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December 20, 2010

Ms. Renee Jenkins
Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street, 13th Floor
Columbus, OH 43215-3793

Re: *In the Matter of the Commission's Investigation into Intrastate Carrier Access Reform Pursuant to Sub. S.B. 162,* Case No. 10-2387-TP-COI

Dear Ms. Jenkins:

Enclosed are the original and twelve (12) copies of the *Comments of Windstream Ohio, Inc. and Windstream Western Reserve, Inc.* for filing in the above-referenced matter. Please time stamp the extra copies and return them to our courier.

Thank you for your assistance.

Very truly yours,

BAILEY CAVALIERI LLC

Bill Adams

William A. Adams

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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Investigation into Intrastate Carrier Access Reform Pursuant to Sub. S.B. 162	)))	Case No. 10-2387-TP-COI

COMMENTS OF
WINDSTREAM OHIO, INC. AND WINDSTREAM WESTERN RESERVE, INC.

Windstream Ohio, Inc and Windstream Western Reserve, Inc. (collectively, "Windstream") respectfully submit the following Comments in response to the Public Utilities Commission of Ohio ("Commission") request for comment on the Commission Staff's proposed Access Restructuring Plan.[1]

OVERVIEW

Although Windstream believes that state regulatory commissions should await the Federal Communications Commission's ("FCC's") comprehensive national intercarrier compensation reform efforts, Windstream supports the Staff's Access Restructuring Plan as representative of how the general manner in which intercarrier compensation reform should be undertaken. The purpose of the Plan is to provide a framework to restructure intrastate switched access service rates, a goal that Windstream believes that the Plan accomplishes in a comprehensive, meaningful and rational manner.

As the Commission is aware, in early 2009, Congress directed the FCC to develop a National Broadband Plan ("NBP") to ensure every American has "access to broadband capability." Congress also required that this plan include a detailed strategy for achieving affordability and maximizing use of broadband to advance economic growth.[2] The NBP

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[1] *See In the Matter of the Commission's Investigation into Intrastate Carrier Access Reform Pursuant to Sub. S.B. 162,* Appendix A, Case No. 10-2387-TP-COI, filed November 3, 2010 (the "Plan").

[2] Connecting America: The National Broadband Plan, released March 16, 2010 (http://download.broadband.gov/plan/national-broadband-plan.pdf).

includes sweeping and wide-reaching recommendations, including recommendations for intrastate switched access rate reform. The FCC is reportedly currently on schedule to release a Notice of Proposed Rulemaking in the first quarter of 2011 to address, among other intercarrier compensation reform issues, intrastate switched access reform. Therefore, Windstream suggests that the Commission consider in its own intercarrier compensation reform efforts the fact that the FCC is undertaking a comprehensive national plan. This course of action is the most logical and effective use of all parties' resources and is most likely to yield the most beneficial results for the citizens of Ohio and the communities in which the companies operate.

THE PLAN

Proper intrastate switched access reform should include appropriate transitions and meaningful revenue replacement opportunities. Any rational approach to intercarrier compensation reform must include a transition from implicit subsidies, in the form of a portion of intrastate switched access charges, to explicit revenue sources over a period of time that ensures end-user customers are not adversely affected.

If the Commission does in fact choose to proceed with intrastate switched access reform, however, Windstream believes that the Plan, as proposed by Staff, is a reasonable path. The Plan reduces intrastate switched access rates while allowing modest end-user retail rate increases and establishing a state fund. This approach is consistent with the FCC's interstate switched access reform implemented through the CALLS and MAG plans.[3] Additionally, the information that

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[3] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Sixth Report and Order, Low-Volume Long Distance Users, Report and Order, Federal-State Joint Board on Universal Service, Eleventh Report and Order*, FCC 00-193, 15 FCC Rcd 12962 (2000); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking, Federal-State Joint Board on Universal Service, Fifteenth Report and Order, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Report and Order, Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers, Report and Order*, FCC 01-304, 16 FCC Rcd 19613 (2001). Through the CALLS and MAG plans, the FCC over a period of time removed implicit subsidies inherent in price cap and rate-of-return carriers' interstate switched access rates and replaced them with a combination of explicit subsidies (Interstate Access Support and Interstate Common Line Support, respectively) and modest increases in end user rates (SLCs).

would be obtained by the Commission through the data requests outlined in Appendices C and D of the Plan are sufficient to accomplish proper implementation.

The one aspect of the Plan that Windstream finds inconsistent with its view of access reform is the reduction of intrastate switched access rates to interstate rate levels in one step with no transition period. Transitioning end-users from no surcharge (as would be the case before the Plan is implemented) immediately to a surcharge that would fund the entire transition to interstate rates could result in detrimental rate shock.

Taken as a whole, however, Windstream believes the Plan will accomplish Staff's goal of restructuring intrastate switched access rates while maintaining affordable local service rates for end-user customers.

WINDSTREAM'S RESPONSES TO STAFF QUESTIONS

1) The Staff's proposed plan for the restructuring of ILEC access rates addresses the impact of access rate reduction only and does not address the impact of access line loss on the rural ILECs' provider-of-last resort obligation. Should the impact of access line loss on revenue be addressed as part of the access restructuring plan? What are the advantages and disadvantages of such an addition to the restructuring plan?

The Access Restructuring Plan appropriately excludes any provision for the impact of access line revenue loss. Windstream does not believe that the revenue impact from access line loss should be addressed as part of the access restructuring plan. Access line revenue loss is an extraneous issue that lies beyond the scope and purpose of the Plan.

