Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
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
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

COMMENTS OF WINDSTREAM COMMUNICATIONS, INC. ON SECTIONS XVII.L-R

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TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY 2

II. THE COMMISSION SHOULD DELAY ANY TRANSITION FOR ORIGINATING ACCESS CHARGES UNTIL AFTER THE TRANSITION FOR TERMINATING ACCESS CHARGES IS COMPLETE. 3

III. THE COMMISSION SHOULD NOT ADOPT A DEFINED SUNSET DATE FOR THE ACCESS REPLACEMENT CHARGE. 5

IV. THE COMMISSION SHOULD NOT REDUCE OR ELIMINATE SUBSCRIBER LINE CHARGES IF IT CONTINUES TO REGULATE THE PRICE OF VOICE SERVICE. . 7

V. THE COMMISSION SHOULD CLARIFY THAT TRANSIT SERVICE IS SUBJECT TO SECTION 251 AND MUST BE MADE AVAILABLE AT RATES NO HIGHER THAN $0.0007 PER MINUTE OF USE. 8

VI. THE COMMISSION SHOULD NOT FORBEAR FROM TARIFFING REQUIREMENTS 12

VII. THE CURRENT POINT OF INTERCONNECTION RULES SHOULD REMAIN IN PLACE UNTIL TDM HAS BEEN RETIRED. 12

VIII. IN DEVELOPING A FRAMEWORK FOR IP-TO-IP INTERCONNECTION, THE COMMISSION SHOULD CONTINUE TO FOCUS ON POLICIES THAT PROMOTE EFFECTIVE COMPETITION. 14

A. The Commission Should Continue to Oversee Interconnection as Carriers Migrate to IP Technologies, and Should Not Let It Be Governed Entirely By Commercial Agreements. 14

B. With Regard to Physical Points of Interconnection, the Commission Should Balance Efficiency and Reasonable Transport Costs for All Carriers 16

C. The Commission Should Decline to Set an Arbitrary Deadline for the Transition to IP. 16

IX. CONCLUSION 18

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COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.
ON SECTIONS XVII.L-R

Windstream Communications, Inc., on behalf of itself and its affiliates (collectively "Windstream"), submits the following comments in response to the Federal Communications Commission ("Commission") request for input on proposals to reform and modernize the intercarrier compensation system set forth in Sections XVII.L-R of the Commission's recent Report and Order and Further Notice of Proposed Rulemaking ("FNPRM").[1]

[1] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, CC Docket Nos. 01-92 and 96-45, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-

I. INTRODUCTION AND SUMMARY

Windstream supports rational reform of the intercarrier compensation system. As demand for and provision of Internet protocol ("IP")-based services grow, it makes sense to move toward a compensation system that permits all carriers flexibility to recover costs from their end users, but also offers explicit subsidies to supplement those revenues where necessary to maintain reasonably comparable rates and services. The Commission began this transition in the *Order*, providing for a gradual reduction in terminating access rates and methods by which carriers may recover some lost revenues through modest end-user rate increases and Connect America Fund ("CAF") support. When considering additional reforms of the intercarrier compensation system, the Commission should continue to focus on the need for measured transitions and opportunities for recovery of revenue diminished by reforms, and should be mindful of the need to provide ample time for carriers and consumers to adjust to the reforms recently enacted. In particular, the Commission should adopt a specific framework for originating access charges only after the transition for terminating access charges is complete, so that the agency may evaluate the resulting regulatory and business environment and make any necessary course corrections. In addition, the Commission should not adopt a defined sunset date for the Access Replacement Charge ("ARC") and should not eliminate the Subscriber Line Charge ("SLC"). Both charges permit price-regulated carriers to recover some costs from their end-users and help place them on more even footing with their competitors in the telecommunications marketplace.

