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Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
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Windstream Petition for Limited Waiver Relief	)	WC Docket No. 10-__
	)	

WINDSTREAM PETITION FOR LIMITED WAIVER RELIEF

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In the Matter of Windstream Petition for Limited Waiver Relief	))))))	WC Docket No. 10-___

WINDSTREAM PETITION FOR LIMITED WAIVER RELIEF

I. INTRODUCTION AND SUMMARY OF PETITION

Windstream Corporation ("Windstream"), on behalf of its newly-acquired incumbent local exchange carrier ("LEC") subsidiary Lexcom, Inc. ("Lexcom") , requests the necessary waiver relief on an expedited basis to enable Windstream to apply to Lexcom the universal service mechanism governing the rest of Windstream's LECs converted to price cap regulation under the *Windstream Order.* [1]

Such uniformity would advance the public interest benefits of the *Windstream Order,* which allowed Windstream to convert its rate-of-return ("ROR") cost study areas to price cap regulation and maintain per-line interstate common line support ("ICLS") for those converted study areas. The requested relief will increase consumer welfare by reducing the overall size of the universal service fund ("USF") and enabling Windstream to maintain and enhance efficient operations and thereby generate all of the competitive benefits of converting Lexcom to price cap regulation.

[1] *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, 23 FCC Rcd 5294 (2008) ("*Windstream Order*").

Grant of this petition for Lexcom would satisfy the Commission's waiver standards[2] and is consistent with the path established in the *Windstream Order* for conversion of ROR study areas to price cap regulation. In fact, the treatment requested for Lexcom follows the *Windstream Order's* treatment of Windstream Concord, a ROR cost LEC that Windstream acquired just before grant of the *Windstream Order*.[3] On the other hand, denial of this petition might seem to undo the path that the Commission created in the *Windstream Order*, which would not serve the public interest.

Windstream provides voice, broadband, and entertainment services to customers in largely rural areas in 16 states as an incumbent LEC.[4] Pursuant to the *Windstream Order*, Windstream converted its ROR cost study areas to price cap regulation on July 1, 2008.[5]

Following the path developed in the *Windstream Order*, in establishing initial price cap indices ("PCIs") for its converted rates, Windstream targeted its average traffic-sensitive ("ATS") rate to a level of $0.0065 per ATS minute of use.[6] For the two Windstream LECs participating in the NECA traffic sensitive pool, Windstream first initialized their interstate switched access rates to meet its authorized ROR, using a prior

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[2] *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*"); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) ("*WAIT Radio*").

[3] *See Windstream Order*, 23 FCC Rcd at 5296 n.16.

[4] *Id.* at 5296-97.

[5] Windstream kept its two small ROR average schedule companies under ROR regulation.

[6] *Windstream Order*, 23 FCC Rcd at 5301; 47 C.F.R. § 61.3(qq).

year Part 69 embedded cost study, and then adapted those rates to the price cap rate structure to be applied to all of the other converted LECs.[7]

The *Windstream Order* also waived Section 54.901(a) of the Commission's rules, which limits ICLS to ROR carriers, in order to allow Windstream to continue receiving ICLS as a price cap carrier.[8] Its per-line ICLS was calculated at its per-line disaggregated ICLS amounts for the prior year (i.e., 2007), and frozen at those per-line levels going forward. Its aggregate annual ICLS was also capped at an amount equal to its overall 2007 ICLS, after application of any required true-ups.[9]

On November 6, 2009, the Wireline Competition Bureau approved the transfer of control of Lexcom to Windstream.[10] Lexcom's wholly-owned subsidiary is a ROR LEC in North Carolina participating in the NECA common line and traffic sensitive pools. Under Section 61.41(c)(2) of the Commission's rules, Lexcom's ROR LEC must be converted to price cap regulation within one year of the December 1, 2009 consummation of Windstream's acquisition of Lexcom.[11] Pursuant to Section 61.41(c)(2), Windstream would convert Lexcom to price cap regulation in its next annual access tariff, effective July 1, 2010.

Windstream proposes to treat Lexcom in the same manner as the Windstream LECs participating in the NECA traffic-sensitive pool were treated under the *Windstream*

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[7] *Windstream Order*, 23 FCC Rcd at 5301-02.

[8] *Id.* at 5302-04; 47 C.F.R. § 901(a).

[9] *Windstream Order*, 23 FCC Rcd at 5304.

[10] *Notice of Non-Streamlined Domestic Section 214 Application Granted*, 24 FCC Rcd 13672 (WCB 2009); *International Authorizations Granted*, 24 FCC Rcd 13364, 13368 (2009).

[11] 47 C.F.R. § 61.41(c)(2).