The Plan provides a framework to allow rural incumbent local exchange carriers ("ILECs") to reduce access charges while maintaining affordable local rates.[4] The intent of the framework is limited to shifting implicit subsidies (certain intrastate switched access revenue) to explicit revenue sources (a combination of modest retail rate increases and a state fund) over a period of time. The revenue neutrality afforded rural ILECs through Sub. S.B. 162 applies to the

[4] Plan at 1.

reduction of intrastate switched access revenues due to rate reductions, not to revenue reductions caused by access line loss. The Plan should remain concisely focused on establishing the transition mechanism for intrastate switched access reform.

2) **Although the Staff's proposed plan does not require interconnected voice over internet protocol (VoIP) service providers to contribute to the restructuring fund, it requires a provider of telecommunications services to a provider of interconnected VoIP-enabled services to pay the mandatory monthly contribution related to those VoIP services. As VoIP traffic volumes terminating on the eligible ILECs' networks increases, is this a reasonable approach to obtain support from all beneficiaries of the eligible ILECs' networks?**

The Plan exempted VoIP providers from contributing to the restructuring fund based on the premise that the FCC had not yet "determine[d] that interconnected voice over internet protocol services may be subject to state regulation for universal service purposes."[5] In light of the FCC's November 5, 2010 declaratory ruling that "state universal service fund contribution rules for nomadic interconnected VoIP are not preempted if they are consistent with the [FCC's] contribution rules for interconnected VoIP providers,"[6] Windstream believes that the underlying premise of this question no longer holds. VoIP providers do, in fact, receive benefit from and impose costs on ILEC networks and therefore should be obligated, like other users of such networks, to contribute to the restructuring fund.

3) **The Staff's proposed plan includes a provision for recalculating the size of the restructuring mechanism for each eligible ILEC every two years after the initial restructuring mechanism becomes operational. Is this a reasonable time frame? If not, how often should the recalculation of the fund occur? Should the fund recalculations for price-cap eligible ILECs and nonprice-cap eligible ILECs be performed at different intervals?**

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[5] Plan at ¶ 9.

[6] *Universal Service Contribution Methodology Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, WC Docket No. 06-122, FCC 10-185, ¶ 1 (2010).

Windstream does not oppose recalculation of the fund disbursements every two years for both price-cap and nonprice-cap Eligible ILECs (as "Eligible ILECs" are defined by the Plan).

4) **The Staff's proposed plan includes different methodologies for recalculating the size of the access restructuring mechanism for price-cap eligible ILECs than the methodology proposed for nonprice-cap eligible ILECs. Is this a reasonable approach?**

Local exchange service providers should have a reasonable opportunity to recover intrastate switched access revenue reductions from their end-user customers to the extent practicable. This shift must be balanced against maintaining retail rates that are affordable and occur over a reasonable time period to avoid customer "rate shock."

With regard to price cap ILECs' recovery from their end users, the Plan includes a reasonable provision that serves to impute modest periodic retail rate increases against Eligible price cap ILEC fund disbursements. Windstream believes that at least its rates would remain affordable under the Plan and, therefore, consistent with the goals of universal service.

The Plan takes a different approach for non-price-cap Eligible ILECs. The fund disbursement recalculation for these carriers does not include an imputed retail rate increase. It does, however, adjust fund disbursements for those carriers based on the percentage change in their number of access lines. At this time, Windstream takes no position regarding the appropriateness of the method applied to non-price-cap Eligible ILECs.

5) **The Staff proposes a third-party administrator to oversee the access restructuring fund. How should this third-party administer be selected? What criteria for selecting a third-party administrator should be included in the selection process? Are there alternatives to a third-party administrator that the Commission should consider?**

Windstream takes no position at this time on the administrative details of the Plan, although Windstream supports administrative rules that permit reasonable flexibility while, at the same time, result in an efficient and transparent process.

6) **The Staff proposes that the projected administration costs be included in the fund size calculation. How should a reasonable initial administration cost amount be estimated? How should it be calculated on an ongoing basis?**

Please see Windstream's response to Question 5 above.

7) **The Staff proposal includes a provision to allow the Commission to revisit the access restructuring mechanism if the Federal Communications Commission (FCC) takes specific actions. Is this a reasonable approach?**

Windstream strongly supports the Commission revisiting its intercarrier compensation rules at such time as the FCC dramatically changes the intercarrier compensation regulatory landscape, as proposed in paragraph 17 of the Plan.

8) **In what ways, if any, can the Staff proposal be modified to address various contingencies including, but not limited to, carriers entering or exiting the Ohio market and mergers between and acquisitions of carriers doing business in Ohio?**

Windstream suggests that unique issues may be addressed by the Commission on an individual case basis through the existing waiver process.

9) **If a carrier believes that it is not a contributing carrier, how shall such a carrier inform that Commission of its belief? How should the Commission deal with such carriers?**

Windstream observes that the Commission has at its disposal a variety of formal and informal means of seeking justification from an entity for apparent noncompliance with the Commission's rules. For example, the Commission could utilize a procedure similar to the one used to end the switchless rebiller process. See all TP-ACE cases attached to Case No. 99-998-TP-COI, entered April 1, 2003.

CONCLUSION

As discussed above, although Windstream believes that intercarrier compensation reform is currently best addressed at the national level by the FCC, the Staff's proposed plan nevertheless is a well-reasoned approach to intercarrier compensation reform that appropriately recognizes the need to transition from implicit subsidies, in the form of a portion of intrastate switched access charges, to explicit revenue sources over a period of time that generally ensures end-user customers are not adversely affected.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing *Comments of Windstream Ohio, Inc. and Windstream Western Reserve, Inc.* by regular U.S. Mail this 20th day of December, 2010, upon:

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