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Before the
Federal Communications Commission
Washington, D.C. 20554

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FCC Mail Room

In the Matter of	)	
	)	
Petition of Virgin Islands Telephone Corporation, for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules	)	WC Docket No. 10-39
	)	
China Telephone Company, FairPoint Vermont, Inc., Maine Telephone Company, Northland Telephone Company of Maine, Inc., Sidney Telephone Company, and Standish Telephone Company Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief	)	WC Docket No. 10-47
	)	
Windstream Petition for Limited Waiver Relief	)	WC Docket No. 10-55
	)	

ORDER

Adopted: May 10, 2010 **Released: May 10, 2010**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant petitions for waiver filed by Virgin Islands Telephone Corporation, d/b/a, Innovative Telephone (VITELCO);[1] collectively, China Telephone Company, FairPoint Vermont, Inc., Maine Telephone Company, Northland Telephone Company of Maine, Inc., Sidney Telephone Company, and Standish Telephone Company, (FairPoint Petitioning LECs),[2] each a debtor-in-possession; and Windstream Corporation (Windstream).[3] As a result, each of these carriers can convert certain of its

[1] Petition of Virgin Islands Telephone Corporation for Election of Price Cap Regulation and for Limited Waiver of Pricing and Universal Service Rules, WC Docket No. 10-39 (filed Feb. 5, 2010) (VITELCO Petition). A Public Notice seeking comment on the VITELCO Petition was released on February 18, 2010. *Pleading Cycle Established for Comment on VITELCO Petition for Conversion to Price Cap Regulation and Other Limited Waiver Relief,* WC Docket No. 10-39, Public Notice, DA 10-272 (Wireline Comp. Bur. 2010).

[2] China Telephone Company, FairPoint Vermont, Inc., Maine Telephone Company, Northland Telephone Company of Maine, Inc., Sidney Telephone Company, and Standish Telephone Company Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 10-47 (filed Feb. 18, 2010) (FairPoint Petition). A Public Notice seeking comment on the FairPoint Petition was released on February 25, 2010. *Comment Sought on FairPoint Petition for Conversion to Price Cap Regulation and for Other Limited Waiver Relief,* WC Docket No. 10-47, Public Notice, DA 10-299 (Wireline Comp. Bur. 2010).

[3] Petition of Windstream for Limited Waiver Relief, WC Docket No. 10-55 (filed March 2, 2010) (Windstream Petition). Windstream completed its acquisition of Lexcom on December 1, 2009. A Public Notice seeking (continued....)

operations from rate-of-return regulation to price cap regulation on July 1, 2010, consistent with existing Commission precedent.[4] We also grant waivers allowing each of these carriers to continue receiving interstate common line support (ICLS) for the converted study areas, subject to certain conditions. These waivers will further the public interest by providing the carriers incentives to maintain and enhance efficient operations and by requiring certain access rate reductions. The waivers granted in this order are subject to any revisions addressing intercarrier compensation, price cap regulation, or universal service requirements that the Commission may adopt in the future.

II. BACKGROUND

2. *Windstream Order*. On March 18, 2008, the Commission released an order granting Windstream's request to convert rate-of-return regulated cost study areas to price cap regulation on July 1, 2008.[5] In the *Windstream Order*, the Commission directed Windstream to establish initial PCIs for its price cap baskets using January 1, 2008 rates and 2007 base period demand.[6] The Commission also required Windstream to target its ATS rate to $0.0065 per ATS minute of use pursuant to section 61.3(qq) of the Commission's rules, using an X-factor of 6.5 percent.[7] Finally, the Commission granted Windstream a waiver to allow it to continue to receive ICLS for the converted study areas.[8] Specifically, Windstream's per-line ICLS was calculated at its trued-up 2007 per-line disaggregated ICLS amounts, and frozen at those per-line levels going forward.[9] This waiver was subject to several conditions. Windstream's aggregate annual ICLS is capped at an amount equal to its overall 2007 ICLS (after application of any required true-ups).[10] Windstream also must forego any recovery of a presubscribed interexchange carrier charge (PICC) or carrier common line (CCL) charge and forego assessing a $7.00 non-primary residential line subscriber line charge (SLC) in conjunction with its receipt of frozen per-line ICLS.[11] The *Windstream Order* also is subject to Commission modification in its intercarrier compensation, price cap, or universal service reform proceedings.[12]

(Continued from previous page)
comment on the Windstream Petition was released on March 9, 2010. *Pleading Cycle Established for Comments on Windstream Petition for Limited Waiver Relief*, WC Docket No. 10-55, Public Notice, DA 10-397 (Wireline Comp. Bur. 2010).

[4] *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-171, Order, 23 FCC Rcd 5294 at para. 2 (2008) (*Windstream Order*) (granting Windstream requested waivers to convert rate-of-return regulated cost study areas to price cap regulation).

[5] In the *Windstream Order*, the Commission described the rate-of-return and price cap regulations that variously apply to incumbent local exchange carriers' (LECs') provision of interstate access services. *Windstream Order*, 23 FCC Rcd at 5295-96, paras. 2-4.