Order. Under that approach, Lexcom's ROR switched and special access rates will first be initialized to meet the authorized ROR, using a 2009 embedded cost study and 2009 demand data, and then converted to the same price cap rate structure as all of Windstream's other price cap LECs, with annual ATS reductions until the ATS target of $0.0065 per minute is reached. Lexcom's special access rates would also be frozen under the approach used in the *Windstream Order*.[12]

In order to transition Lexcom to price cap regulation consistent with the path developed in the *Windstream Order*, Windstream requests a waiver of Section 54.901(a) in order to allow Lexcom to continue receiving ICLS as a price cap carrier. Following the approach taken in the *Windstream Order*, Lexcom's per-line ICLS will be set at its per-line amount for 2009, and frozen at that per-line level going forward. Its aggregate annual ICLS will also be capped at an amount equal to the sum of the 2007 ICLS cap for the LECs converted to price caps under the *Windstream Order*, plus Lexcom's ICLS support in 2009, after application of any required true-ups.[13]

As with Windstream's USF waiver request granted in the *Windstream Order*, permitting Lexcom to continue receiving ICLS as a price cap carrier is necessary to realize all of the public interest benefits of Lexcom's conversion to price cap regulation under Section 61.41(c)(2). Moreover, by freezing ICLS at its 2009 levels, Lexcom will likely receive less high-cost support going forward under the requested waiver than it would have received as a ROR carrier. Thus, the requested waiver will likely reduce the long-term burden on the high-cost fund, which is even more significant with a contribution factor that has grown since the *Windstream Order* was released. These

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[12] *Windstream Order*, 23 FCC Rcd at 5302.

important public interest benefits fully justify grant of the requested relief under the Commission's waiver standards.[14]

II. TARGETED PARTIAL RELIEF FROM CERTAIN UNIVERSAL SERVICE RULES WOULD SERVE THE PUBLIC INTEREST.

Although Windstream continues to receive relatively less USF support than the typical rural incumbent LEC, this support remains very important. As Windstream demonstrated when seeking similar relief in the *Windstream Order*, the investments that Windstream continues to make in its network depend, in significant part, on continued high-cost support.[15] The successful conversion of Lexcom to price cap regulation is inherently intertwined with the efficiencies generated by continued network investment. Windstream will require continued high-cost USF support, albeit at reduced levels, in order to realize all of the public interest benefits of acquiring Lexcom and converting it to price cap regulation. Moreover, the network upgrades that depend on USF support will enable Windstream to continue its deployment of broadband services to rural consumers.[16] Finally, the Commission has explained in the *CALLS Order* and other

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[13] *Id.* at 5303-04.

[14] *See Northeast Cellular,* 897 F.2d at 1166; *WAIT Radio,* 418 F.2d at 1159.

[15] *See Windstream Order* at 5302.

[16] Although broadband is not a supported service, the Commission has recognized that "the network is an integrated facility that may be used to provide both supported and non-supported services," and has committed itself to "ensuring that appropriate policies are in place to encourage the successful deployment of infrastructure capable of delivering advanced and high-speed services." *Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, 18 FCC Rcd 15090, 15095-96 (2003). The Commission is now considering whether broadband investments should be directly supported from the USF. *See Comment Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan, NBP Notice # 19*, 24 FCC Rcd 13757, 13758 (2009).

precedents the need for explicit USF support to replace the implicit support that was originally part of interstate access charges.[17]

A. Windstream Seeks Partial Relief From Certain USF Rules So That Lexcom Can Continue To Receive Support, But At A Lower Level.

One of the most significant public interest benefits of the *Windstream Order* is that it created a framework by which Windstream could convert its ROR companies to price cap regulation while retaining some USF support from ICLS. To permit Lexcom's conversion to price cap regulation, Windstream requests partial relief from the USF rules for Lexcom consistent with the *Windstream Order*'s framework. Absent such relief, as a price cap carrier, under the Commission's rules, Lexcom would no longer be eligible for ICLS.[18] The Commission also has tentatively concluded, however, that new carriers converting to price cap regulation will not have access to the $650 million interstate access support ("IAS") fund established in the *CALLS Order*.[19] Accordingly, to secure the required high-cost USF support that will assist Windstream in its continued efforts to invest, upgrade and maintain Lexcom's network, Windstream requests waiver relief in order to continue Lexcom's support from the ICLS fund, although as a price cap carrier.

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[17] *See, e.g.*, *Access Charge Reform*, 15 FCC Rcd 12962, 13043 (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), *on remand*, 18 FCC Rcd 14976 (2003); *Windstream Order*, 23 FCC Rcd at 5303.

[18] *See* 47 C.F.R. § 54.901(a) (ICLS is available only to ROR carriers).

[19] *CALLS Order*, 15 FCC Rcd at 13043-55; *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122, 4163 (2004) ("*Second MAG Further Notice*"). *See also Windstream Order*, 23 FCC Rcd at 5302.