Windstream also urges the Commission to ensure that future policies foster the principal goal underlying the Telecommunications Act of 1996 ("the 1996 Act")—the promotion of

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51, and WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking (rel. November 18, 2011) (*FNPRM*).

effective competition. First, the Commission should ameliorate competitive issues in the market for transit service by clarifying that such service is subject to Section 251 of the 1996 Act and must be made available at rates no higher than $0.0007 per minute of use. Second, the Commission should retain existing tariffing requirements to provide carriers an expedited path to interconnection where an agreement is impractical. Third, the Commission should maintain the existing point of interconnection ("POI") rules—and apply them equally to all LECs—until time-division multiplexing ("TDM") has been retired. Finally, in developing a framework for IP-to-IP interconnection, the Commission should continue to maintain oversight of the process to minimize barriers to entry, carefully consider which POI framework would be most efficient for all carriers, and avoid setting an arbitrary deadline for the transition to all-IP networks that could force carriers to abandon service in many high-cost areas.

II. THE COMMISSION SHOULD DELAY ANY TRANSITION FOR ORIGINATING ACCESS CHARGES UNTIL AFTER THE TRANSITION FOR TERMINATING ACCESS CHARGES IS COMPLETE.

In accordance with its goal of providing a "sensible transition path that ensures that the industry has sufficient time to adapt to changed circumstances,"[2] the Commission should not adopt a specific framework or timeline for reducing originating access charges until after the transition for terminating access charges is complete.[3] Adjusting to the revised business model resulting from the reduction and elimination of terminating switched access charges—a transition that just now is beginning—will take time for both carriers and customers, and any unintended consequences cannot be known until the reform process runs its course. At the completion of this transition, the Commission will be in a much better position to evaluate the

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[2] *FNPRM* at ¶ 1297.

[3] *See id.* at ¶ 1299 (seeking comment on the need for an additional multi-year transition for originating access and asking specific questions regarding a transition schedule).

resulting regulatory and business environment, assess what would be an appropriate timeline for originating access reform going forward, and make any necessary course corrections to address market changes or unintended consequences of previous reforms.

The Commission should establish the same framework for reform of 8YY traffic as for originating access generally. As the America's Broadband Connectivity Plan ("ABC Plan") signatories noted, further reforms that reduce originating access rates "would likely make it more difficult to keep the access replacement fund at a manageable size."[4] For that reason, the ABC Plan "does not call for reductions in originating access charges," either 8YY traffic or otherwise.[5] To the extent any access rates for 8YY traffic may be unreasonable, the Commission has authority to take action within the existing statutory framework; there is no need for comprehensive reform in the near term. Finally, originating access reform with respect to 8YY traffic will not affect 8YY database query charges because LECs would continue to pay a cash cost expense to the owner of the database for each query.

When the Commission undertakes reform of originating access charges, it should ensure that recovery from the CAF is available to incumbent LECs but only for the limited purpose of replacing revenue that had been generated by a non-affiliate interexchange carrier ("IXC").[6]

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[4] *See* Joint Comments of AT&T, CenturyLink, FairPoint, Frontier, Verizon, and Windstream, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, at 23 (August 24, 2011) (ABC Plan Signatories' Comments).

[5] *Id.*

[6] The *FNPRM* queries whether recovery should "be limited to those incumbent LECs that do not provide retail long distance through affiliates." *FNPRM* at ¶ 1301. Windstream proposes recovery in somewhat broader circumstances—where an ILEC—which may or may not have a retail long-distance affiliate—is owed originating access from an IXC that is not the ILEC's affiliate. For example, Windstream has a retail long-distance affiliate but many of its customers have an unaffiliated IXC as their long-distance provider. It should be entitled to recovery for lost revenues from originating access in those cases.

