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Before the
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. 11-36

ORDER

Adopted: May 27, 2011 **Released: May 27, 2011**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant the petition for waiver filed by Windstream Corporation (Windstream),[1] allowing Windstream to convert the operations of its subsidiary Windstream Lakedale, Inc. (Lakedale) from rate-of-return regulation to price cap regulation, consistent with Commission precedent.[2] We grant Windstream's waiver request to convert its operations on July 1, 2011, rather than on June 1, 2011, as otherwise would have been required by section 61.41(c)(2).[3] We also grant a waiver allowing Windstream to continue receiving interstate common line support (ICLS) for the converted study areas, subject to certain conditions. This waiver will further the public interest by providing Windstream 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 to intercarrier compensation, price cap regulation, or universal service requirements that the Commission may adopt in the future.[4]

II. BACKGROUND

2. *Windstream Order.* On March 18, 2008, the Commission released an order granting Windstream's request to convert rate-of-return regulated study areas to price cap regulation on July 1,

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[1] Petition of Windstream for Limited Waiver Relief, WC Docket No. 11-36 (filed February 16, 2011) (Windstream Petition). A Public Notice seeking comment on the Windstream Petition was released on February 24, 2011. *Pleading Cycle Established for Comments on Windstream Petition for Limited Waiver Relief,* WC Docket No. 11-36, Public Notice, 26 FCC Rcd 2116 (Wireline Comp. Bur. 2011).

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

[3] 47 C.F.R. § 61.41(c)(2).

[4] For example, we note that the Commission recently adopted a Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking in which it is considering reforms to the intercarrier compensation regimeand universal service. *See Connect America Fund,* WC Docket No. 10-90, *A National Broadband Plan for Our Future,* GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers,* WC Docket No. 07-135, *High-Cost Universal Service Support,* WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime,* CC Docket No. 01-92), *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45), *Lifeline and Link-Up,* WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011).

2008.[5] In the *Windstream Order*, the Commission directed Windstream to establish initial Price Cap Indices (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 average traffic sensitive (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 was capped at an amount equal to its overall 2007 ICLS (after application of any required true-ups).[10] Windstream also must forgo any recovery of a presubscribed interexchange carrier charge (PICC) or carrier common line (CCL) charge and forgo 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]

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] In 2010, the Bureau granted waivers for Virgin Islands Telephone Corporation; China Telephone Company, *et al.*; and Windstream to convert certain of their operations from rate-of-return to price cap regulation.[15]

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[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 study areas that participated 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.*

[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) (*Combined Price Cap Order*).

[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 Rcd 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 Rcd 4677 (Wireline Comp. Bur. 2009).

[15] *See Petition of Virgin Islands Telephone Corporation, for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules; China Telephone Company, FairPoint Vermont, Inc., Maine Telephone* (continued....)

4. *Windstream proposal.* On May 17, 2010, the Wireline Competition Bureau approved the application for the transfer of control of Iowa Telecommunications Services, Inc., including its wholly owned subsidiary Lakedale, to Windstream.[16] Lakedale is a rate-of-return LEC in Minnesota with two study areas that participate in the National Exchange Carrier Association (NECA) common line and traffic-sensitive pools. 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.[17] Absent waiver of section 61.41(c)(2) of the Commission's rules, Lakedale would be required to convert to price cap regulation by June 1, 2011. Windstream requests a limited waiver of section 61.41(c)(2) to permit it to convert Lakedale to price cap regulation in its July 1, 2011, annual access tariff filing.[18]

