

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| WINDSTREAM PETITION FOR |) | WC Docket No. 07-171 |
| CONVERSION TO PRICE-CAP |) | |
| REGULATION AND LIMITED |) | |
| WAIVER RELIEF |) | |

**COMMENTS OF THE
INDEPENDENT TELEPHONE AND TELECOMMUNICATIONS ALLIANCE**

To the Commission:

The Independent Telephone and Telecommunications Alliance (ITTA) hereby submits comments on the Petition of Windstream for Conversion to Price-Cap Regulation and Limited Waiver Relief (Petition). ITTA supports Windstream’s request for relief. The changing telecommunications market warrants Commission action that accords carriers flexibility to meet market demands and strategic needs.

ITTA is an alliance of mid-sized local exchange carriers (LECs). ITTA members collectively provide local exchange and exchange access services to more than 14 million lines in 43 states. ITTA members also offer interexchange (IXC) services, commercial mobile radio services (CMRS), and information services, both as incumbent LECs (ILECs) and competitive LECs (CLECs).

Windstream was formed in 2006 by the merger of VALOR Communications Group with the spun-off wireline assets of Alltel Corporation.¹ Windstream states that approximately 60 percent of its access lines are subject to rate-of-return regulation, and that all but one of its rate-of-return study areas are served by rural telephone company affiliates.² Windstream further states that nearly half of its price-cap access lines are served by rural telephone company affiliates.³ Windstream explains that it has concluded that price-cap regulation will enable more efficient operations for its company, and that it expects to realize benefits from “administrative simplicity afforded by a single regulatory regime. . . .”⁴ ITTA supports Windstream’s request to avail itself of the regulatory constructs it determines best-suited to its needs. ITTA supports regulatory flexibility that enables carriers to maximize operational efficiencies while meeting demands arising out of a changing and dynamic telecommunications marketplace.⁵

Conversion of Windstream’s rate-of-return study areas to price-cap regulation implicates the need for waiver of certain Commission rules, since there does not exist a defined methodology for rate-of-return conversion to price-cap in a post-CALLS⁶

¹ Petition at 3.

² Petition at 7.

³ Petition at 7.

⁴ Petition at 8.

⁵ While ITTA supports alternatives to traditional cost-of-service regulation for carriers whose needs are best met by that approach, ITTA notes that rate-of-return regulation has enjoyed enormous success in ensuring reasonable rates for consumers in high-cost-to-serve areas, many of which are subject to strong competitive forces.

⁶ *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 Dockets No. 96-262 and 94_I, Report and Order in CC Docket No. 94-249, Eleventh Report and Order in CC Docket No. 96-45, FCC 00-193, 15 FCC Rcd 12962, (2000) (CALLS Order), affirmed in part, reversed in*

environment. The CALLS proceeding established the existing regulatory framework for price-cap carriers, premised, in part, upon a negotiated industry agreement that included price-cap carrier access reductions of approximately \$2.1 billion and a target interstate access support (IAS) fund of \$650 million.⁷ The Commission concluded tentatively that entry to the CALLS plan, which “began as a voluntarily negotiated agreement among price-cap carriers and certain IXCs” was “not designed to be open to new carriers or study areas.” The Commission emphasized this point when it stated, “[t]hat CALLS was not intended to accommodate additional entry is most clearly indicated by the fact that in adopting the plan, the Commission made no provision for how the universal service component of the CALLS plan would address future expansion to new carriers.”⁸ Commission Rule 47 CFR 61.41(a)(3), however, permits ILECs to elect price-cap regulation. Absent is direction as to how a carrier can elect price-cap regulation in a post-CALLS environment.

Windstream bridges the gap by recommending a course of action that relies, in part, on the company’s current access rate structure and waiver of certain Commission

part, and remanded in part by Texas Office of Public Utility Counsel v. FCC, 265 F.3d 313 (5th Cir. 2001), on remand, Order on Remand, FCC 03-164, 18 FCC Rcd 14976 (2003).