Because incumbent LECs uniquely are required to provide equal access,[7] customers of Windstream and other incumbent LECs often have as their presubscribed long-distance carrier an unaffiliated IXC, such as AT&T or Sprint, and any reform that reduces or eliminates originating access charges should permit incumbent LECs to recover lost revenue from payments from such unaffiliated IXCs. In contrast, when an incumbent LEC's customer is presubscribed to an affiliated IXC, no such recovery is needed. In these cases, the payment of originating access from the IXC to the incumbent LEC is a transaction between two affiliated companies under the same ownership, and access recovery would not be appropriate.

III. THE COMMISSION SHOULD NOT ADOPT A DEFINED SUNSET DATE FOR THE ACCESS REPLACEMENT CHARGE.

The Commission should not adopt a defined sunset date for the access replacement charge ("ARC"). Because comprehensive intercarrier compensation reform involves a reduction in access charges that have provided implicit support to carriers in high-cost areas, the Commission rightly permits carriers to obtain, through an ARC, "limited, reasonable recovery" of lost revenues from end users.[8] Those lost revenues, and the ARC revenue that partially replaces them, were designed in large part to support carriers' ongoing loop costs—which are incurred in offering both voice and broadband services. These costs are real and do not diminish with the transition of traffic-sensitive access components to $0.0007 or bill-and-keep; in fact, carriers face increasing pressure to grow loop investment to meet the expanding network demands of broadband service. There is no justification for reducing or eliminating the ARC along with the reduction and elimination of access charges, and doing so would only frustrate the Commission's goals by rendering it substantially more difficult for carriers to make an economic case to continue to provide broadband service and to deploy new broadband facilities in rural,

[7] 47 U.S.C. § 251(g).

high-cost areas, even where those areas are eligible for CAF support.

The fact that the intercarrier compensation-replacement CAF support for price cap carriers is already subject to a defined phase-out does not justify a similar phase-out for the ARC.[9] The phase-out of the intercarrier compensation-replacement CAF funding was a compromise intended to provide necessary recovery to carriers while managing financial pressure on the Universal Service Fund.[10] In contrast to intercarrier compensation-replacement CAF support, the ARC is not a cross-subsidy from other carriers' end users, but rather an explicit charge to a carrier's own customers. The rationale for phasing out the intercarrier compensation-replacement CAF—to reduce strain on the Fund—does not support a similar phase-out of the ARC. Thus, the Commission should permit each carrier over the longer term to determine how to utilize (or not utilize) the ARC within its overall business plan and pricing of services.

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[8] *FNPRM* at ¶ 906.

[9] Windstream also opposes the modification of the phase-out period for intercarrier compensation-replacement CAF support based on a price cap carrier's receipt of statewide CAF Phase II support. *See FNPRM* at ¶ 1328. CAF Phase II support and the intercarrier compensation-replacement funding serve two distinct purposes. CAF Phase II support will be targeted to specific high-cost areas, and specific broadband deployment obligations will be linked to the statewide election. Moreover, CAF Phase II support will replace the current frozen support in its entirety, and therefore a carrier will not necessarily receive an increase in funding in a given state. A phase-out schedule for the ARC that is linked to a carrier's statewide CAF Phase II election would complicate a carrier's decision regarding whether to accept CAF Phase II support and could introduce an artificial penalty for not accepting CAF Phase II funding.

[10] *See FNPRM* at ¶ 920; Joint Reply Comments of AT&T, CenturyLink, FairPoint, Frontier, Verizon, and Windstream, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, at 17 (September 6, 2011) (ABC Plan Signatories' Reply) (noting that "[t]ogether, the ABC Plan's ARM, managed SLC increases, and the $30 benchmark appropriately balance the goals of controlling the size of the USF and enabling reasonably comparable, affordable service for all areas").

IV. THE COMMISSION SHOULD NOT REDUCE OR ELIMINATE SUBSCRIBER LINE CHARGES IF IT CONTINUES TO REGULATE THE PRICE OF VOICE SERVICE.