5. Windstream proposes to initialize Lakedale's switched and special access rates to meet the authorized rate-of-return, using a 2010 embedded cost study and 2010 demand data, and then convert those rates to the price cap rate structure.[19] In converting Lakedale to price cap regulation, Windstream states that it will in all other respects treat Lakedale as the Lexcom subsidiary was treated under the *VITELCO/FairPoint/Windstream Order* and the Windstream LECs participating in the NECA traffic-sensitive pool were treated under the *Windstream Order*.[20] Lakedale will target its ATS rate to $0.0065 per minute as provided in section 61.3(qq)(3) using a 6.5 percent X-Factor and will freeze its special access basket PCI.[21] Windstream requests that it be granted the necessary waivers to permit Lakedale to receive per-line ICLS as a price cap carrier at its per-line disaggregated amount for 2010, which would be frozen on a study area basis at that per-line level going forward.[22] Windstream proposes that Lakedale's aggregate annual ICLS be capped by study area at an amount equal to its overall 2010 ICLS, after application of any required true-ups.[23] Windstream also commits to forgo any PICC or CCL charges that might otherwise be assessable by Lakedale under the price cap rules and to forgo an increase in the non-primary residential SLC from a $6.50 cap to the $7.00 cap permitted under the *CALLS Order*[24] for price

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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; Windstream Petition for Limited Waiver Relief, WC Docket Nos. 10-37, 10-47, 10-55, Order, 25 FCC Rcd 4824 (Wireline Comp. Bur. 2010) (*VITELCO/FairPoint/Windstream Order*).

[16] *Notice of Non-Streamlined Domestic Section 214 Application Granted*, 25 FCC Rcd 5456 (Wireline Comp. Bur. 2010). Windstream completed the acquisition of Iowa Telecom on June 1, 2010. Windstream Petition at 4.

[17] 47 C.F.R. § 61.41(c)(2).

[18] Windstream Petition at 4. Absent a grant of this waiver request, Windstream states that it would need a waiver of the all-or-nothing rule for Lakedale to continue operating as a rate-of-return LEC and continue receiving ICLS. *Id.* at 8.

[19] *Id.* at 4.

[20] *Id.*

[21] *Id.*; *see Windstream Order*, 23 FCC Rcd at 5301, para. 15; *VITELCO/FairPoint/ Windstream Order*, 25 FCC Rcd at 4832, para. 16.

[22] *See Windstream Order*, 23 FCC Rcd at 5303, para. 20; *VITELCO/FairPoint/Windstream Order*, 25 FCC Rcd at 4834, para. 20.

[23] Windstream Petition at 5.

[24] *See 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, 12993, para. 80 (2000) (*CALLS Order*) (subsequent history omitted).

cap LECs.[25] Windstream states that granting the requested waivers 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 Lakedale to price cap regulation.[26] No comments were filed on the Windstream Petition.

III. DISCUSSION

A. The Public Interest

6. We find that good cause exists to grant, to the extent described below, Windstream's petition for waiver to convert its Lakedale subsidiary to price cap regulation on July 1, 2011.[27] The Commission concluded in 1990 that incentive-based regulation is preferable to rate-of-return regulation.[28] 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.[29] The Commission also found that price cap regulation is likely to benefit consumers directly or indirectly through lower access prices.[30] In subsequent annual tariff filings, several of the larger incumbent LECs adopted price cap regulation.

7. Windstream seeks to employ the methods adopted in the *Windstream Order* and the *VITELCO/FairPoint/Windstream Order* in converting Lakedale to price cap regulation. We find that Windstream's request offers the public interest benefits generally attributed to incentive regulation—specifically, it provides incentives for Lakedale to become more efficient, innovative, and productive.[31]

8. The question presented by the Windstream Petition is whether the public interest will be better served by strict enforcement of the current rules, or by waiving certain rules to allow Windstream to adopt its proposal. Based on the information provided by Windstream, 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 Lakedale receives in the future. The relief granted in this order is subject to any revisions to intercarrier compensation, price cap regulation, or universal service requirements that the Commission may adopt in the future.[32]

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[25] *Id.* at 5-6.

[26] *Id.* at 9.

[27] 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.

[28] *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*).

[29] *Id.* at para. 31.

[30] *Id.* at para. 33.

[31] *See id.* at para. 31.

[32] *See supra* note 4.

9. Lakedale is a cost company currently in the NECA common line and traffic-sensitive tariffs and does not have existing rates based on its own costs.[33] As it did in its initial conversion for its study areas that participated in NECA's interstate access tariffs, Windstream indicates that Lakedale will initialize its rates, for both switched and special access, to meet the authorized rate-of-return and then adapt those rates to the price cap rate structure.[34] We find this is a reasonable approach for initializing Lakedale's rates and PCIs and is consistent with the *Windstream Order*.[35] The rates so determined shall be the January 1, 2011, rates used in establishing their PCIs for all price cap baskets.[36] Windstream shall include the cost studies used to develop these rates in the supporting materials filed with its initial price cap tariffs for Lakedale.