[6] *Id.* at paras. 11-14. For its two cost study areas that participate in the NECA interstate access tariffs, Windstream initialized the rates of these two companies to meet its authorized rate-of-return and then adapted those rates to the price cap rate structure in a manner similar to that used for its other study areas.

[7] *Id.* at paras. 15-16.

[8] *Id.* at paras. 19-22.

[9] *Id.* at para. 21.

[10] *Id.* at para. 22.

[11] *Id.* at para. 20.

[12] *Id.*

3. *Subsequent price cap conversions.* The Bureau granted waivers similar to those granted in the *Windstream Order* to Puerto Rico Telephone Company, Inc.; Consolidated Communications Holdings, Inc.; and Frontier Communications to convert rate-of-return study areas to price cap regulation in 2008.[13] In 2009, the Bureau granted waivers for Alaska Communications Systems Group, Inc., and CenturyTel, Inc., to convert rate-of-return study areas to price cap regulation following the model of the *Windstream Order.*[14]

4. *VITELCO proposal.* VITELCO seeks authority to allow it to convert from rate-of-return regulation to price cap regulation on July 1, 2010, using the approach adopted in the *Windstream Order.*[15] VITELCO proposes to establish its initial switched and special access PCIs using its current interstate access rates.[16] VITELCO proposes to transition its ATS rate to $0.0065 as required by section 61.3(qq)(3) using an X-Factor of 6.5 percent.[17] VITELCO proposes to make no future reductions to its special access PCI.[18] Finally, VITELCO requests that the Commission grant the appropriate waivers to allow VITELCO to continue to receive ICLS support as a price cap carrier as was done in the *Windstream Order* and subsequent price cap conversion orders. Such support would be calculated on a per-line basis at its 2009 per-line disaggregated ICLS amounts and frozen on a study area basis at those per-line levels going forward. VITELCO further proposes that its aggregate annual ICLS support be capped equal to its overall 2009 ICLS (after application of any required true-ups).[19] VITELCO agrees to forego any PICC or CCL charges that otherwise might be assessable under the *CALLS Order* and to forego any increase in the non-primary residential SLC cap from $6.50 to $7.00.[20] It also seeks a waiver to allow it to notify NECA of its intent to withdraw from the NECA common line tariff later than the March 1 date specified in section 69.3(i)(1) of the Commission's rules.[21] VITELCO states that grant of the requested waivers will

[13] *See Petition of Puerto Rico Telephone Company, Inc. for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules; Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief; Frontier Petition for Limited Waiver Relief upon Conversion of Global Valley Networks, Inc., to Price Cap Regulation,* WC Docket Nos. 07-292, 07-291, 08-18, Order, 23 FCC Rcd 7353 (Wireline Comp. Bur. 2008).

[14] *See ACS of Alaska, Inc., ACS of Anchorage, Inc., ACS of Fairbanks, Inc. and ACS of the Northland, Inc., Petition for Conversion to Price Cap Regulation and Limited Waiver Relief,* Order, WC Docket No. 08-220, 24 FCC Red 4664 (Wireline Comp. Bur. 2009); *CenturyTel, Inc., Petition for Conversion to Price Cap Regulation and Limited Waiver Relief,* WC Docket No. 08-191, 24 FCC Red 4677 (Wireline Comp. Bur. 2009).

[15] VITELCO Petition at 1. VITELCO also confirmed that it proposed to calculate the common line, marketing and transport interconnection charge (CMT) basket as outlined in the *Windstream Order. See* Letter from Bennett L. Ross, Esq., Counsel for Virgin Islands Telephone Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-39 (filed Apr. 2, 2010).

[16] *Id.* at 3.

[17] *Id.* at 8. VITELCO states that its current ATS rate is $0.01317. *Id.*

[18] *Id.* at 3.

[19] *Id.* at 9-10.

[20] *Id.* at 10; *see also Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service,* Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order, CC Docket No. 99-249; Eleventh Report and Order, CC Docket No. 96-45, 15 FCC Rcd 12962, 12990-13013, paras. 75-128 (2000) (*CALLS Order*) (subsequent history omitted).

[21] 47 C.F.R. § 69.3(i)(1).

allow VITELCO and its customers to enjoy the same public interest benefits recently extended to other carriers and their customers.[22] No comments were filed on the VITELCO Petition.

