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Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room (2nd Floor)
Harrisburg, PA 17120

Re: Petition of Core Communications, Inc. for Arbitration of Interconnection Rates,
Terms And Conditions With Windstream Pennsylvania, Inc. Pursuant to 47
U.S.C. § 252(b); Docket No. A-310922F7004
Supplemental Brief of Windstream Pennsylvania, Inc.

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Supplemental Brief of Windstream Pennsylvania, Inc. in the above-captioned proceeding. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Sincerely,

THOMAS, LONG, NIESEN & KENNARD

By:

Norman J. Kennard



NJK:slt

cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of Core Communications, Inc. for :
Arbitration of Certain Terms and :
Conditions of the Proposed Agreement With : Docket No. A-310922F7004
Windstream Pennsylvania, Inc., Pursuant to :
the Communications Act of 1934, as amended:
by the Telecommunications Act of 1996 :**

**SUPPLEMENTAL BRIEF OF
WINDSTREAM PENNSYLVANIA, INC.**

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Dated: January 11, 2013

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ATTACHMENT 1 - Issue Grid

I. STATEMENT OF CASE

On or about October 21, 2005, Core Communications, Inc. (“Core”) requested to enter into negotiations for an interconnection agreement with Windstream Pennsylvania, Inc. (“Windstream”).¹ On March 30, 2006, Core filed a Petition for Arbitration pursuant to 47 U.S.C. §252(b)² requesting that the Pennsylvania Public Utility Commission (“Commission”) arbitrate the terms and conditions for interconnection. The parties were unable to reach resolution on twelve specific issues which were arbitrated before Administrative Law Judge (“ALJ”) David A. Salapa. Judge Salapa issued his Recommended Decision (“RD”) on December 18, 2007. Core filed Exceptions on January 29, 2008 and Windstream filed Replies to Exceptions on February 8, 2008.

On November 5, 2008, the Federal Communications Commission (“FCC”) released an order confirming the existing ISP compensation regime and limiting its decision on an alternative basis for the FCC’s jurisdiction over ISP traffic.³ At the request of the Commission, on January 26, 2009 and February 6, 2009, the parties filed supplemental comments and reply comments addressing the impact of the FCC’s order on the open issues in this proceeding.

On November 18, 2011, the FCC released an order which comprehensively reformed and modernized the intercarrier compensation and the federal universal service support systems.⁴ With regard to intercarrier compensation, the FCC adopted a bill and keep framework for the exchange of telecommunications traffic. The *Transformation Order* provides a six-year

¹ Originally Alltel Pennsylvania, Inc., the name was changed. ALJ RD at 3.

² 47 U.S.C. § 252(b).

³ *In the Matter of High-Cost Universal Service Support et al.*, WC Docket No. 05-337 et al., FCC 08-262, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475 (2008) (“*FCC Second ISP Remand Order*”).

⁴ *In Re Connect America Fund, et al.*, WC Docket No. 10-90 et al. (FCC. Rel. Nov 18, 2011), Report and Order and Further Notice of Proposed Rulemaking, FCC 11-61, 26 FCC Rcd 17663 (2011) (“*Transformation Order*”).

transition for price-cap carriers and a nine-year transition for rate-of-return carriers to bill and keep. The FCC did not change the types of traffic that are subject to access or reciprocal compensation charges. Interexchange traffic continues to be subject to access charges while intraexchange (local) traffic continues to be subject to reciprocal compensation. Both access and reciprocal compensation rates are subject to the transition towards bill and keep.

The *Transformation Order* did not make any changes to the interconnection obligations of telecommunications carriers. The FCC, through the *Transformation Order* and its accompanying Further Notice of Proposed Rulemaking, is seeking comments regarding whether any upgrades are needed to interconnection obligations resulting from the bill and keep regime. Specifically, the FCC is asking whether it needs to prospectively modify Point of Interconnection rules in the transition towards bill and keep.⁵ In order to provide such guidance, the FCC is seeking comment on the appropriate network edge and related issues.⁶ Interconnection issues, including Points of Interconnection, will be addressed by the FCC at a later time and carriers are expected to operate under the existing interconnection rules until then.

On October 4, 2012, by Secretarial Letter, the Commission requested Supplemental Briefs to address specific points, among other things, the impacts of the *Transformation Order* on the outstanding issues in this proceeding. This Supplemental Brief is filed in response thereto.