1. Price Cap Baskets

10. 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 common line, marketing and transport interconnection charge revenues (CMT) basket;[37] the traffic sensitive switched interstate access basket (traffic sensitive basket); the trunking basket; the special access basket; and the interexchange basket.[38] Each basket is subject to its own price cap.[39] The interstate access rates associated with these baskets may be assessed on either end-user customers or carriers.

a. CMT Basket

11. To recover costs associated with the local loop, or common line, rate-of-return LECs assess certain interstate access charges on end-user customers. 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.[40] Price cap LECs may also assess PICCs and CCL charges on interexchange carriers in certain instances.[41] 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, in addition to the SLC caps imposed by Part 69 of the Commission's rules. We describe in some detail how Lakedale shall convert its common line rates to the price cap common line structure in the following paragraphs.

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[33] Windstream Petition at 4.

[34] *Id.*

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

[36] *See id.* at paras. 16-17.

[37] 47 C.F.R. §§ 61.3(cc), 61.42(d)(1).

[38] *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). Windstream does not indicate whether it offers such services. To the extent that it does, it must establish a price cap interexchange basket consistent with the Commission's rules. *Id.*

[39] 47 C.F.R. § 61.42.

[40] 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).

[41] 47 C.F.R. §§ 69.153, 69.154.

12. We begin with the calculation of Lakedale's initial average price cap CMT revenues per-line month. Price cap CMT revenue is the maximum total revenue a tariff 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.[42] Thus, for purposes of the conversion, Lakedale's CMT revenues will include its 2010 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.[43] Lakedale's average price cap CMT revenues per-line month will then be its CMT revenues divided by its 2010 base period demand.[44] 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 Lakedale may assess end users.[45]

13. The other control on the CMT basket is the common line PCI. To create its common line PCI, Lakedale shall multiply its January 1, 2011, end user rates by 2010 base period demand. To this result, Lakedale shall add the marketing expenses shifted to the CMT basket pursuant to section 69.156 of the Commission's rules.[46] One final adjustment will be necessary for Lakedale to establish its initial CMT basket PCI. Windstream has committed, in conjunction with its receipt of universal service at a level equal to its 2010 ICLS receipts frozen on a study area basis at a per-line level, to forgo the recovery of any PICC or CCL charge.[47] To reflect this commitment, and to avoid any headroom that may be created by forgoing this recovery, Lakedale must reduce its CMT basket PCI by an amount equal to the PICC and CCL revenues it is forgoing.

b. Traffic Sensitive and Trunking Baskets

14. 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. As discussed above, Windstream will initialize Lakedale's rates to meet the authorized rate-of-return and then adapt those rates to the price cap rate structure.[48] Windstream will target Lakedale's ATS rate to $0.0065 and will use an X-factor of 6.5 percent to reduce Lakedale's tariffed charges to the ATS target rate.

15. Windstream's proposal for converting Lakedale's switched access rates to price caps is reasonable. Windstream must establish initial traffic-sensitive and trunking basket PCIs using Lakedale's January 1, 2011, switched access rates multiplied by 2010 base period demand.[49] The PCIs must be

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[42] 47 C.F.R. § 61.3(cc).

[43] 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.

[44] 47 C.F.R. § 61.3(d).

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

[46] 47 C.F.R. § 69.156.

[47] Windstream Petition at 5-6. Although IAS is included in the common line PCI and adjusted annually as projected IAS receipts change, the ICLS amount here will be frozen. Windstream should, therefore, exclude Lakedale's ICLS receipts from the PCI calculations since they will have no effect on the PCI. This will also simplify the ICLS true-up process.

[48] *See supra* para. 5.