5. *FairPoint background and proposal.* On January 15, 2007, FairPoint Communications, Inc. (FairPoint),[23] a rate-of-return local exchange carrier (LEC), agreed to purchase certain telephone assets located in Maine, New Hampshire, and Vermont from Verizon Communications, a price cap LEC. The Commission released an order approving the transfer of these assets on January 9, 2008.[24] On January 25, 2008, the Wireline Competition Bureau granted FairPoint a waiver of sections 61.41(b) and (c) of the Commission's rules. This allowed FairPoint to continue operating its existing telephone operations pursuant to rate-of-return regulation, while operating the properties it was acquiring from Verizon pursuant to price cap regulation.[25] In its current petition, the FairPoint Petitioning LECs seek limited waivers of the Commission's rules to permit: (i) the FairPoint Petitioning LECs' rate-of-return regulated telephone operations in the states in which it acquired Verizon properties to convert to price cap regulation as of July 1, 2010, while retaining their existing ICLS;[26] and (ii) allow the other local exchange carrier subsidiaries of FairPoint currently subject to rate-of-return regulation in the interstate jurisdiction (FairPoint ROR LECs) to remain subject to such regulation.[27]

6. The FairPoint Petitioning LECs propose to file a price cap tariff with separate rates for each study area using the approach adopted in the *Windstream Order*. Because the FairPoint Petitioning LECs participate in the NECA traffic-sensitive pool, and thus do not have current rates based on their own costs, their switched and special access rates would be initialized to target the authorized rate-of-return of 11.25%, based on 2009 base period demand, and then adapted to the price cap rate structure. The PCIs for the traffic-sensitive and trunking baskets would be reduced to eliminate any marketing expenses that were recovered through switched access rates in 2009.[28] The FairPoint Petitioning LECs propose to target their ATS rates to $0.0065, pursuant to section 61.3(qq)(3) of the rules using a 6.5 percent X-

[22] VITELCO Petition at 2.

[23] The FairPoint Petitioning LECs are all wholly-owned subsidiaries of FairPoint. FairPoint Petition at 2.

[24] *Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc.*, WC Docket No. 07-22 Memorandum Opinion and Order, 23 FCC Rcd 514 (2008) *(FairPoint Merger Order).*

[25] *See* 47 C.F.R. § 61.41(c)(2) (requiring price cap carriers that merge with rate-of-return carriers to convert the rate-of-return carriers to price cap regulation no later than one year following the effective date of the merger—referred to as the all-or-nothing rule). *See also Petition of FairPoint Communications, Inc. for Waiver of Sections 61.41(b) and (c) of the Commission's Rules,* Order, 23 FCC Rcd 892 (Wireline Comp. Bur. 2008) *(2008 FairPoint Waiver Order).* As a condition of that relief, FairPoint was required to "obtain prior Commission approval before seeking to elect price-cap regulation for its rate-of-return exchanges." *Id.* at 895, para. 7.

[26] These telephone operations are located in Maine and Vermont and participate in the NECA traffic-sensitive tariff. FairPoint also owns Consolidated Community Service Telephone Company, an average schedule carrier operating in Maine, which will continue as an average schedule carrier as permitted by section 61.41(c)(3) of the Commission's rules, 47 C.F.R. § 61.41(c)(3). FairPoint Petition at 2.

[27] *Id.* at 1, Appendix A.

[28] *Id.* at 7.

Factor.[29] They would make no future adjustments to their special access PCIs. The FairPoint Petitioning LECs propose that they continue to receive ICLS support as a price cap carrier, and that such support be calculated on a per-line basis at their 2009 per-line disaggregated ICLS amounts and frozen at those per-line levels going forward. The overall annual ICLS of each FairPoint Petitioning LEC would be capped on a study area basis at an amount equal to its overall 2009 ICLS, after application of required true-ups.[30] The FairPoint Petitioning LECs agree to forego any PICC or CCL charges that otherwise might be permitted and agree to forego an increase in the non-primary residential SLC rate.[31] FairPoint also requests a waiver of section 61.41(b) and (c) of the rules to permit it to continue to operate the FairPoint ROR LECs as rate-of-return carriers, while moving the FairPoint Petitioning LECs to price cap regulation. FairPoint states that grant of the requested waivers would further the public interest by providing the FairPoint Petitioning LECs with regulatory incentives to maintain and enhance efficient and innovative operations, would result in lower overall rates for consumers, and would permit FairPoint to more closely align its operations and rate structure in northern New England, while retaining rate-of-return regulation for its LECs in other states so they can continue to meet varied market demands.[32] If its petition is granted, FairPoint seeks a waiver of the requirement in section 69.3(i)(1) of the Commission's rules that it notify NECA of its intent to withdraw the six pooling study areas from the NECA tariffs by March 1, 2010.[33] The Independent Telephone and Telecommunications Alliance and the United States Telecom Association filed comments in support of the FairPoint Petition.[34]

7. *Windstream's Lexcom proposal.* Windstream proposes to convert its Lexcom subsidiary, which is subject to rate-of-return regulation and participates in the NECA common line and traffic-sensitive tariffs, to price cap regulation on July 1, 2010, using the approach adopted in the *Windstream Order.*[35] Windstream would initialize Lexcom's switched and special access rates to meet the authorized rate-of-return, using a 2009 embedded cost study and 2009 demand data, and then convert those rates to the price cap rate structure.[36] Lexcom will target its ATS rate to $0.0065 per minute as provided for in section 61.3(qq)(3) using a 6.5 percent X-Factor and will freeze its special access basket PCI.[37] Windstream requests that it be granted the necessary waivers to permit Lexcom to receive per-line ICLS

[29] *Id.* at 8.

