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## **ELECTRONIC EX PARTE FILING**

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

**Re: Windstream's Petition for Conversion to Price Cap Regulation  
and for Limited Waiver Relief, WC Docket No. 07-171**

Dear Ms. Dortch:

Today, Cesar Caballero, Tim Loken, and I met by teleconference with Wireline Competition Bureau staff to discuss the above captioned matter. The details of the discussion are described below. On August 6, 2007, Windstream Corporation filed a Petition<sup>1</sup> on behalf of its cost rate-of-return incumbent local exchange subsidiaries (collectively "Windstream") seeking to convert entirely to price cap regulation consistent with the rules established in the *CALLS Order*.<sup>2</sup> In its Petition, Windstream proposed a reasonable approach to price cap regulation that relies to the largest extent possible upon the framework already established in the *CALLS Order* and, to the extent necessary, limited waivers of the applicable pricing and high-cost universal service fund ("USF") support mechanisms to enable Windstream's successful conversion. The Petition was unopposed.

Windstream urges the Commission to grant the Petition as quickly as possible because of the substantial public interest benefits that will result from Windstream's operation under price cap regulation. In the following, Windstream clarifies a few remaining aspects of the Petition.

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<sup>1</sup> Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 07-171 (Aug. 6, 2007) ("Petition"). See FCC Public Notice, *Comment Sought on Windstream Petition for Conversion to Price Cap Regulation and for Other Limited Waiver Relief*, 22 FCC Rcd 16060 (WCB 2007).

<sup>2</sup> *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).

### **Universal Service Support Calculation.**

In its Petition, Windstream requested a partial waiver of certain rules regarding the distribution of USF support in order that it could continue to receive interstate common line support (“ICLS”) as a price cap carrier, but at a level no higher than the interstate access support (“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.<sup>3</sup> Under that approach, Windstream 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 the regime established in the *CALLS Order* (“CALLS”), and frozen at that level per line going forward. As a price cap carrier, and consistent with the rate development rules set forth in the *CALLS Order*, Windstream would be eligible to assess any Presubscribed Interexchange Carrier Charge (“PICC”) and carrier common line (“CCL”) charge permitted under the rules and would be subject to a \$7.00 subscriber line charge (“SLC”) cap for non-primary residential lines.<sup>4</sup>

As an alternative, Windstream would not object if the Commission simply converted Windstream’s current ICLS funding to a frozen per-line amount, consistent with the approach taken in the *ACS Forbearance Order*.<sup>5</sup> Under this approach, Windstream would forego any PICC or CCL charges that might otherwise be assessable under CALLS and would forego an increase in the non-primary residential SLC cap from \$6.50 to \$7.00. As such, instead of the USF partial waiver relief originally requested, the Commission would grant a partial waiver of the relevant USF rules so that Windstream would continue to receive ICLS as a price cap carrier, but at 2007 per line disaggregated ICLS amounts and frozen at those per-line levels going forward.<sup>6</sup> This measure of relief is similar to a condition placed on the relief granted to ACS of Anchorage, Inc. (“ACS”) in the *ACS Forbearance Order*. In granting ACS forbearance from dominant carrier regulation, the Commission also determined that, under certain conditions, ACS could continue to receive ICLS “set at the current competitive ETC per-line level.”<sup>7</sup>

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<sup>3</sup> Windstream requested that it continue to receive ICLS as a price cap carrier in order not to impinge on other price cap carriers’ IAS funding (*see* 47 C.F.R. § 54.801 *et seq.*). Because ICLS is available only to rate-of-return carriers (*see* 47 C.F.R. § 54.901(a)), however, Windstream would not be eligible, in the absence of a waiver, for ICLS once it converted to price cap regulation.

<sup>4</sup> The *CALLS Order* permitted price cap carriers to continue charging the PICC to multiline business customers, capped at \$4.31, and assessing CCL charges, although those charges were expected to be eliminated eventually under the CALLS regime. 15 FCC Rcd at 12989-90, 13004-07, 13022. In addition, the *CALLS Order* increased the SLC cap for non-primary residential lines from \$6.50 to \$7.00. *Id.* at 12993.

<sup>5</sup> *Petition of ACS of Anchorage, Inc.*, 22 FCC Rcd 16304 (2007) (“*ACS Forbearance Order*”).

<sup>6</sup> *See, e.g.*, Universal Service Administrative Company’s Appendix HC10 for fourth quarter 2007. <<http://www.usac.org/about/governance/fcc-filings/2007/Q4/HC10%20-20%20Interstate%20Common%20Line%20Support%20Projected%20Per%20Line%20-%20Q2007.xls>>

<sup>7</sup> *ACS Forbearance Order*, 22 FCC Rcd at 16337. An “ETC” is an eligible telecommunications carrier.

