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VIA COURIER AND ECFS

EX PARTE

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *WC Docket No. 10-90, Connect America Fund; GN Docket No. 09-51, National Broadband Plan for our Future; WC Docket No. 07-135, Establishing Just and Reasonable Rates for Local Exchange Carriers; WC Docket No. 05-337, High-Cost Universal Service Support; CC Docket No. 01-92, Developing a Unified Intercarrier Compensation Regime; CC Docket No. 96-45, Federal State Joint Board on Universal Service; WC Docket No. 03-109, Lifeline and Link-Up*

Dear Ms. Dortch:

On April 10, 2012, Eric Einhorn and I, from Windstream Communications, Inc. (“Windstream”), met with Angela Kronenberg, Legal Advisor to Commissioner Clyburn. We discussed issues related to the intercarrier compensation treatment of VoIP-PSTN traffic, including the Frontier Communications and Windstream Petition for Clarification that asked the Commission to clarify that it did not intend to flash cut existing originating access rates for PSTN-to-VoIP traffic to interstate rate levels.¹ I provided further information (Attachment A) regarding concerns raised in this discussion in an e-mail to Ms. Kronenberg on April 11, 2012.

Windstream urged the Commission to exercise caution with regard to any further reform of access charges. Windstream explained that, as indicated in Attachment B (which was made available to Ms. Kronenberg at her request), Windstream already has seen significant variations in the IP factors provided by various large carriers, but because the company lacks visibility regarding whether traffic terminated on its network is originated in IP format or whether traffic it originates is terminated in IP format, the process for challenging surprisingly high factors likely will be time-consuming and resource-intensive. Windstream urged the Commission to allow

¹ See Petition for Reconsideration and/or Clarification filed by Frontier Communications Corp. and Windstream Communications, Inc., WC Docket 10-90, et al. (Dec. 29, 2011) (“Frontier/Windstream Petition”).

time for carriers to address IP factor implementation concerns in the context of reductions to terminating access rates before considering any reforms of originating access rates.

Windstream also discussed the provision in the *Comprehensive Reform Order* that gives a carrier the option to specify in its intrastate tariff that the default percentage of traffic subject to the VoIP-PSTN framework is equal to the percentage of VoIP subscribers in the state based on the Commission's Local Competition Report.² Windstream stated that when calculating the percentage of VoIP subscribers, it is most sensible to consider interconnected VoIP subscribers as a percentage of all lines, including wireline and wireless. Windstream encouraged the Commission to endorse this reasonable approach—which may be specified in a carrier's intrastate tariff or referenced in the context of individual carrier disputes.

Windstream urged the Commission that if it mandates any reductions to originating access, it should recognize the need for appropriate transitions, including an access recovery mechanism ("ARM"). Windstream noted that there would be no rational basis for not providing an ARM in the context of originating access reforms in light of the Commission's recognition that access recovery is necessary in the terminating-access context "to provide predictability to" carriers, "mitigate market disruption during the reform transition," and ensure that reforms "do not unintentionally undermine [the Commission's] objectives for universal service reform."³ Indeed, the distinct role and characteristics of originating access make ARM recovery particularly essential. In the typical toll call flow for equal access traffic, the interexchange carrier, not the originating carrier, has a customer relationship with the end user for the relevant service. Thus, the originating carrier is not well situated to recover its reduced originating access revenues through end-user charges.

Finally, consistent with the Frontier/Windstream Petition, Windstream reiterated that the Commission should (1) revise the "one unserved location per \$775" deployment requirement for Connect America Fund Phase I support to ensure that more consumers in high-cost areas may benefit from Phase I support, and (2) clarify that Phase I support will be allocated to individual carriers in the manner recommended by the America's Broadband Connectivity Plan proponents.⁴

² *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 Inter-carrier 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. 09-51, and WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, at para. 963 and fn.1993 (rel. November 18, 2011) (*Comprehensive Reform Order*).

³ *Id.* at para. 858.

⁴ See Frontier/Windstream Petition at 3-20; Letter from Cathy Carpino, General Attorney, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 (filed Oct. 21, 2011), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021716846>.

Pursuant to Section 1.1206(b)(2)(ii) of the Commission's rules, Windstream seeks confidential treatment for the attached chart and requests that it not be routinely made available for public inspection. This chart was submitted to the Commission on April 3, 2012, pursuant to the Protective Order in CC Docket No. 01-92, WC Docket Nos. 05-337, 07-135, and 10-90 and GN Docket No. 09-51 (DA 10-1749, rel. Sept. 16, 2010) because it contains proprietary and confidential information. In accordance with Section 1.1206(b)(2)(ii) of the Commission's rules, a paper copy of the document containing the confidential information is being submitted to the Secretary, and a redacted version is being filed electronically via ECFS.

Please contact me if you have any questions regarding this submission.

Sincerely,

/s/ Jennie B. Chandra

Jennie B. Chandra

cc: Angela Kronenberg

Attachments

Attachment A

For the purposes of identifying VoIP-PSTN traffic, Paragraph 963 indicates that a carrier (1) may require IXCs “delivering traffic for termination to identify the percentage of traffic that is subject to the studies or other reasonable analyses that are subject to audit” (i.e., to provide VoIP factors that identify the percentage of VoIP-originated traffic) or (2) specify in its intrastate tariff that the default percentage of traffic subject to the VoIP-PSTN framework is equal to the percentage of VoIP subscribers in the state based on the Local Competition Report, unless rebutted by the other carrier.