[30] *Id.* at 9.

[31] *Id.*

[32] *Id.* at 11.

[33] *Id.* at 14.

[34] Comments of the Independent Telephone and Telecommunications Alliance, WC Docket No. 10-47 (filed Mar. 12, 2010); Comments of the United States Telecom Association, WC Docket No. 10-47 (filed Mar. 12, 2010).

[35] Windstream Petition at 3. Absent a grant of this waiver request, Windstream states that it would need a waiver of the all-or-nothing rule for Lexcom to continue operating as a rate-of-return LEC and continue receiving ICLS. *Id.* at 8.

[36] *Id.* at 4. Windstream also confirmed that it proposed to calculate the CMT basket as outlined in the *Windstream Order. See* Letter from Eric Einhorn, Vice President Federal Government Affairs, Windstream, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-55 (filed Apr. 30, 2010) (Einhorn *Ex Parte* Letter).

[37] Windstream Petition at 2.

as a price cap carrier at its per-line amount for 2009, which would be frozen on a study area basis at that per-line level going forward. Windstream proposes that its aggregate annual ICLS be capped at an amount equal to the sum of the 2007 ICLS cap for the LECs converted to price cap regulation under the Windstream Order, plus Lexcom's ICLS support in 2009, after application of any required true-ups.[38] Windstream also commits to forego any PICC or CCL charges that might otherwise be assessable by Lexcom under the price cap rules and to forego an increase in the non-primary residential SLC from $6.50 cap to the $7.00 cap permitted under the CALLS Order for price cap LECs.[39] Windstream states that granting the requested waiver will increase consumer welfare by reducing the overall size of the universal service fund and enabling Windstream to maintain and enhance efficient operations and thereby generate all of the benefits of converting Lexcom to price cap regulation.[40] No comments were filed on the Windstream Petition.

III. DISCUSSION

A. The Public Iuterest

8. We find that good cause exists to grant, to the extent described below, the three petitions for waivers to convert to price cap regulation on July 1, 2010.[41] The Commission concluded in 1990 that incentive-based regulation is preferable to rate-of-return regulation.[42] The Commission found that several benefits would flow from the adoption of price cap regulation, including incentives for carriers to become more productive, innovative, and efficient.[43] The Commission also found that price cap regulation is likely to benefit consumers directly or indirectly through lower access prices.[44] In subsequent annual tariff filings, several of the larger incumbent LECs adopted price cap regulation.

9. VITELCO, the FairPoint Petitioning LECs, and Windstream seek to take advantage of the opportunity provided by section 61.41(a)(3) of the Commission's rules and the *Windstream Order* to convert to price cap regulation.[45] VITELCO, the FairPoint Petitioning LECs, and Windstream propose to target their ATS rate to $0.0065, and have agreed to accept the conditions applied to the relief granted in

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[38] *Id.* at 4. We clarify that the *Windstream Order* requires the aggregate cap to be applied on a study area basis.

[39] *Id.* at 7.

[40] *Id.*

[41] Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

[42] *See Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6789, para. 21 (1990) (*LEC Price Cap Order*).

[43] *Id.* at 6791, para. 31.

[44] *Id.* at 6791, para. 33.

[45] 47 C.F.R. § 61.41(a)(3).

the *Windstream Order*. We find that the requests presented by the three carriers offer the public interest benefits generally attributed to incentive regulation – specifically, they provide incentives for the carriers to become more efficient, innovative, and productive.[46]

10. The question presented by these petitions is whether the public interest will be better served by strict enforcement of the current rules, or by waiving certain rules to allow each carrier to adopt its proposal. Based on the information provided by the carriers and the commenters, we find that the public interest will be better served by granting the requested relief. Consistent with the Commission's findings in the *Windstream Order,* grant of the waivers requested here will facilitate the achievement of Commission policies. Moreover, granting the requested relief will directly lower some access rates over time and will likely reduce the ICLS that the carriers receive in the future. The relief granted in this order is subject to any revisions addressing intercarrier compensation, price cap regulation, or universal service requirements that the Commission may adopt in the future.

11. The FairPoint Petitioning LECs and Lexcom are cost companies currently in the NECA common line and traffic-sensitive tariffs and do not have existing rates based on their own costs.[47] As Windstream did in its initial conversion for its study areas that participated in NECA's interstate access tariffs, the FairPoint Petitioning LECs and Lexcom indicate that they will initialize their rates to meet the authorized rate-of-return and then adapt those rates to the price cap rate structure.[48] We find this is a reasonable approach for initializing the rates and PCIs for these carriers and is consistent with the *Windstream Order*.[49] The rates so determined shall be the January 1 rates used in establishing their PCIs for all price cap baskets.[50] FairPoint and Windstream shall include the cost studies used to develop these rates in the supporting materials filed with their initial price cap tariffs.