Using Windstream's 2007 ICLS level of funding, calculated on a per-line disaggregated basis, as the measure of partial waiver relief would ensure that Windstream's per-line high-cost USF support would not be higher than it would have been if Windstream remained a rate-of-return carrier and continued to receive ICLS under the applicable rules and would likely decline over time. Windstream also would commit, as a condition to the alternative waiver relief described above, not to (1) assess any PICC or CCL charges or (2) increase the non-primary residential SLC cap to \$7.00, although these charges would otherwise be permitted under the *CALLS Order* framework. Because ICLS was intended to convert all implicit universal service support for rate-of-return carriers to explicit support, if Windstream were to receive support calculated on a frozen per-line ICLS basis as described above, it would be appropriate to eliminate the residual implicit support in the multiline business PICC and CCL charges that should otherwise be available to Windstream as a price cap carrier.<sup>8</sup> Likewise, to be consistent, Windstream should also continue to be subject to the \$6.50 SLC cap for all residential lines associated with ICLS.<sup>9</sup> Thus, under this alternative, Windstream's conversion to price cap regulation would not enable it to recover implicit support in the form of an additional access charge element or higher non-primary residential SLC, but would allow it to continue to receive similar but likely declining support in an explicit form.

#### **Treatment of Windstream Concord Telephone, Inc.**

At the time that Windstream filed the Petition, Windstream was in the process of acquiring 105,000 rate-of-return lines that were part of CT Communications, Inc. The acquisition closed on August 31, 2007, and Windstream established a new subsidiary called Windstream Concord Telephone, Inc. (f/k/a The Concord Telephone Company) ("WCTI").<sup>10</sup> In its reply comments filed on October 9, 2007, Windstream committed to submit a proposal for the regulatory treatment of those lines in the context of the Petition.<sup>11</sup>

WCTI is a rate-of-return cost company that currently participates in the NECA common line and traffic sensitive pools. WCTI will still be a member of those pools through June 2008. Accordingly, WCTI is in a similar situation as Windstream Ohio, Inc. ("Windstream Ohio"). As explained in the Petition, because Windstream Ohio's rates have not been based on its own costs, Windstream Ohio's access rates should be initialized based on the authorized rate-of-return and

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<sup>8</sup> *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 19613, 19621-22, 19642-46 (2001) ("*MAG Order*") (eliminating the CCL charge and rejecting establishment of a PICC for rate-of-return carriers and instead requiring "a direct recovery of any allowed common line revenues not recovered through the SLC through explicit universal support" in the form of ICLS); *CALLS Order*, 15 FCC Rcd at 13006 (recognizing that "the continued existence of the multi-line business PICC in some areas may constitute an implicit non-portable subsidy").

<sup>9</sup> *MAG Order*, 16 FCC Rcd at 19634.

<sup>10</sup> See Consummation Notification, IBFS File No. CON-SMT-200790919-00050 (filed Sept. 19, 2007).

<sup>11</sup> Windstream Reply Comments at 2, n.2, *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-171 (Oct. 9, 2007).

then adapted to the CALLS rate structure.<sup>12</sup> Windstream proposes to treat the recently acquired WCTI the same as Windstream Ohio and convert it from ROR to price-cap regulation in accordance with the same process outlined in the Petition for Windstream Ohio, Inc.

**Notice to NECA pursuant to 47 C.F.R. § 69.3**

Pursuant to the Commission's rules, companies must notify the National Exchange Carrier Association ("NECA") no later than March 1<sup>st</sup> of the tariff filing year of their intention to withdraw from the NECA pools.<sup>13</sup> Today, Windstream notified NECA of its intent to withdraw all of its cost companies from the pools conditioned on the Commission approval of Windstream's Petition. Windstream respectfully requests a waiver of Section 69.3(i)(1) of the Commission's rules requiring such notice no later than March 1<sup>st</sup>, however, to ensure that Windstream is not prevented from exiting the pools upon approval of the Petition. In this instance, there is good cause to waive this rule to allow Windstream to convert its cost rate-of-return study areas to price-cap regulation no later than July 1, 2008 as described in the Petition.

In accordance with Section 1.1206(b)(1) of the Commission's rules, this letter is submitted for inclusion in the record of the above-captioned docket. Please do not hesitate to contact the undersigned with any questions or concerns about this letter or the issues discussed.

Sincerely,

/s/ Eric N. Einhorn

Eric N. Einhorn

cc: Dana Shaffer  
Jennifer McKee  
Al Lewis

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<sup>12</sup> Petition at 26.

<sup>13</sup> See 47 C.F.R. § 69.3(i)(1).