⁵ *Transformation Order* at ¶¶ 1316 and 1318.

⁶ *Id.* at ¶ 1321.

II. BRIEF

A. Request for Extra Record Factual Development.

This case has been litigated as an “on-the-record” proceeding. Testimony was submitted and was subject to discovery and cross examination (waived). The Recommended Decision is based upon this record evidence. While the Secretarial Letter also solicits “technical evidentiary presentations” in the form of affidavits and schematic diagrams, Windstream’s presentation in this Supplemental Brief is limited to legal issues and no further factual development is offered. Were any participant to seek to adduce new or additional facts, then the case should be remanded to the ALJ for such purpose to preserve the parties’ due process rights. It would be inappropriate to admit additional evidence outside of the formal record.

B. Status of Negotiations and Merger Conditions.

On November 5, 2012 and November 20, 2012, Windstream and Core conducted further negotiations in an attempt to resolve some or all of the open issues. In addition, on November 27, 2012 Windstream provided Core certain information to assist in resolving the outstanding disputes. Core is in the process of reviewing such information. To date, the parties have not been able to resolve any of the open issues but discussions are ongoing.

Windstream is not subject to any merger conditions that would affect the open issues in this proceeding.

C. Disputed Issue Discussion.

1. GTC Issue No. 3 - Security Deposit

a. Background

Judge Salapa found in favor of Core. Windstream did not object to this finding and there is no dispute remaining on this issue.

2. NIA Issue No. 1 – Points of Interconnection

a. Background

The crux of this issue is the geographic location for the Point of Interconnection (“POI”). Core proposes dual POIs rather than a single POI. Core would require each party designate a POI on its network and require the other party to deliver its originating traffic to the terminating party’s designated POI. Windstream objects to being forced to bear the costs of delivering to Core’s single POI network, where those POIs are not on Windstream’s network.⁷

Judge Salapa found in favor of Windstream noting the one way nature of the calling (dial-up Internet traffic directed at Core’s switch location locate on Verizon’s network) with no traffic originated by Core.⁸ The ALJ also found that Windstream's language is consistent with both federal law and Commission decisions. “In [*USLEC*]⁹ the Commission stated that the

⁷ See also Windstream Reply to Exceptions (“Reply Exceptions”) at 9-12 (Core Exception No. 3).

⁸ ALJ RD at 16-17 (...the facts as set forth in this proceeding indicate that there is no need for a dual connection point arrangement. Core provides service for ISPs. Its customers do not originate any traffic. Its current business plan does not contemplate providing service to any customers that would originate traffic. It will not be delivering any traffic to Windstream. Therefore, it has no need to designate a point on Windstream's network where it will deliver traffic.”)

⁹ *Petition of US LEC of Pennsylvania, Inc. for Arbitration with Verizon Pennsylvania, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. A-310814F7000, (Order entered January 18, 2006).

FCC's binding regulation at 47 C.F.R. § 51.305(a)(2) specifies that an interconnection point must be within the incumbent's network.”¹⁰ Core’s case citations were found to be inapposite.

b. Impact of FCC Order

While the FCC is seeking additional comments regarding *possible* changes to the POI rules as the industry transitions towards bill and keep,¹¹ the *Transformation Order* did not make any changes to the existing rules governing POIs. Rule 47 C.F.R. 51.305 is unrevised and *still* requires that the POI be located at any technically feasible point “within the incumbent LEC’s network.” The law has not changed subsequent to ALJ Salapa’s ruling.

c. Other Interim Authority

Windstream is not aware of any court decision or state commission decision that addresses this issue in the context of interconnection between an ILEC and a CLEC.

d. Resolution in Other States

Neither Windstream nor any of its ILEC or CLEC affiliates has entered at any time into interconnection or commercial agreements that establish the POI outside of the ILEC’s network.

e. Conclusion

ALJ Salapa’s ruling on NIA Issue No. 1 should be affirmed by the Commission.

3. NIA Issue No. 4 – Direct Connection Threshold

a. Background

This issue involves the point at which the volumes of traffic would require direct interconnection of the parties’ networks. Both parties agree that initially indirect interconnection

¹⁰ ALJ RD at 16.