The Commission should not place a lower cap on SLCs if it and/or state commissions continue to regulate the price of voice service.[11] SLCs are entirely consistent with the Commission's overall approach to intercarrier compensation reform, which involves a shift from a system based on access charges that provide implicit support to carriers serving high-cost areas, to a system that permits carriers greater flexibility to recover costs from their end users and offers explicit subsidies where necessary to maintain reasonably comparable rates and service.[12] Reduction or elimination of SLCs—especially in a world where access charges are vanishing and intercarrier compensation-recovery CAF support is limited by a desire to control the size of the Universal Service Fund—would undermine broadband deployment and service, particularly in high-cost areas, by making it more difficult for carriers to attain the revenues necessary to make an economic case to invest in operation and/or deployment of those services. For the same reason, it also would undermine carriers' ability to continue to provide voice services, particularly in rural, high-cost areas. In addition, without the ability to charge SLCs at current levels, incumbent LECs would be hindered when attempting to compete effectively in the current market, in which competitive LECs, cable providers, wireless carriers, and over-the-top VoIP providers are free to impose end-user rates that recover their costs of providing service—or can refuse to serve certain areas.[13]

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[11] *See FNPRM* at ¶ 1330 (seeking comment on the magnitude and long-term role of SLCs).

[12] *See id.* at ¶ 737.

[13] *See* ABC Plan Signatories' Comments at 29.

Likewise, the Commission should not further eliminate or decrease the revenue that price cap carriers receive from Interstate Common Line Support ("ICLS") for common line recovery.[14] In its broader universal service reform plan, the Commission already has capped ICLS for price cap carriers and their rate-of-return affiliates,[15] and all support from the existing universal service mechanisms, including ICLS, will be phased out upon the transition to CAF Phase II.[16] Until CAF Phase II is implemented, ICLS remains a vitally important source of support for price cap carriers serving high-cost areas, and reducing or eliminating it would only undermine the Commission's broadband goals by taking away funding from companies that are best positioned to offer and deploy new broadband services in high-cost areas. Doing so also would impair these companies' ability to continue to provide basic voice service in rural, high-cost areas.

V. THE COMMISSION SHOULD CLARIFY THAT TRANSIT SERVICE IS SUBJECT TO SECTION 251 AND MUST BE MADE AVAILABLE AT RATES NO HIGHER THAN $0.0007 PER MINUTE OF USE.

Transit services provide links that are critical to Windstream's ability to interconnect with rural, wireless, and other carriers, and the transit market is insufficiently competitive to offer services at just and reasonable rates. Therefore, the Commission should include transit service in its comprehensive reform of the intercarrier compensation system, clarify that transit service is subject to Section 251 of the 1996 Act, and mandate that transit service be made available at rates no higher than $0.0007 per minute of use.

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[14] *See FNPRM* at ¶ 1332.

[15] *Id.* at ¶¶ 128, 133. For those carriers and affiliates who converted to price cap regulation in recent years, ICLS support was already frozen on a per-line basis. *See, e.g., Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-171, Order, 23 FCC Rcd 5294, 5304 (2008).

[16] *See FNPRM* at ¶¶ 151, 180.

For technical, historical, and economic reasons, Windstream, like most carriers that are not Regional Bell Operating Companies (RBOCs), does not exchange a significant volume of its traffic directly with other non-RBOC carriers, but does so indirectly through transit services provided by the RBOCs—Verizon, AT&T and CenturyLink—pursuant to state-approved interconnection agreements. The Commission recognized the significance of this transit service in a 2005 intercarrier compensation rulemaking when it noted that "[w]ithout the continued availability of transit service, carriers that are indirectly interconnected may have no efficient means by which to route traffic between their respective networks."[17]

In Windstream's experience, competitive transit services are not widely available and only offer a carrier interconnection with a limited number of other carriers with whom the transit providers have agreements. Thus, in particular, the RBOCs essentially control the transit market, and the vast majority of Windstream's transit traffic must go through an RBOC tandem to reach its destination. Nevertheless, the RBOCs have asserted that Section 251 does not govern transit services,[18] and in Windstream's experience, RBOCs often assess above-cost transit rates and can be unwilling to negotiate acceptable rates.[19] As a result, Windstream is at a competitive