B. Price Cap Baskets

12. Part 69 of the Commission's rules establishes interstate access rate elements that are designed to recover the costs of various parts of the local network. Under price cap regulation, these rate elements are grouped together into five price cap baskets: the CMT basket; the traffic sensitive switched interstate access basket (traffic sensitive basket); the trunking basket; the special access basket; and the interexchange basket.[51] Each basket is subject to its own price cap.[52] The interstate access rates associated with these baskets may be assessed on either end-user customers or carriers.

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[46] *See LEC Price Cap Order*, 5 FCC Rcd at 6791, para. 31.

[47] *See* FairPoint Petition at 7; Windstream Petition at 3-4.

[48] FairPoint Petition at 7; Windstream Petition at 3-4.

[49] *Windstream Order*, 23 FCC Rcd at 5302, para. 17.

[50] *Id.*

[51] *See* 47 C.F.R. § 61.42. The interexchange basket is established only by price cap LECs that offer interstate interexchange services that are not classified as access services for the purposes of Part 69 of the Commission's rules. 47 C.F.R. § 61.42(d)(4). VITELCO, FairPoint, and Windstream do not indicate whether they offer such services. To the extent that any of them does, it must establish a price cap interexchange basket consistent with the Commission's rules. *Id.*

[52] 47 C.F.R. § 61.42.

1. CMT Basket

13. To recover costs associated with the local loop, or common line, rate-of-return LECs assess certain interstate access charges on end-user eustomers. Price cap LECs generally assess the same types of common line-related charges on their end-user customers, although the levels of such charges are determined differently. The common-line related end-user charges assessed by both rate-of-return and price cap LECs include SLCs, Line Port Costs in Excess Of Analog, and Special Access Surcharges.[53] Price cap LECs may also assess PICCs and CCL charges on interexchange carriers in certain instances.[54] A price cap LEC's common line rates are limited by a CMT basket PCI and by its average price cap CMT revenues per-line month,[55] in addition to the SLC caps imposed by Part 69 of the Commission's rules. We describe in some detail how VITELCO, the FairPoint Petitioning LECs, and Windstream shall convert their common line rates to the price cap common line structure in the following paragraphs.

14. We begin with the calculation of each carrier's initial average price cap CMT revenues per-line month. Price cap CMT revenue is the maximum total revenue a filing entity would be permitted to receive from SLCs, PICCs, CCL charges, and marketing expenses, using base period lines. Price cap CMT revenue does not include price cap LEC universal service contributions.[56] Thus, for purposes of the conversion, each carrier's CMT revenues will include its 2009 SLC revenues plus the marketing expenses shifted to the CMT basket from the traffic-sensitive and trunking baskets pursuant to section 69.156 of the Commission's rules.[57] Each carrier's average price cap CMT revenues per-line month will then be its CMT revenues divided by its 2009 base period demand.[58] The average price cap CMT revenues per-line month, in conjunction with the $6.50 per-line cap on residential and single line business lines and the $9.20 per-line cap on multiline business lines, will create the ceiling on the SLC charges that each carrier may assess end users.[59]

15. The other control on the CMT basket is the common line PCI. To create its common line PCI, each carrier shall multiply its January 1, 2010, end user rates by 2009 base period demand. To this result, each carrier shall add the marketing expenses shifted to the CMT basket pursuant to section 69.156 of the Commission's rules.[60] One final adjustment will be necessary for each carrier to establish its initial CMT basket PCI. VITELCO, the FairPoint Petitioning LECs, and Windstream each have committed, in conjunction with its receipt of universal service at a level equal to its 2009 ICLS receipts frozen on a

[53] 47 C.F.R. §§ 69.104, 69.130 (rate-of-return carrier SLC and line port surcharge in excess of analog rules); 47 C.F.R. §§ 69.152, 69.157 (price cap carrier SLC and line port surcharge in excess of analog rules); 47 C.F.R. § 69.115 (special access surcharge rules applicable to both rate-of-return and price cap carriers).

[54] 47 C.F.R. §§ 69.153, 69.154.

[55] Price cap CMT revenues are a carrier's common line, marketing, and transport interconnection charge revenues. 47 C.F.R. §§ 61.3(cc), 61.42(d)(1).

[56] 47 C.F.R. § 61.3(cc).

[57] 47 C.F.R. § 69.156. The use of the $6.50 SLC from 2009 in calculating the price cap CMT revenues will reflect each carrier's commitment to not assess a $7.00 SLC on non-primary residential lines, as would otherwise be permitted for price cap carriers, as part of its receipt of frozen per-line ICLS support.

[58] 47 C.F.R. § 61.3(d).

[59] *See generally* 47 C.F.R. § 69.152.

[60] 47 C.F.R. § 69.156.

study area basis at a per-line level, to forego the recovery of any PICC or CCL charge.[61] To reflect this commitment, and to avoid any headroom that may be created by foregoing this recovery, each carrier must reduce its CMT basket PCI by an amount equal to the PICC and CCL revenues it is foregoing.

