reply comments supported AT&T.
- Westelcom filed its reply comments on May 11, 2015.



Waiver Standard & Commission Discretion

- The Commission, in its discretion, may grant a waiver when good cause is shown.

- Good cause has been explained by the Commission to allow the following:
 - The Commission may exercise its discretion to waive a rule where the particular facts/special circumstances make strict compliance inconsistent with the public interest.

 - The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.



Effective Implementation of Policy is Advanced by a Grant of the Waiver

- The policies at issue in this proceeding include the following:
 - Establishment of “just and reasonable” rates and avoidance of flash-cuts.
 - Establishment for all carriers of standardized glide paths aimed at providing a reasonable transition to bill and keep.
 - Companion policy to increase access to broad band by rural health care providers and foster “development and deployment of broadband health care networks, particularly networks that include HCPs that serve rural areas.”



The Facts at Issue Stand Unrebutted

- There are no facts in controversy; the facts set forth by Westelcom are unrebutted on the record.
- Among the facts presented are the following:
 - Westelcom began operation in 1981 and operated as a “Rural CLEC” under Section 61.26(a)(6) of the Commission’s rules since their adoption in 2001.
 - Westelcom has relied on all sources of revenue to replace leased network with its own fiber-based network that provides advanced telecommunications services.
 - Westelcom’s operations provide a considerable number of fiber-based connections and advanced service capability to multiple rural health care providers in the Adirondack North Country area of New York.
 - In August 2011 the Census Bureau (“CB”) altered significantly its prior standards for determining an “urbanized area,” and used these new criteria in March, 2012 to reclassify Watertown, NY (an area served by Westelcom).
 - Fort Drum was included in the Watertown urbanized area, but facilities-based service to the Fort’s housing is not available to local carriers like Westelcom.
 - The CB identified the need for other agencies that use the CB classifications to review such classifications in light of those agencies’ particular programs.
 - In October 2014, Westelcom first became aware of the CB’s action which changed Westelcom’s prior status as a Rural CLEC under Section 61.26(a)(6).
 - The change in status from a Rural CLEC to a non-Rural CLEC resulted in a 96% flash-cut reduction in interstate exchange access revenues.



Issues for Resolution

- The record confirms that each of the following issues should be answered in the affirmative:
 - Will consumers in the Adirondack North Country area of New York benefit from a grant of Westelcom’s waiver request?
 - Will consumers in the Adirondack North Country area of New York be harmed if Westelcom’s waiver request is denied?
 - Does the record support the position that grant of Westelcom’s waiver request will advance the Commission’s 2011 *USF/ICC Transformation Order* policy and its 2012 *Healthcare Connect Order* policy and also preserve the underlying policy of the *CLEC Access Charge Reform Order*?
 - Will a grant of the waiver allow Westelcom:
 - n a reasonable transition to bill and keep?
 - n to continue its investment in fiber-based networks which are utilized to provide advanced telecommunications services to rural health care providers?
 - n to continue Commission-established “just and reasonable” Rural CLEC access rates and avoid flash cuts?
 - Will a denial of Westelcom’s waiver request:
 - n frustrate these same policies?
 - n create flash cuts on CLEC access rates?
 - n prevent further network investment?



Conclusion

- Based on undisputed facts in the record associated with Westelcom's specific operations and network deployment, the policies of the *USF/ICC Transformation Order*, *Healthcare Connect Order*, and the *CLEC Access Charge Reform Order* are frustrated by rote application of Section 61.26(a)(6).
- The Westelcom Petition for waiver should be granted expeditiously.