¹¹ The FCC did not make any revisions or modifications to the interconnection rules, including those related to Points of Interconnection or network edges. The FCC is seeking further comments on these issues, and changes, if any, will be addressed at a later time. See *Transformation Order* at ¶¶ 1316, 1318 and 1321.

is appropriate. Core argues that it be permitted to indirectly interconnect (through Verizon) with no volume restriction (i.e., indefinitely). Windstream proposes that at a threshold of one DS1 volume of traffic (approximately 257,000 minutes in a month) direct connection should be required to the particular end office exceeding the DS1 volume of traffic.¹²

ALJ Salapa found that indirect interconnection is appropriate where “small volumes of traffic are exchanged, [h]owever once the volumes of traffic reach a significant level, the parties should directly interconnect so that parties can control their own facilities and expand their capacity as needed.”¹³ A DS1 of traffic “is significant and justifies direct connection.”¹⁴

b. Impact of FCC Order

The FCC’s *Transformation Order* did not address the current precedent or industry standards governing direct and indirect interconnection.

c. Other Interim Authority

Windstream is not aware of any court or state commission decision that alters current industry practices or previous court or state commission rulings. In fact, as stated in Windstream’s Main Brief, this Commission has upheld a DS1 volume threshold for the establishment of direct interconnection.¹⁵

d. Resolution in Other States

Since the filing of exceptions in this proceeding, Windstream and its ILEC affiliates have executed Interconnection Agreements¹⁶ with AT&T that require AT&T to establish direct end

¹² See also Windstream Reply Exceptions at 12-13 (Core Exception No. 4).

¹³ ALJ RD at 19.

¹⁴ *Id.*

¹⁵ Windstream Main Brief at 36.

¹⁶ Windstream and its ILEC affiliates have executed and filed with the respective state commission Interconnection Agreements with AT&T CLEC in the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Missouri,

office facilities if the end office *does not* subtend a Windstream ILEC tandem and traffic to that particular end office exceeds two (2) DS1 levels of traffic for three (3) consecutive months. If the end office subtends a Windstream ILEC tandem, AT&T is required to establish direct interconnection to the Windstream ILEC tandem and also is required to establish direct connections to that end office if it exceeds nine (9) DS1 level of traffic for three (3) consecutive months.¹⁷

It is important to note that the Interconnection Agreement between Windstream and its ILEC affiliates with AT&T *does not* permit the use of virtual NXX (“VNXX”).¹⁸ Further, the Interconnection Agreement between Windstream and its ILEC affiliates with AT&T includes both bill and keep provisions that apply when local traffic is roughly balanced and provisions to invoke reciprocal compensation when local traffic is no longer roughly balanced.¹⁹

As the Commission is fully aware, a negotiation is a give and take endeavor that results in a careful compromise between carriers. For this reason, the FCC does not permit CLECs to adopt portions of Interconnection Agreements; they must adopt them in their entirety.²⁰ Windstream cautions the Commission not to alter this delicate balance by requiring Windstream to require offering portions of the AT&T Interconnection Agreement to Core.

e. Conclusion

ALJ Salapa’s ruling on NIA Issue No. 4 should be affirmed by the Commission.

Mississippi, North Carolina, Nebraska, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, South Carolina and Texas.

¹⁷ Attachment 4: Network Interconnection Architecture Section 2.2.

¹⁸ Attachment 12: Compensation Section 1.2.

¹⁹ Attachment 12: Compensation Section 3.

²⁰ 47 C.F.R. § 51.809.

4. NIA Issue No. 5 – Payment for 3rd Party Tandem Services

a. Background

Core proposes a provision that requires each party to arrange and pay for third party tandem services regarding its own originating traffic. Windstream contends that the third party tandem provider is not a party to this interconnection agreement and the agreement should not contain language dictating the terms and conditions of relationships with third parties who are not parties to the interconnection agreement.²¹

ALJ Salapa rejected Core’s language as it addresses issues involving third parties and “is immaterial to an interconnection agreement between Core and Windstream,” observing that “[e]ach party can make their own arrangements with third party transiting providers.”²²

b. Impact of FCC Order

Again, the *Transformation Order* does not address this issue.

c. Other Interim Authority

Windstream is not aware of any court or state commission decisions that address this specific issue.

d. Resolution in Other States

Neither Windstream nor any of its ILEC or CLEC affiliates have at any time entered into interconnection agreements or commercial agreements that establish payment obligations of the parties to the interconnection agreement to third party tandem providers.

e. Conclusion

ALJ Salapa’s ruling on NIA Issue No. 5 should be affirmed by the Commission.