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[17] *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4740 (2005) (2005 NPRM). In the same passage, the Commission further explains that "[t]he record suggests that the availability of transit service is increasingly critical to establishing indirect interconnection – a form of interconnection explicitly recognized and supported by the Act." *Id.*

[18] *See, e.g.*, AT&T Connecticut's Reply Brief on the Merits at 1-2, *Southern New England Tel. Co. v. Palermino*, No. 3:09-cv-1787 (D. Conn. Feb. 26, 2010) (arguing that there is nothing "in the Act or FCC rules or orders that requires incumbent [LECs], like AT&T Connecticut, to provide transit service as part of interconnection"); Comments of Century Link, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, at 76 (Apr. 18, 2011) (urging the FCC to find that transit service is not subject to sections 251 and 252 and transit service providers have no mandatory obligation to provide such service).

[19] *See also Petition of Youghiogheny Communications-Northeast, LLC d/b/a Pocket Communications for a Declaratory Ruling that the Southern New England Telephone Company d/b/a AT&T Connecticut is in Violation of Section 16-247B of the Connecticut General Statutes*

disadvantage—to the detriment of its customers—because an RBOC can charge Windstream high, above-cost transit service rates, while the RBOC effectively charges itself based on its economic costs.

To facilitate the future provision of essential transit services at just and reasonable rates, the Commission should make clear that the obligation to provide transit is mandated by Section 251(c). This finding would be consistent with determinations made by numerous courts and state commissions.[20] As a United States District Court in Nebraska explained:

> When Section 251(a) is read in conjunction with Section 251(c), it is clear that Congress imposed this obligation in Section 251(c) of the Act. Under Section 251(c), an ILEC must allow a CLEC to interconnect its facilities and equipment with the ILEC's network "for the transmission and routing of telephone exchange service and exchange access." 47 U.S.C. § 251(c)(2)(A); 47 C.F.R. § 51.305(a). Accordingly, an ILEC must provide transit service when a CLEC interconnects with the ILEC for the purpose of indirectly interconnecting with a third carrier. Otherwise, the indirect interconnection could not be used "for the transmission and routing of telephone exchange service and exchange access," and an ILEC

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and the Department's Orders in Docket No. 02-01-23 Relating to Transit Traffic and Federal and State Laws and Regulations Relating to the Transit Traffic Factor, Docket No. 08-12-04, Decision, at 1, 41 (Conn. Dept. of Pub. Util. Control, Oct. 7, 2009) (noting that "the lack of power that market forces have had on [AT&T's] transit service prices as exhibited by a large disparity between AT&T's cost of providing [transit service] and the various rates charged to the different carriers also contributes to the Department's belief that effective competition for this service does not exist").

[20] *See Southern New England Tel. Co. v. Palermino*, No. 3:09-cv-1787, 2011 U.S. Dist. LEXIS 48773 at *12 (D. Conn. May 6, 2011) (concluding that "interconnection under section 251(c) includes the duties to provide indirect interconnection and to provide transit service"). *See also Qwest Corp. v. Cox Nebraska Telecom*, No. 4:08-cv-3035, 2008 U.S. Dist. LEXIS 102032 at *11 (D. Neb. Dec. 17, 2008) ("Based on the facts that Section 251 explicitly supports the availability of indirect interconnections, transit is critical to the availability of indirect interconnections, and Section 251(b)(5) does not apply to transiting carriers, the Court finds that an ILEC's interconnection obligations must include the duty to provide transit . . . ."); *Telcove Investment, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Southwestern Bell Telephone*, Docket No. 04-167-U, Order No. 10, Memorandum and Order, 2005 Ark. PUC LEXIS 338 at *58-*59 (Ark. PUC Sept. 15, 2005) (transit traffic is covered by section 251(c)).