Following the approach taken in the *Windstream Order*, Windstream requests only partial relief from the relevant USF rules in order that Lexcom receive a level of support no higher than the per-line amount of ICLS that it received in 2009, and that its ICLS be frozen at that level going forward. Similarly, Windstream also commits that its overall system-wide annual ICLS be capped at an amount equal to the sum of Windstream's ICLS cap for 2007 plus the total ICLS received by Lexcom in 2009, after application of any required true-ups.[20] Windstream also commits to forego any presubscribed interexchange carrier charges ("PICC") or carrier common line ("CCL") charges that might otherwise be assessable by Lexcom under the price cp rules and to forego an increase in the non-primary residential subscriber line charge ("SLC") from the $6.50 cap for all residential lines associated with ICLS to the $7.00 cap permitted under the *CALLS Order* for price cap carriers.[21]

Because Lexcom's ICLS would be capped at the 2009 level going forward, Windstream would have a strong incentive to operate Lexcom's network more efficiently while investing in the network. Importantly, this approach will not burden the IAS fund and will likely reduce the level of support to Lexcom over time, thereby reducing the overall size of the USF. The savings to the USF program resulting from Windstream's acquisition of Lexcom, with the relief proposed in this Petition, are a significant public interest benefit.[22]

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[20] *See Windstream Order*, 23 FCC Rcd at 5303-04.

[21] *Id.* at 5302-03.

[22] It should also be noted that, unlike IAS, ICLS is not capped, although a reduction in Lexcom's ICLS may result in a reduction in the ICLS per line received by a competitive eligible telecommunications carrier serving Lexcom's study area. *See* 47 C.F.R. § 54.901(b).

As described above, Commission Rule 54.901(a) makes ICLS "available" only "to a rate-of-return carrier."[23] Windstream seeks a partial waiver of that eligibility rule in order for Lexcom to qualify for ICLS as a price cap carrier. It seeks only a partial waiver so that the amount of support it receives equals the amount of ICLS per line that it received in 2009.

In order for Lexcom's ICLS as of July 1, 2010 to be set at the 2009 per-line amount and frozen at that per-line level going forward, Windstream also requests partial waiver relief from the remainder of the ICLS reporting and support calculation rules set forth in Sections 54.901 and 54.903 of the Commission's rules, as was granted in the *Windstream Order*.[24] Without a waiver of those rules, Lexcom's ICLS would continue to be calculated in the same manner it is now, rather than frozen at its 2009 per-line level.

B. The Public Interest Benefits From Windstream's Conversion Of Lexcom To Price Cap Regulation Justify Waiver Of These Universal Service Rules.

If Lexcom cannot continue to receive ICLS, it will not be able to receive any high-cost funding to recover its interstate common line costs because IAS funding is likely not available to new price cap carriers.[25] This result would be contrary to the public interest as described in the *Windstream Order*. Without either ICLS or IAS for Lexcom as a price cap carrier, Windstream would have to seek a waiver of Section 61.41(c)(2) in order to keep Lexcom under ROR regulation, simply in order to retain its ICLS, with the accompanying loss of competitive and administrative efficiencies that

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[23] 47 C.F.R. § 54.901(a).

[24] *Windstream Order*, 23 FCC Rcd at 5304; 47 C.F.R. §§ 54.901-54.903.

[25] *See Windstream Order*, 23 FCC Rcd at 5302.

otherwise would have resulted from conversion to price caps. Denial of all ICLS for Lexcom would undermine the public interest benefits of Lexcom's conversion to price cap regulation by depriving it of crucial network investment funding.

To prevent such an unreasonable reduction in USF support, partial relief from the universal service rules is in the public interest, consistent with the *Windstream Order*. This relief will enable Windstream to generate all of the public benefits resulting from Lexcom's conversion to price cap regulation. In light of Lexcom's need for continued partial ICLS funding in order to fully realize the benefits of its conversion to price cap regulation, partial waiver of the ICLS requirements in Sections 54.901 and 54.903 of the Commission's rules thus "will serve the public interest" due to the efficiency and competitive benefits to be generated by Lexcom's conversion and reduction in ICLS funding over the long term.[26] Conversely, strict compliance with those rules, thereby cutting off a significant source of high-cost USF support to Lexcom as a price cap carrier, thereby undermining the efficiency benefits of Windstream's acquisition of Lexcom, would be "inconsistent with the public interest."[27]

This waiver would result in a "more effective implementation of overall policy."[28] Specifically, the requested partial waiver would enable Lexcom to receive ICLS equivalent to what it received in 2009, alleviate at least some of the burden on the high-cost USF program, and would enable Windstream to generate all of the competitive and consumer benefits of Lexcom's conversion to price cap regulation. Accordingly, Windstream has demonstrated good cause for a partial waiver of the universal service

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[26] *Northeast Cellular*, 897 F.2d at 1166.

[27] *Id.*

[28] *WAIT Radio*, 418 F.2d at 1159.

rules in order for Lexcom to continue receiving ICLS funding as a price cap carrier but at the same level as last year.

III. CONCLUSION

The *Windstream Order* marked a significant advance by defining a clear path for Windstream at the time to fully convert from ROR cost regulation to price cap regulation. Windstream seeks the necessary waivers to permit Lexcom to follow that same path now. Because the USF waiver relief requested will make it possible for Windstream to generate all of the competitive benefits of Lexcom's conversion to price cap regulation, this relief, and any other waiver relief the Commission may deem necessary to implement Lexcom's conversion in the manner described above, should be granted as quickly as possible in order to generate the resulting substantial public benefits.

Respectfully submitted,

/s/

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