

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of Consolidated Communications, Frontier, and Windstream for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief	)	WC Docket No. 12-63

**COMMENTS OF AT&T, INC.**

AT&T Inc. (AT&T), on behalf of its affiliates, respectfully submits these comments in response to the petition filed by Consolidated Communications, Inc., Frontier Communications Corporation, and Windstream Corporation (Petitioners) seeking approval to convert their average schedule affiliates to price cap regulation and for limited waiver relief.<sup>1</sup> Petitioners propose to withdraw their average schedule study areas from the National Exchange Carrier Association, Inc. (NECA) Tariff No. 5 on July 1, 2012, and for each carrier to file its own interstate access tariff using the switched access rates in effect in the NECA tariff as of January 1, 2012.<sup>2</sup> AT&T generally supports Petitioners' request to convert to price caps but the Commission should impose conditions on the conversion that ensure that the Petitioners do not reap an unwarranted windfall during the transition to bill-and-keep initiated by the *USF/ICC Transformation Order*.<sup>3</sup>

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<sup>1</sup> See generally Joint Petition of Price Cap Holding Companies for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 12-63 (filed Mar. 1, 2012) (Petition); *Wireline Competition Bureau Seeks Comment on the Petition of Consolidated Communications, Frontier, and Windstream for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 12-63, Public Notice, DA 12-375 (rel. Mar. 9, 2012).

<sup>2</sup> See Petition at 5-6.

<sup>3</sup> See generally *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 a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-

In 1990, the Commission concluded that price cap regulation, which breaks the direct link between LECs' costs and prices, provides LECs with improved incentives to operate efficiently and cut costs, which benefits the LECs' customers.<sup>4</sup> AT&T is a significant purchaser of switched access services from a number of rate-of-return carriers, including Petitioners, and as such, supports efforts by LECs to convert from rate-of-return regulation to the Commission's price cap plan for LECs where such conversion encourages those carriers to respond more efficiently to their interexchange carrier customers by reducing costs and access prices. Any such conversion, however, must be under terms that ensure that the carrier's switched access rates remain just and reasonable.

First, the Commission should reject Petitioners' proposal to initialize their price cap indices (PCIs) using NECA rates because they have failed to show that initializing their PCIs at NECA rates will result in just and reasonable rates for these carriers, and it seems likely that it will not. As the Commission knows, average schedule carriers pool their costs and revenues with those other average schedule carriers through NECA to produce average schedule rates that allow such carriers collectively to recover the Commission's authorized rate of return on their combined investment. But because those carriers' costs vary (in many cases significantly), application of such rates to any particular carrier in isolation results in a return that likewise varies from the authorized rate of return—in some cases producing returns that exceed and in others that fall below such carrier's authorized rate of return. Indeed, that is what it means to have pooled rates—some carriers are net payers and others are net receivers from the pool.

Insofar as Petitioners are among the largest members of the NECA pool, there is every reason to

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92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*).

<sup>4</sup> See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, paras. 21-37 (1990).

believe that their costs on average are lower than those of other members of the pool. As a consequence, allowing Petitioners to set their initial rates based on the higher, average costs of other pool members once Petitioners withdraw from the NECA averaging mechanism would permit them to reap a windfall from significantly above-cost switched access rates. Therefore, AT&T urges the Commission to require Petitioners to perform cost studies to establish just and reasonable initial rates under price cap regulation.

Moreover, this approach is fully consistent with Commission precedent in addressing similar issues in previous price cap conversions. In 2010, a group of Fairpoint LECs and Lexcom—all cost companies then in the NECA common line and traffic-sensitive tariffs—sought to convert to price caps but did not have existing rates based on their own costs.<sup>5</sup> In order to complete the conversion, these carriers were required to initialize their rates to meet the authorized rate of return and then adapt those rates to the price cap rate structure.<sup>6</sup> The Bureau found this approach to be reasonable for initializing the rates and PCIs, and fully consistent with the *Windstream Order*.<sup>7</sup> The Commission should require no less here.

Petitioners argue that now cost studies are an undue burden given the transition to bill-and-keep initiated by the Commission in the *USF/ICC Transformation Order*. But while the transition to bill-and-keep, which does not even begin for interstate rates until July 1, 2014, will undoubtedly eliminate this problem for many of the terminating interstate rates over time—that cannot justify, as a legal or policy matter, allowing them to reap such an unjust and unreasonable

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<sup>5</sup> See *Petition of Virgin Islands Telephone Corporation, for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules, et al.*, WC Docket Nos. 10-39, 10-47, 10-55, Order, 25 FCC Rcd 4824, para. 11 (WCB 2010) (*VITELCO et al. Conversion Order*); see also *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. 17 (2008) (*Windstream Order*).

<sup>6</sup> See *id.* They were also required to include the cost studies used to develop these rates in the supporting materials filed with their initial price cap tariffs. See *id.*

<sup>7</sup> See *id.*

windfall in the intervening years of the six-year glide path. Moreover, the transition to bill-and-keep for other access elements—most notably originating access—has yet to be established and special access is not part of the transition at all. Thus, without a cost study, Petitioners' rates will be unreasonably high indefinitely.

Second, the Commission should also make clear whether the Petitioners will be subject to targeting of their average traffic-sensitive (ATS) rates to the appropriate target rate as described in section 61.3(rr) of the Commission's rules.<sup>8</sup> Section 51.905(b)(1) of the new rules states that:

With respect to interstate switched access services governed by this subpart, LECs shall tariff rates for those services in their federal tariffs. Except as expressly superseded below, LECs shall follow the procedures specified in part 61 of this chapter when filing such tariffs.<sup>9</sup>

Section 61.3(rr) was not deleted or changed in the rule amendments, and was not otherwise expressly superseded, in the *USF/ICC Transformation Order*. The fact that the Commission removed all switched access rates from price cap regulation effective July 1, 2012 is not enough to conclude that Petitioners' rates are not subject to the ATS target rate reductions. The Commission simply replaced price cap regulation with individual rate element caps and the rules still may require ATS rate reductions, notwithstanding the absence of price cap regulation.<sup>10</sup> Therefore, to the extent that Petitioners' rates are above the appropriate ATS target rate, the Commission should clarify whether Petitioners are required to begin ATS targeting, consistent with previous orders approving conversions to price cap regulation.<sup>11</sup>

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<sup>8</sup> 47 C.F.R. § 61.3(rr).

<sup>9</sup> 47 C.F.R. § 51.905(b)(1).

<sup>10</sup> See 47 C.F.R. § 51.907(a).

<sup>11</sup> See, e.g., *VITELCO et al. Conversion Order*, 25 FCC Rcd 4824, at para. 17.

For these reasons, AT&T respectfully urges the Commission to grant Petitioners' petition subject to the terms discussed above.

April 9, 2012

Respectfully submitted,

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