> could frustrate the flow of traffic and prevent carriers from indirectly interconnecting. Such a finding would render the "indirectly" language in Section 251(a) meaningless. The clear language of Section 251 requires ILECs to directly interconnect with competitors and facilitate competitors' ability to indirectly interconnect.[21]

Moreover, the Commission should mandate that transit service be made available at rates no higher than $0.0007 per minute of use. The $0.0007 rate is the default rate for reciprocal compensation and the exchange of intraMTA wireless and ISP-bound traffic,[22] and evidence on the record indicates that this rate would be a just and reasonable cap on the rates RBOCs may charge for the provision of transit. AT&T has noted that end office softswitching costs are $0.00010 to $0.00024 per minute of use[23]—well below $0.0007—and end office costs are generally higher than transit costs due to the much larger volume of traffic at the typical transit office compared to the typical end office. Thus, even $0.0007 likely would far exceed an RBOC's transit costs and would more closely approximate a market rate—if the transit market were truly competitive—than the current transit rates that RBOCs assess. Furthermore, Verizon has advocated $0.0007 as a "reasonable policy choice" for the default rate for VoIP-PSTN traffic, and has noted that it frequently enters into interconnection agreements that have established termination rates at or below $0.0007.[24] In sum, a default cap of $0.0007 per minute

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[21] *Qwest*, 2008 U.S. Dist. LEXIS 102032 at *9 (internal citation omitted).

[22] *See* 47 U.S.C. § 251(c)(2)(D) (requiring interconnection "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory").

[23] *See* Letter from Henry Hultquist, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-337, 99-69, 07-135, CC Docket Nos. 01-92, 96-45, at 4 (October 13, 2008). AT&T's analysis is based on softswitching, and Windstream acknowledges that not all tandem switches are softswitches today. However, the Commission is developing a forward-looking framework that is applicable to an increasingly IP-based system, and tandem switches are likely to be converted to softswitches earlier than end-office switches. Thus, this analysis may be applied appropriately to the transit context.

[24] *See, e.g.*, Comments of Verizon and Verizon Wireless, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, at 15-16 (April 1, 2011).

of use for transit would ensure that competing providers can obtain interconnection with other carriers on reasonable terms, while enabling the RBOCs to profit on transit services but not to exploit their market power.

VI. THE COMMISSION SHOULD NOT FORBEAR FROM TARIFFING REQUIREMENTS.

Windstream recognizes that there are some cases where the volume of traffic at issue does not warrant the negotiation of an interconnection agreement. To address these cases, Windstream agrees with the Commission that the option to continue to rely on tariffs, as a default arrangement, is in the public interest, and the Commission accordingly should not forbear from tariffing requirements.[25] Tariffs are not an impediment to the negotiation of alternative arrangements, but instead offer carriers an expedited path to interconnection in cases where the value of negotiating an interconnection agreement is outweighed by the time and expense involved in doing so. Absent tariffs, incumbent LECs would be required to negotiate interconnection agreements with every competitive LEC and wireless carrier, regardless of the volume of traffic at issue.

VII. THE CURRENT POINT OF INTERCONNECTION RULES SHOULD REMAIN IN PLACE UNTIL TDM HAS BEEN RETIRED.

The Commission should maintain the current POI rules—and apply them equally to all LECs—until TDM has been retired, rather than attempt to provide new or revised rules during or automatically at the end of the transition to bill-and-keep.[26] The current rules, particularly if applied to rural and non-incumbent LECs, provide a functional and important framework for

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[25] *See id.* at ¶ 1322.