⁷ The CALLS plan was crafted to last five years, but the Commission recently directed that it will remain effective until it is replaced. See *Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services: Order and Notice of Proposed Rulemaking*, WC Docket No. 05-25, RM-10593, FCC 05-18, 20 FCC Rcd 1994, at para. 2 (2005).

⁸ *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: Report and Order and Second Further Notice of Proposed Rulemaking*, CC Docket Nos. 00-256, 96-45, FCC 04-31, 19 FCC Rcd 4122, at para. 93 (internal citations omitted) (2004) (*MAG Order*).

rules.⁹ As part of a transition, certain of Windstream's access rates would be reduced,¹⁰ and according to Windstream, its conversion to price-cap will not have an adverse impact on the Universal Service Fund (USF).¹¹ Windstream's waiver requests are intended to enable receipt of access-replacement support after it transitions to price-cap regulation. The Windstream request to elect price cap regulation implies that it also desires to freeze separations factors in any of its rate of return study areas where it had not elected to freeze separations factors. ITTA also supports this implicit request while suggesting the Commission allow rate-of-return companies that have not previously done so the opportunity to freeze separations factors. While many rural rate-of-return companies may not be ready to elect price cap regulation, allowing them to freeze separations factors would be a step in that direction. This is of particular importance as the Commission is currently considering significant changes to intercarrier compensation rules as well as potential changes in USF high cost mechanisms. The outcome of these proceedings could have a significant impact on separations.

In sum, ITTA supports Windstream's Petition for relief that is enabled by regulatory flexibility. Flexibility enables carriers to structure products and pricing based on market conditions in a manner that maximizes consumer benefits; can facilitate network deployments; and can ease regulatory administration as may be appropriate to a particular carrier. A "one-size-fits all" approach to regulation is not viable in a dynamic

⁹ These include: 47 CFR 61.3(qq)(2) (Petition at 20-24); 47 CFR 54.901 and 54.903 (Petition at 27, 28, 30, 31); and, 47 CFR 54.802-806 (Petition at 31, 32).

¹⁰ Petition at 8, 19.

¹¹ Petition at 33, 34.

marketplace, and the Commission, consistent with prior findings,¹² is urged to enable carriers to move forward under the structures most appropriate for each carrier.

Certain of ITTA's members have individually, in the past several years, purchased local exchange assets from larger carriers, often in rural markets. ITTA supports adequate flexibility for carriers in order to meet diverse market conditions. Whereas Windstream seeks to consolidate its operations under a single regulatory structure, ITTA supports elimination of the "all-or-nothing" rule;¹³ moreover, ITTA supports an option of price-cap election on a study-area basis. ITTA's positions are not in conflict with the relief sought by Windstream. Rather, the intent in both regards is to ensure that carriers are accorded maximum flexibility. ITTA members have frequently met the need to upgrade aging and neglected facilities and introduced new and innovative service offerings. Regulatory flexibility in these instances enables a carrier to meet nimbly the competitive demands brought to bear by other market participants. Certainly, in an instance where it can be determined that a transition to a different regulatory construct harbors no harm, the Commission should grant expeditiously such relief as to encourage that effect. Inasmuch as the relief sought by Windstream should enable that carrier to operate in a manner it finds more efficient, and to the extent the transition

¹² See, i.e., *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent 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, FCC 01-304, 16 FCC Rcd 2872, at para 19 (2001) (internal citations omitted) (describing basis for making price-cap regulation optional for most incumbent LECs).*

¹³ See, i.e., *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: Reply Comments of the Independent Telephone and Telecommunications Alliance, CC Docket Nos. 00-256, 96-45, 98-77 (filed Mar. 18, 2002).*

described by Windstream should not have an adverse affect on the USF, ITTA supports the Petition of Windstream.

Respectfully submitted,

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