2. Traffic Sensitive and Trunking Baskets

16. Rate-of-return and price cap LECs assess local switching and transport charges on interexchange carriers. Price cap LECs reflect the appropriate rates and demands in PCIs for the traffic-sensitive and trunking baskets. VITELCO proposes to set its initial traffic-sensitive and trunking basket PCIs using current switched access rates. As discussed above, the FairPoint Petitioning LECs and Windstream will initialize their rates to meet the authorized rate-of-return and then adapt those rates to the price cap rate structure.[62] Each carrier will target its ATS rate to $0.0065. Each carrier will use an X-factor of 6.5 percent to reduce its tariffed charges to the ATS target rate.

17. Each carrier's proposal for converting its switched access rates to price caps is reasonable. Each carrier must establish initial traffic-sensitive and trunking basket PCIs using its January 1, 2010, switched access rates multiplied by 2009 base period demand.[63] The PCIs must be reduced to eliminate any marketing expenses that were recovered through switched access rates in 2009.[64] Each carrier shall begin reducing its ATS rates to its respective target ATS rate through the use of a 6.5 percent X-factor in its 2010 annual access tariff filing consistent with the requirements of section 61.45(i) of the Commission's rules.[65] This will further the public interest by ensuring that carrier customers receive reduced local switching and transport rates. Consistent with the Commission's price cap rules, each carrier must establish actual price indexes (APIs), service categories, and service band indexes (SBIs) for the traffic sensitive and trunking baskets.[66]

3. Special Access Basket

18. Each carrier proposes to use its current special access rates to set its PCI for the special access basket. We agree that current special access rates are the appropriate rates to use in setting initial PCIs for the special access basket. Under the rules adopted in the *CALLS Order*, there is no requirement for further reductions in the special access PCIs.[67] Accordingly, each carrier shall set its initial PCIs for special access using its January 1, 2010, special access rates multiplied by the appropriate 2009 base

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[61] VITELCO Petition at 7-8; FairPoint Petition at 6; Windstream Petition at 7. Although IAS is included in the common line PCI and adjusted annually as projected IAS receipts change, the ICLS amount here will be frozen. VITELCO, FairPoint and Windstream should, therefore, exclude their ICLS receipts from the PCI calculations since they will have no effect on the PCI. This will also simplify the ICLS true-up process.

[62] *See supra* paras. 14-15.

[63] Any local switching support (LSS) VITELCO, FairPoint, and Windstream may receive will be excluded from the PCI calculations, as is done by other price cap LECs. We note that if the carriers become more efficient, LSS will decrease.

[64] *See* 47 C.F.R. § 69.156.

[65] 47 C.F.R. § 61.45(i).

[66] 47 C.F.R. §§ 61.46; 61.42(e)(1) and (2); 61.47.

[67] 47 C.F.R. § 61.45(b)(1)(iv).

period demand. Consistent with the Commission's price cap rules, each carrier must establish APIs, service categories, and SBIs for the special access basket.[68]

C. Universal Service

19. VITELCO, the FairPoint Petitioning LECs, and Windstream propose to continue to receive high-cost universal service support to recover explicitly a portion of their common line costs after they convert their rate-of-return cost study areas to price cap regulation.[69] The high-cost support mechanisms available to allow ETCs to recover common line costs through explicit universal service support, rather than implicitly through a portion of access charge rates, are ICLS for rate-of-return carriers, and IAS for price cap carriers.[70] The Commission's rules do not make ICLS available to price cap carriers,[71] and the Commission tentatively has concluded that carriers converting from rate-of-return regulation to price cap regulation are ineligible for IAS established in the *CALLS Order*.[72] Accordingly, absent Commission intervention, the requested conversions to price cap regulation could result in the loss of explicit support by these carriers to offset the interstate portion of their loop costs that are not recovered through interstate access charges.

20. Each carrier argues that realization of all of the public interest benefits of its conversion to price cap regulation depends upon continued receipt of some high-cost universal service support for loop costs.[73] In its petition, each carrier requested that the Commission grant a partial waiver of applicable rules so it could receive ICLS set at a frozen per-line amount.[74] Under this approach, as discussed above, each carrier agrees to forego any PICC or CCL charges that might otherwise be assessable under the price cap rules, and would forego an increase in the non-primary residential SLC cap from $6.50 to $7.00.[75] The Commission has previously expressed a preference for explicit support, through universal service support mechanisms, as opposed to implicit support, through access charges.[76] Therefore, we find that

[68] 47 C.F.R. §§ 61.46; 61.42(e)(3); 61.47.

[69] *See* VITELCO Petition at 1; FairPoint Petition at 1; Windstream Petition at 1.

[70] 47 C.F.R. §§ 54.901; 54.801.

[71] *See* 47 C.F.R. § 54.901(a) (providing ICLS for rate-of-return carriers).

[72] *See 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, para 93 (2004) (*MAG Second Further Notice*).

[73] *See* VITELCO Petition at 5; FairPoint Petition at 13; Windstream Petition at 5.

[74] *See* VITELCO Petition at 10; FairPoint Petition at 13; Windstream Petition at 7.

[75] *See* VITELCO Petition at 10; FairPoint Petition at 9; Windstream Petition at 7.

