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January 19, 2011

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 *Reply 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

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

In response to comments that were filed on December 20, 2010, Windstream Ohio, Inc. and Windstream Western Reserve, Inc. (collectively, "Windstream") file these reply comments to emphasize three points that it believes are critical to any intrastate access reform plan that the Public Utilities Commission of Ohio ("Commission") implements, considerations that are appropriately taken into account in the Commission Staff's proposed Access Restructuring Plan ("Plan"): (1) carriers should not be expected to look entirely to their end users for adequate replacement of intrastate switched access revenue lost as a result of any plan; (2) creation of an Access Restructuring Fund ("ARF") is not anticompetitive; and (3) wireless and voice over Internet protocol ("VoIP") providers should be required to contribute to the ARF.

1. CARRIERS SHOULD NOT BE EXPECTED TO LOOK ENTIRELY TO THEIR END USERS FOR ADEQUATE REPLACEMENT OF INTRASTATE ACCESS REVENUE LOST AS A RESULT OF ANY PLAN.

Under any plan that has the effect of substantially decreasing intrastate switched access revenues, incumbent local exchange carriers ("ILECs") are forced to adequately offset such revenue losses through end user rate increases to the extent that any new explicit funding mechanism is not established. To be sure, ILECs should be expected, at least to some degree, to look to their own end users as a revenue source. Public policy dictates, however, that ILECs serving predominantly rural areas ("RLECs") such as Windstream, should not be expected to look entirely to their own end users for such revenue, contrary to the assertions of, among others, Verizon.[1]

Telecommunications policy has as a fundamental goal of ensuring the widest availability of high-quality services at affordable rates. Intrastate switched access charges are a critical component of the RLECs' ability to shoulder the burden of serving as carriers of last resort in rural areas while retaining affordable end user basic local service rates. This becomes increasingly critical as competitors are able to selectively capture end users in such areas that are less expensive to serve (through both in-town cable or competitive local exchange carrier ("CLEC") networks or through selectively-deployed wireless networks) and RLECs are left "holding the bag" in outlying areas. While it may be appropriate to establish some sort of reasonable and affordable benchmark end user rate to which carriers are expected to raise retail rates in order to qualify fully for ARF distributions, raising end user rates to the full extent required by the reduction of intrastate switched access rates to interstate levels would render end user rates unaffordable to many citizens of Ohio and drive remaining ILEC customers in areas less expensive to serve to competitors that compete on a geographically selective basis.

When the Federal Communications Commission ("FCC") adopted the rate reductions that ultimately led to the existing interstate rate levels, to which intrastate switched access reform would lower intrastate rates, the FCC did require ILECs to increase the extent to which they relied on end users by increasing the Subscriber Line Charge ("SLC") caps. At the same time, however, the FCC recognized both in the CALLS and MAG Plans that the entirety of such recovery should not come from end users by creating Interstate Access Support ("IAS") and

[1] MCImetro Access Transmission Services LLC *et al.* ("Verizon") Comments at 11-17.

Interstate Common Line Support ("ICLS") as part of each respective plan.[2] Such explicit support mechanisms are similar in purpose to the proposed ARF. Windstream suggests that the Commission follow the same path used by the FCC in establishing the rates that the Commission would require RLECs to mirror and not look entirely to end users for adequate compensation for lost intrastate switched access revenue.

2. CREATION OF AN ARF IS NOT ANTICOMPETITIVE.

As discussed above, to ensure affordable rates in rural Ohio, particularly for the carriers that bear carrier of last resort obligations, some sort of ARF is necessary. RLECs are at a significant competitive disadvantage bearing carrier of last resort obligations in outlying parts of Ohio, particularly while maintaining relatively comparable rates between the urban and rural parts of their service territories. If the Commission continues to believe that ensuring that RLECs are able to sustain viable networks capable of serving high-cost areas of Ohio affordably, implementation of an ARF is critical. Moreover, the ARF would be established to ensure Ohioans located in high-cost areas would continue to have access to high quality services at affordable prices, not to provide ILECs with a competitive advantage. In fact, adoption of some sort of ARF is highly unlikely to unreasonably tilt the playing field in favor of ILECs in Ohio given their disproportionate service obligations. There is nothing anticompetitive about establishment of an ARF, contrary to that suggested by, among others, Sprint.[3]

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[2] As a technical matter, the increase in the SLC caps for price cap carriers in the CALLS Order did not require ILECs to increase SLCs. Generally, to the extent that an ILEC left potential SLC revenue allowed by the FCC's price cap rules "on the floor," however, such ILECs's IAS does not increase to compensate the ILEC for this decision.

[3] Sprint Communications Company *et al.* ("Sprint") Comments at 2-3, 9.

3. WIRELESS AND VOIP PROVIDERS SHOULD BE REQUIRED TO CONTRIBUTE TO THE ARF.

Wireless and VoIP providers should be required to contribute to the ARF, despite the protestations of a number of parties.[4] Both types of providers benefit from the continued financial viability of ILEC networks even as they reduce the number of ILEC subscribers through competition. The FCC has found it in the public interest to require wireless carriers to contribute to the federal Universal Service Fund ("USF") since the inception of such fund and, over the years, has increased its expectations of wireless carrier contribution.[5] In 2006, the FCC concluded that interconnected VoIP providers should also be required to contribute due to their reliance on the wireline network:

> The Commission has previously found it in the public interest to extend universal service contribution obligations to classes of providers that benefit from universal service through their interconnection with the PSTN. We believe that providers of interconnected VoIP services similarly benefit from universal service because much of the appeal of their services to consumers derives from the ability to place calls to and receive calls from the PSTN, which is supported by universal service mechanisms. As the Fifth Circuit explained, "Congress designed the universal service scheme to exact payments from those companies benefiting from the provision of universal service." Like other contributors to the Fund, interconnected VoIP providers are "dependent on the widespread telecommunications network for the maintenance and expansion of their business," and they "directly benefit[] from a larger and larger network." It is therefore consistent with Commission precedent to impose obligations that correspond with the benefits of universal service that these providers already enjoy.[6]

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[4] *See* Verizon Comments at 18-20, T-Mobile Central, LLC and VoiceStream Pittsburgh, LP Comments at 12-13, Sprint Comments at 9, Ohio Cable Telecommunications Association Comments at 5-6

[5] *See Universal Service Contribution Methodology*, FCC 06-94, ¶¶ 23-33, 71 FCC Rcd 38781 (2006)("*USF Contribution Order*")(increasing the minimum "safe harbor" for determining the percentage of wireless revenue subject to the USF contribution factor).

[6] *USF Contribution Order* at ¶¶ 43 (footnotes omitted).

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Contrary to the assertions of the Ohio Cable Telecommunications Association ("OCTA"),[7] the Commission has the authority to require VoIP providers to contribute to the ARF. OCTA ignores the fact that Section 4927.03 maintains Commission authority over VoIP providers if "the commission, upon a finding that the exercise of the commission's authority is necessary for the protection, welfare, and safety of the public, adopts rules specifying the necessary regulation."[8] Ensuring a broad and stable ARF contribution base that includes entities that benefit from the networks supported by the ARF is undoubtedly necessary for the protection of public interest of maintaining a reliable telecommunications network that remains affordable to the citizens of Ohio.

Respectfully submitted

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[7] OCTA Comments at 5-6.

[8] Ohio Rev. Code 4927.03(A).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing *Reply Comments of Windstream Ohio, Inc. and Windstream Western Reserve, Inc.* via electronic transmission this 19th day of January, 2011, upon:

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