[26] *See FNPRM* at ¶ 1316 (querying whether the Commission needs to provide new or revised POI rules at some later stage of the transition to bill-and-keep or provide one set of rules to be effective at the end of the six-year transition for price cap carriers and nine-year transition for rate-of-return carriers and maintain the current framework until that time).

carriers to arrange direct interconnection. As the Commission notes, section 251(c)(2)(B) requires incumbent LECs to allow a requesting telecommunications carrier to interconnect at any technically feasible point in their network.[27] When Windstream receives interconnection requests, it attempts to meet the interconnecting carrier's request for a specific interconnection point, or otherwise negotiates an alternative. Each carrier is responsible for the facility costs from its switch to the agreed-upon POI.

If the Commission does see fit to establish revised POI rules prior to the end of TDM, Windstream urges the Commission to state that an incumbent LEC must provide one point of interconnection per interconnected network, i.e., a ubiquities network, and not adopt a one-POI-per-LATA requirement.[28] The current obligation to interconnect at one POI per LATA applies only to RBOCs, pursuant to Section 271, and has never applied generally to incumbent LECs under the Section 251 regime.[29] One POI per LATA is appropriate for the RBOCs, which generally own the LATA tandems, but would not be workable for non-RBOCs, such as Windstream, whose networks are disbursed and usually not interconnected throughout an entire LATA. For Windstream, an obligation to interconnect at any feasible point on an interconnected network is more reasonable, and Windstream successfully has negotiated many such arrangements with interconnecting carriers.

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[27] *See id.* (citing 47 U.S.C. § 251(c)(2)(B)).

[28] *See id*. at ¶ 1316.

[29] *See Application of SBC Communications Inc., Southwestern Bell Telephone Co., and Southwestern Bell Communications Service, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18390, ¶ 78, n.174 (2000).

VIII. IN DEVELOPING A FRAMEWORK FOR IP-TO-IP INTERCONNECTION, THE COMMISSION SHOULD CONTINUE TO FOCUS ON POLICIES THAT PROMOTE EFFECTIVE COMPETITION.

Ubiquitous network connectivity has been a hallmark of the current telecommunications framework,[30] and should continue to be a priority as the network transitions from a TDM-based to an IP-based system. Just as in the TDM world, all telecommunications carriers should have a right to obtain interconnection to IP networks at just and reasonable rates, terms, and conditions, regardless of whether they are large or small, incumbent or competitive, and serve high-cost or low-cost areas. The goal that underlay the 1996 Act—to promote effective competition in the telecommunications market[31]—should continue to guide the Commission as it develops a policy framework for IP-to-IP interconnection. In particular, (1) the Commission should continue to maintain oversight of the interconnection process to minimize barriers to entry resulting from unequal access to customers and unequal bargaining power; (2) with regard to physical POIs, the Commission should consider what would be the most efficient framework for all providers—not just the largest carriers—and act to ensure that transport costs are reasonable; and (3) the Commission should avoid setting an arbitrary deadline for the transition to all-IP networks, which could force carriers to abandon service in many of the hardest-to-reach areas.

A. The Commission Should Continue to Oversee Interconnection as Carriers Migrate to IP Technologies, and Should Not Let It Be Governed Entirely By Commercial Agreements.

Though Windstream generally prefers commercial agreements over regulatory intervention, there continues to be a need for an overarching regulatory framework that ensures that all carriers have a right to obtain IP-to-IP interconnection at just and reasonable rates, terms,

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30 *See, e.g.*, 47 U.S.C. § 251.

31 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, Docket No. 96-98, 11 FCC Rcd 15499, ¶ 1 ("*First Local Competition Order*"), subsequent history omitted.

and conditions. Motivating the interconnection obligations of the 1996 Act was the fact that carriers had no independent economic incentive "to provide potential competitors with opportunities to interconnect with and make use of [their] network and services."[32] As recognized by Congressional leaders, competitive carriers cannot effectively compete without interconnection and access to incumbents' networks, while the largest incumbents, able to complete most traffic end-to-end over their own networks, have little or no need to interconnect with competitive carriers. This massive "inequality of bargaining power"[33] that underlay the interconnection framework established for the TDM world is equally problematic in the IP-to-IP interconnection context, and it renders unworkable a regime based entirely on commercial agreements and lacking a regulatory backstop.