[76] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Red 19613, 19621-22, 19642-46, paras. 15, 62-68 (2001) (*MAG Order*) ; *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 13006, para. 111 (2000) (*CALLS Order*) (subsequent history omitted).

VITELCO, the FairPoint Petitioning LECs, and Windstream, on behalf of its Lexcom subsidiary, should continue to receive high-cost support for loop costs via ICLS. We find good cause to grant these partial waiver requests so these carriers may continue to receive ICLS at 2009 per-line disaggregated ICLS amounts, and frozen on a study area basis at those per-line levels going forward. Furthermore, we cap each carrier's future overall annual ICLS by study area at an amount equal to its overall 2009 ICLS, after application of any required true-ups. This waiver is conditioned upon each carrier's adherence to the commitments discussed above and subject to any revisions addressing intercarrier compensation, price cap regulation, or universal service requirements that the Commission may adopt in the future.

21. For each study area, the frozen per-line ICLS amount will be based on the amount of per-line ICLS the carrier received in 2009, after the application of any true-ups based on actual cost and revenue data for 2009.[77] The monthly frozen per-line ICLS amount will be calculated by dividing the final annual 2009 ICLS amount by twelve times the average of the carrier's line counts as of December 31, 2008, and December 31, 2009.[78] Because this final frozen per-line ICLS cannot be determined until after the carriers file their 2009 cost and revenue data, VITELCO, FairPoint, and Windstream will each receive an interim per-line ICLS amount until the final amount can be determined. For each carrier, this interim amount will be calculated by dividing the amount of ICLS disbursed to each study area in December 2009, not including any prior period true-ups, by the number of lines served in each respective study area as of December 31, 2009. When the carrier's final frozen per-line ICLS amount is determined, any support distributed to that carrier pursuant to the interim per-line ICLS amount will be trued up to the final per-line level.[79]

22. We partially waive section 54.901(a) of the Commission's rules, which makes ICLS available only to rate-of-return carriers, so that VITELCO, FairPoint, and Windstream may convert their rate-of-return study areas to price cap regulation but continue to receive ICLS for those study areas.[80] Because these carriers will be receiving ICLS on a frozen per-line basis, the amount of ICLS each receives will decline if their number of lines declines. Further, we partially waive the ICLS reporting and support calculation provisions of sections 54.901 and 54.903 of the Commission's rules so that each carrier's ICLS may be set at 2009 per-line disaggregated ICLS amounts and frozen at those per-line levels going forward.[81] Finally, we waive any portions of sections 54.802 through 54.806 of the Commission's

[77] The actual cost and revenue data required to true-up each carrier's 2009 ICLS must be filed by December 31, 2010. *See* 47 C.F.R. § 54.903(a)(4).

[78] For example, if a study area had a final 2009 ICLS of $4,800, and its line counts as of the end of 2008 and 2009 were 110 and 90, respectively, that study area would have a frozen ICLS per-line of $4 per month – $4,800/(((110+90)/2)*12).

[79] We also note that each carrier will be subject to regular ICLS true-ups for the period up until its conversion to price cap status. Accordingly, VITELCO, FairPoint, and Windstream will be required to file actual cost and revenue data for 2010 pursuant to section 54.903(a)(4). *See* 47 C.F.R. § 54.903(a)(4). Pursuant to section 54.307 of the Commission's rules, competitive ETCs serving the affected study areas will receive the same per-line support amounts and be subject to the same true-ups as VITELCO, FairPoint, and Windstream, subject to the interim cap on competitive ETC support. 47 C.F.R. § 54.307; High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008).

[80] 47 C.F.R. § 54.901.

[81] *See* 47 C.F.R. §§ 54.901, 54.903. We note that each carrier must comply with those reporting requirements for all true-ups and calculations necessary to determine the ultimate frozen per-line ICLS amount, as described in paras. 20-21 *supra*.

rules that would preclude the carriers from receiving ICLS at the 2009 per-line disaggregated ICLS amounts.[82] To ensure that these waivers do not result in VITELCO, FairPoint, and Windstream receiving increased ICLS in the future due to any increases in its line counts, as a condition of these waivers, we cap each carrier's future overall annual ICLS at an amount equal to its overall 2009 ICLS, after application of any required true-ups.[83]

D. FairPoint All-Or-Nothing Waiver Request

23. Section 61.41 of the Commission's rules is designed to ensure that all of a carrier's study areas and affiliates are subject to a single form of pricing regulation—either price cap regulation or rate-of-return regulation.[84] This rule is commonly referred to as the "all-or-nothing" rule. Specifically, section 61.41 provides that, if an individual rate-of-return carrier or study area converts to price cap regulation, all of its affiliates or study areas must also do so, except for those using average schedules.[85] This section also provides that, if a price cap carrier enters into a merger, acquisition, or similar transaction, it must continue to operate under price cap regulation after the transaction.[86] In addition, when rate-of-return and price cap carriers merge or acquire one another, the rate-of-return carrier must convert to price cap regulation within one year.[87] These requirements address two concerns the Commission has regarding mergers and acquisitions involving price cap and non-price cap companies. First, a carrier might attempt to shift costs from its price cap affiliates to its non-price cap affiliates.[88] This would allow the non-price cap affiliate to charge higher rates than would otherwise be permitted to recover its higher revenue requirement, while simultaneously increasing the profits of the price cap affiliate as a result of these cost savings.[89] Second, a carrier might attempt to "game the system" by switching back and forth between rate-of-return regulation and price cap regulation.[90] A rate-of-return carrier could build a large rate base to raise rates, and then return to price cap regulation and reduce costs to an efficient level, thereby maximizing its profits at the expense of ratepayers.[91]