[49] Any local switching support (LSS) that Lakedale may receive will be excluded from the PCI calculations, as is done by other price cap LECs. We note that if Lakedale becomes more efficient, LSS will decrease.

reduced to eliminate any marketing expenses that were recovered through switched access rates in 2010.[50] Lakedale shall begin reducing its ATS rates to its respective target ATS rate through the use of a 6.5 percent X-factor in its 2011 annual access tariff filing consistent with the requirements of section 61.45(i) of the Commission's rules.[51] 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, Windstream must establish Lakedale's actual price indexes (APIs), service categories, and service band indexes (SBIs) for the traffic sensitive and trunking baskets.[52]

c. Special Access Basket

16. Windstream proposes to initialize Lakedale's special access rates to meet the authorized rate of return using 2010 base period demand to set its PCIs for the special access basket. This approach to setting initial PCIs for the special access basket is consistent with the manner in which special access rates were initialized in previous price cap conversions.[53] We agree that those 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.[54] Accordingly, Lakedale shall set its initial PCIs for special access using its January 1, 2011, special access rates multiplied by the appropriate 2010 base period demand. Consistent with the Commission's price cap rules, Lakedale must establish APIs, service categories, and SBIs for the special access basket.[55]

B. Universal Service

17. Windstream proposes that Lakedale continue receiving high-cost universal service support to recover explicitly a portion of Lakedale's common line costs after it converts its rate-of-return study areas to price cap regulation.[56] The high-cost support mechanisms available to allow Eligible Telecommunications Carriers (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 Interstate Access Support (IAS) for price cap carriers.[57] The Commission's rules do not make ICLS available to price cap carriers,[58] 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*.[59] 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.

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[50] *See* 47 C.F.R. § 69.156.

[51] 47 C.F.R. § 61.45(i).

[52] 47 C.F.R. §§ 61.46, 61.42(e)(1)-(2), 61.47.

[53] *See Windstream Order*, 23 FCC Rcd at 5302, para. 18; *Combined Price Cap Order*, 23 FCC Rcd at 7363, para. 21.

[54] 47 C.F.R. § 61.45(b)(1)(iv).

[55] 47 C.F.R. §§ 61.46, 61.42(e)(3), 61.47.

[56] *See* Windstream Petition at 1.

[57] 47 C.F.R. §§ 54.901, 54.801.

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

[59] *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).

18. Windstream argues that realization of all of the public interest benefits of Lakedale's conversion to price cap regulation depends upon continued receipt of some high-cost universal service support for loop costs.[60] In its petition, Windstream requests that the Commission grant a partial waiver of applicable rules so Lakedale may receive ICLS set at a frozen per-line amount.[61] Under this approach, as discussed above, Lakedale agrees to forgo any PICC or CCL charges that might otherwise be assessable under the price cap rules, and would forgo an increase in the non-primary residential SLC cap from $6.50 to $7.00.[62] The Commission has previously expressed a preference for explicit support, through universal service support mechanisms, as opposed to implicit support, through access charges.[63] Therefore, we find that Lakedale should continue to receive high-cost support for loop costs via ICLS. We find good cause to grant this partial waiver request so Lakedale may continue to receive ICLS at 2010 per-line disaggregated ICLS amounts, and frozen on a study area basis at those per-line levels going forward. Furthermore, we cap Lakedale's future overall annual ICLS by study area at an amount equal to its overall 2010 ICLS, after application of any required true-ups. This waiver is conditioned upon Lakedale's adherence to the commitments discussed above and subject to any revisions to intercarrier compensation, price cap regulation, or universal service requirements that the Commission may adopt in the future.[64]

19. For each study area, the frozen per-line ICLS amount will be based on the amount of per-line ICLS Lakedale received in 2010, after the application of any true-ups based on actual cost and revenue data for 2010.[65] The monthly frozen per-line ICLS amount will be calculated by dividing the final annual 2010 ICLS amount by twelve times the average of the Lakedale's line counts as of December 31, 2009, and December 31, 2010.[66] Because this final frozen per-line ICLS cannot be determined until after Lakedale files its 2010 cost and revenue data, Lakedale will receive an interim per-line ICLS amount until the final amount can be determined. This interim amount will be calculated by dividing the amount of ICLS disbursed to each study area in December 2010, not including any prior period true-ups, by the number of lines served in each respective study area as of December 31, 2010. When Lakedale's final

[60] *See* Windstream Petition at 7.