Unfortunately Windstream has encountered problems with both options:

Individual IXC factors – It is very difficult for a carrier to assess or challenge the validity of an individual IXC’s VoIP-PSTN factor. While Paragraph 963 correctly observes that factors have been useful in the context of determining jurisdiction, that context is a very different from that of using factors to determine the percentage of traffic that is VoIP-PSTN. In the jurisdictional context, a carrier can look to call detail records (if not altered) when assessing whether jurisdictional factors were calculated accurately. This is not the case with VoIP-PSTN traffic. Call detail records do not tell a carrier about whether VoIP is used and, therefore, are not helpful in this context. Effectively, without records to dispute an IXC’s factor, a carrier may be left to rely on reports created by the submitting IXC.

Local Competition Report statistics – The Local Competition Report is an insufficient default. First, footnote 1993, which elaborates on the Order’s finding that the Report can be used to determine “the percentage of VoIP subscribers in the state,” has produced some confusion by specifying that “the default percentage of VoIP-PSTN traffic in a state would be the total number of incumbent LEC and non-incumbent LEC VoIP subscribing in a state divided by the sum of those reported VoIP subscriptions plus incumbent LEC and non-incumbent LEC switched access lines.” This proposed calculation appears to omit wireless connections when specifying non-VoIP-PSTN connections in the denominator, and, if this is the case, the “percentage of VoIP subscribers” produced by the calculation offers an inflated prediction of the VoIP-PSTN component of an IXC’s total traffic – which encompasses both wired and wireless traffic. Second, Windstream has run into difficulty in certain states where it has attempted to use the Local Competition Report data as a backstop during individual IXC disputes. It would be helpful if the Local Competition Report data could be used as a cap on the VoIP-PSTN factor used while a dispute is pending. But since the FCC’s Order indicates that this backstop may be rebutted by an IXC, a dispute over a factor based on Local Competition Report data instead can quickly revert back to a dispute over an individual IXC’s alleged, higher factor – which an IXC may argue is sufficient evidence to rebut the Local Competition Report data.

When there is a dispute, some IXCs have the practice of paying a carrier only the amount that they claim that they should pay. Disputes regarding identification of VoIP-PSTN traffic can drag on for a long time, and a carrier may suffer prolonged, significant reductions in revenues as a result.

Attachment B

VoIP Factors Submitted to Windstream

State	Form 477 Data:	
	Interconnected VoIP/(Total Wired + Wireless)	Form 477 Data: Interconnected VoIP/Total Wired
Alabama	4.7%	14.8%
Arizona	5.9%	17.4%
Arkansas	4.1%	13.8%
California	6.6%	18.4%
Colorado	7.6%	22.5%
Connecticut	11.7%	30.4%
Delaware	9.4%	25.7%
D.C.	4.4%	10.6%
Florida	9.4%	27.0%
Georgia	6.0%	19.0%
Idaho	3.5%	10.4%
Illinois	7.2%	21.3%
Indiana	6.4%	18.9%
Iowa	4.2%	12.4%
Kansas	6.2%	19.4%
Kentucky	6.3%	19.1%
Louisiana	5.3%	17.0%
Maryland	7.2%	19.7%
Massachusetts	10.5%	27.0%
Michigan	9.4%	28.8%
Minnesota	6.0%	17.1%
Mississippi	3.5%	11.3%
Missouri	5.4%	16.1%
Montana	5.7%	16.7%
Nebraska	4.7%	13.0%
New Hampshire	13.2%	34.2%
New Jersey	11.9%	31.0%
New Mexico	3.7%	11.7%
New York	11.2%	31.5%
North Carolina	7.0%	21.1%
North Dakota	4.2%	12.0%
Ohio	7.1%	21.7%
Oklahoma	6.7%	19.7%
Oregon	7.6%	23.2%
Pennsylvania	7.4%	19.6%
Rhode Island	7.1%	17.8%
South Carolina	5.8%	17.3%
South Dakota	5.4%	14.9%
Tennessee	6.0%	19.6%
Texas	5.4%	17.8%
Utah	5.8%	19.2%
Virginia	6.0%	16.0%
Washington	8.9%	26.6%
Wisconsin	7.3%	20.3%
Wyoming	6.4%	20.7%

Form 477 Data Notes:

Source: FCC, Local Telephone Competition: Status as of December 31, 2010, Tables 8 and 17.

The FCC reports an asterisk ("*") where it withholds data for certain carriers to protect confidentiality and it reports a hash mark ("#") where the data round to zero.

Our calculation of VoIP share is conservative because where data are withheld or a figure is rounded to zero, we assume the figure is zero.

The FCC reported "#" (rounds to zero) for 19 states for ILEC standalone VoIP, ILEC bundled VoIP, or both.

> States affected were: AZ, GA, HI, ID, IN, IA, KS, KY, MN, MO, MT, NE, NJ, NY, OK, PA, SD, TX, and WY.

> The ILEC VoIP numbers are not very large and the skew to the overall result would likely be minimal.

> For example, the national weighted average share of ILEC lines that is switched is 97.1% and in no state do ILEC switched lines account for less than 94.1% of the total ILEC lines.

The FCC reported "*" (data withheld) for 7 states for Non-ILEC standalone VoIP, non-ILEC bundled VoIP, non-ILEC total, or some combination thereof.

> States affected were: AK, DE, RI, and VT.

> For affected states, this may have a material impact on the VoIP share calculated.

> However, for DE, RI, and VT, it was possible to back out total VoIP by subtracting switched lines from total lines; using this alternative formula we can get VoIP shares for those states.