24. We find good cause to grant FairPoint's request for waiver of the Commission's all-or-

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[82] *See* 47 C.F.R. §§ 54.802 - 54.806.

[83] *See* VITELCO Petition at 10; FairPoint Petition at 13; Windstream Petition at 7; *Windstream Order*, 23 FCC Rcd at 5304, para. 22. The annual ICLS cap would apply only to those converting study areas that are the subject of this order.

[84] 47 C.F.R. § 61.41.

[85] 47 C.F.R. § 61.41(b).

[86] 47 C.F.R. § 61.41(c)(1).

[87] 47 C.F.R. § 61.41(c)(2).

[88] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service*, CC Docket Nos. 00- 256 and 96-45, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613, 19781, para. 261 (2001) (*MAG First Further Notice*).

[89] *Id.*

[90] *Id.*

[91] *Id.*

nothing rule. FairPoint essentially requests a modification of the earlier all-or-nothing waiver it received to reduce the number of study areas subject to the waiver by the six FairPoint cost study areas in the states in which the acquired Verizon exchanges are located.[92] As FairPoint indicates, grant of the waiver will allow FairPoint to more closely align its operations and rate structure in northern New England, while retaining rate-of-return regulation for its LECs in other states so that they can continue to meet varied market demands.[93] FairPoint states that grant of its petition would largely unify the regulatory status of FairPoint's operating LECs in northern New England, reducing the potential for cost-shifting between subsidiaries in the same state.[94]

25. Consistent with the findings in the previous all-or-nothing waiver granted FairPoint, the efficiencies created here will outweigh any threat of cost shifting or gaming the system. Moreover, more of FairPoint's study areas will now be subject to incentive-based regulation. To safeguard against possible gaming that could result from attempts to elect to take its rate-of-return exchanges to price cap regulation, we continue to require FairPoint to obtain prior Commission approval before seeking to elect price cap regulation for its rate-of-return exchanges. At that time, we can determine whether the transaction raises concerns addressed by section 61.41. In sum, for the above reasons, we find good cause to grant the FairPoint request for waiver of the Commission's all-or-nothing rule.

E. Other Waivers

26. Incumbent LECs that plan to leave one or both of the NECA tariffs are required by section 69.3(i)(1) of the Commission's rules to notify NECA of their intent by March 1 of the tariff filing year in which they plan to leave the tariff(s).[95] VITELCO and FairPoint each request a waiver of section 69.3(i)(1) to allow it to notify NECA of its intent to leave the common line tariff once the Commission has reached a decision on its price cap conversion waiver request.[96]

27. As noted above, the Commission may waive its rules for good cause shown.[97] We find good cause exists to waive section 69.3(i)(1) of the rules to permit VITELCO and FairPoint to each notify NECA of its intent to withdraw study areas from the NECA common line tariff within thirty (30) days of the release of this order. Absent a waiver, the relief we grant VITELCO and FairPoint in this order would be nullified because of this procedural limitation. We find that grant of this waiver will not impose an undue hardship on NECA in developing its annual access tariff filing given the limited number of study areas involved.

IV. ORDERING CLAUSES

28. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 201-203, and 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201-203, and 254(g), and pursuant to the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291,

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[92] *See* FairPoint Petition at 10.

[93] *Id.* at 10-11.

[94] *Id.* at 11.

[95] 47 C.F.R. § 69.3(i)(1).

[96] VITELCO Petition at 7-8 n.17; FairPoint Petition at 14.

[97] *See supra* note 48; 47 C.F.R. § 1.3.

that the Virgin Islands Telephone Corporation petition for waiver IS GRANTED to the extent described herein.

29. IT IS FURTHER ORDERED, pursuant to sections 4(i), 201-203, and 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201-203, and 254(g), and pursuant to the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the FairPoint Telephone Company petition for waiver IS GRANTED to the extent described herein.

30. IT IS FURTHER ORDERED, pursuant to sections 4(i), 201-203, and 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201-203, and 254(g), and pursuant to the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the Windstream Corporation petition for waiver IS GRANTED to the extent described herein.

31. IT IS FURTHER ORDERED, pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and pursuant to the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that section 69.3(i)(1) of the Commission's rules IS WAIVED to the extent indicated herein.

32. IT IS FURTHER ORDERED that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett

Sharon E. Gillett
Chief, Wireline Competition Bureau