[61] *See id.* at 9.

[62] *See id.* at 5-6.

[63] *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 Rcd 19613, 19621-22, 19642-46, paras. 15, 62-68 (2001); *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) (subsequent history omitted).

[64] *See supra* note 4.

[65] The actual cost and revenue data required to true-up Lakedale's 2010 ICLS must be filed by December 31, 2011. *See* 47 C.F.R. § 54.903(a)(4).

[66] For example, if a study area had a final 2010 ICLS of $4,800, and its line counts as of the end of 2009 and 2010 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).

frozen per-line ICLS amount is determined, any support distributed to it pursuant to the interim per-line ICLS amount will be trued up to the final per-line level.[67]

20. We partially waive section 54.901(a) of the Commission's rules, which makes ICLS available only to rate-of-return carriers, so that Lakedale may convert its rate-of-return study areas to price cap regulation but continue to receive ICLS for those study areas.[68] Because Lakedale will be receiving ICLS on a frozen per-line basis, the amount of ICLS it receives will decline if its 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 Lakedale's ICLS may be set at 2010 per-line disaggregated ICLS amounts and frozen at those per-line levels going forward.[69] Finally, we waive any portions of sections 54.802 through 54.806 of the Commission's rules that would preclude Lakedale from receiving ICLS at the 2010 per-line disaggregated ICLS amounts.[70] To ensure that these waivers do not result in Lakedale receiving increased ICLS in the future due to any increases in its line counts, as a condition of these waivers, we cap Lakedale's future overall annual ICLS at an amount equal to its overall 2010 ICLS, after application of any required true-ups.[71]

C. Waiver of Section 61.41(c)(2)

21. Windstream requests a waiver of section 61.41(c)(2) to permit it to defer the conversion of Lakedale to price caps by one month from June 1, 2011, to July 1, 2011. Absent waiver of section 61.41(c)(2) of the Commission's rules, Lakedale would be required to convert to price cap regulation by June 1, 2011, and then make its annual tariff filing to be effective on July 1, 2011. Section 61.41(c)(2) is intended to address cost shifting and gaming concerns the Commission has regarding mergers and acquisitions involving price cap and non-price cap companies.[72] The one-month deferral of the conversion does not implicate any gaming or cost-shifting concerns. Given that the waiver eliminates one tariff filing that would otherwise be due within a month of the price cap conversion tariff filing, we find good cause exists to waive section 61.41(c)(2) to allow Lakedale to convert to price cap regulation on July 1, 2011, rather than on June 1, 2011.

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[67] We also note that Lakedale will be subject to regular ICLS true-ups for the period up until its conversion to price cap status. Accordingly, Lakedale will be required to file actual cost and revenue data for 2011 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 Lakedale, 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).

[68] 47 C.F.R. § 54.901.

[69] *See* 47 C.F.R. §§ 54.901, 54.903. We note that Lakedale 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. 18-19 *supra*.

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

[71] *See Windstream Order*, 23 FCC Rcd at 5304, para. 22; Windstream Petition at 9. The annual ICLS cap would apply only to those converting study areas that are the subject of this order.

[72] *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).

D. Waiver of section 69.3(i)(1)

22. 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).[73] Windstream requests a waiver of section 69.3(i)(1) to allow it to notify NECA of its intent to withdraw Lakedale from the NECA tariffs "on short notice."[74]

23. As noted above, the Commission may waive its rules for good cause shown.[75] We find good cause exists to waive section 69.3(i)(1) of the rules to permit Windstream to notify NECA of Lakedale's intent to withdraw study areas from its NECA tariffs within thirty (30) days of the release of this order. Absent a waiver, the relief we grant Windstream 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

24. 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, 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.

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

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief, Wireline Competition Bureau

[73] 47 C.F.R. § 69.3(i)(1).

[74] Windstream Petition at 10.

[75] *See supra* note 1; 47 C.F.R. § 1.3.