In Windstream's experience as a competitive carrier, commercial negotiations with the largest carriers for deregulated services can be contentious and difficult. Larger carriers often are unwilling to come to reasonable terms with smaller carriers that lack comparable "purchasing power," and they are even less interested in offering reasonable terms to a carrier that they perceive as a stronger competitor for larger business customers. Without a regulatory backstop to ensure that all carriers have a right to interconnect at just and reasonable rates, terms, and conditions, competitive providers will face unreasonably high costs for interconnection and be increasingly unable to compete against the largest carriers. The result will be diminishing competition, contrary to the goals of the 1996 Act and to the detriment of American consumers and businesses.

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32 *Id.* at ¶ 55.

33 *Id.*

B. With Regard to Physical Points of Interconnection, the Commission Should Balance Efficiency and Reasonable Transport Costs for All Carriers.

When evaluating possible policy frameworks for physical POIs in the future all-IP network,[34] the Commission should balance some carriers' desire to transition toward one POI per large geographic area with consideration of the need to ensure reasonable transport costs for all carriers, not just the largest. With IP technology it may be possible to enable proper connectivity with fewer POIs than are required in the TDM network; indeed, the largest carriers may be able to operate IP networks efficiently with as few as four points of interconnection across the nation.[35] However, for the vast majority of carriers that rely on others for transport in whole or in part, more than a few POIs likely will be necessary because the costs associated with delivery of traffic to distant POIs may be prohibitive. The Commission should ensure that whatever framework it may adopt for physical POIs results in reasonable transport costs for all carriers.

C. The Commission Should Decline to Set an Arbitrary Deadline for the Transition to IP.

To ensure the continued provision of voice and robust broadband service in high-cost areas, the Commission should neither hinder the transition to all-IP networks nor set an arbitrary deadline for the transition.[36] The transition to all-IP transport and switches is occurring naturally over time. Customers, especially business customers, are demanding features that only an IP network can provide, and TDM equipment and software is gradually being replaced with VoIP-based products. Ultimately, each provider will reach its own "tipping point"—where the

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[34] *See FNPRM* at ¶ 1367.

[35] *See, e.g.*, Reply Comments of Sprint Nextel Corp., WC Docket No. 11-119, at 7-8 (August 30, 2011) (noting that Sprint's IP voice interconnection arrangement requires only four points of interconnection with a major IP voice peering partner to serve areas across the nation).

[36] *See id.* at ¶ 1366 (asking whether adopting a timetable for all-IP interconnection would be necessary or appropriate).

preponderance of voice traffic is VoIP and TDM traffic will have to be converted to VoIP via gateways at the edge of the company's network—at which it will be most economical to convert all switches and transport facilities to IP architecture. Technology and the market will drive this outcome, and the transition should be left to occur at its own pace.

However quickly or slowly this transition occurs, it is sure to be an expensive proposition. Windstream estimates it will cost more than $200 million to replace its working TDM switches with softswitches. The cost to deploy end-to-end IP facilities is even more expensive—including more than $1 billion to build out broadband in unserved areas and approximately $500 million to provide broadband ports for voice-only customers. Imposing an arbitrary deadline for a carrier to complete its transition to an all-IP world would risk substantial costs and inefficiencies, stranding plant and misdirecting resources. Imposing a transition requirement could cause such substantial economic strain that forces carriers to pull back on service, leaving customers without any service providers. To avoid this result, the Commission should monitor the transition to all-IP networks but not dictate its pace.

IX. CONCLUSION

Windstream supports rational reform of the intercarrier compensation and interconnection frameworks. Accordingly, Windstream urges the Commission to support measured transitions and opportunities for recovery of revenue diminished by reforms, and to adopt policies that foster the principal goal underlying the 1996 Act—the promotion of effective competition in the telecommunications market.

Respectfully submitted,

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