²¹ See also Windstream Reply Exceptions at 13-14 (Core Exception No. 5).

²² ALJ RD at 21.

5. ICC Issue No. 1 – VNXX Call Rating

a. Background

Core argues that VNXX service provides a virtual presence for a customer in a local calling area where that customer does not have a physical presence and that calls should be rated, not based upon the physical destination of the call, but rather the “virtual” location (i.e., the exchange where Core opens the number. Windstream argues that the NXX refers to a central office code and, pursuant to standard industry practice, an NXX code generally corresponds to a particular geographic area served by a local exchange carrier.²³ Core has no presence in Windstream ' s territory, rather Core uses a telephone number to appear as if it is a local number in Windstream ' s exchange. Further Windstream states that the issues surrounding jurisdiction and compensation of VNXX traffic was not in dispute during the negotiations between Core and Windstream.²⁴

The ALJ found that the FCC’s the *ISP Remand Order* addresses ISP-bound traffic only within a local calling area and that the use of VNXX does not transform a toll call into a local call.²⁵ The use of VNXX promotes the regulatory arbitrage that the *ISP Remand Order* disapproved.²⁶

Adopting Core's position would mean that all of the traffic terminating with Core's ISP customers would be the subject of reciprocal compensation to be paid by Windstream. In addition, as Windstream contends, Windstream would bear the costs of the transport path Core would use and associated transport costs.

²³ See also Windstream Reply Exceptions at 14-18 (Core Exception No. 6).

²⁴ Windstream Main Brief at 38. Windstream reserves its rights that Core did not properly raise the compensation and jurisdictional issues of VNXX traffic during the negotiations and therefore Core is precluded from including these issues in the arbitration and the Commission cannot consider these issues in the context of this arbitration.

²⁵ ALJ RD at 24-27.

²⁶ ALJ RD at 25.

Windstream's customers would bear the costs of the reciprocal compensation paid to Core plus the costs of the transport path and associated costs.²⁷

While CORE argues that its costs would increase were the call rated on its physical (and not virtual assignment of the number), the *ISP Remand Order* applies to ISP-bound traffic only within a local calling area and “it is consistent with the *ISP Remand Order* that Core would recover its costs from its customers that use VNXX.”²⁸

b. Impact of FCC Order

The FCC’s *Transformation Order* did not discuss any jurisdictional or compensation issues associated with the use of virtual NXXs. All changes to reciprocal compensation rules were made only to effectuate the rate reductions towards a bill and keep regime. The FCC asserted jurisdiction over access and non-access traffic under the auspices of Section 251(b)(5) of the Telecommunications Act.²⁹ However, the FCC retained the existing jurisdictional treatment that existed prior to the *Transformation Order* for access and non-access traffic for purposes of the intercarrier compensation transition. Specifically, the FCC added definitions for Non-Access Telecommunications Traffic and Non-Access Reciprocal Compensation.³⁰ The definition of Non-Access Telecommunications Traffic excludes interstate or intrastate exchange access, information access or exchange services for those services.³¹ Non-Access Reciprocal

²⁷ ALJ RD at 25.

²⁸ ALJ RD at 26.

²⁹ *Transformation Order* at ¶ 761.

³⁰ 47 C.F.R. § 51.701(b) and (e).

³¹ *Id.*

Compensation is defined as a bill and keep arrangement or a compensation arrangement for the transport and termination of Non-Access Telecommunications Traffic.³²

As explained in detailed in Windstream’s Brief and in Section C.7 below (ICC Issue No. 4), ISP-bound traffic provided via VNXX arrangements is considered interexchange traffic and does not fall within the definition of Non-Access Telecommunications Traffic. As a result, ISP-bound VNXX traffic is not subject to Non-Access Reciprocal Compensation and, instead, continues to be subject to the application of access charges. Of course, this traffic is now subject to the rate transition towards bill and keep as set forth in the *Transformation Order*.

c. Other Interim Authority

Windstream is not aware of any court or state commission decisions that address this specific issue.

d. Resolution in Other States

Neither Windstream nor any of its ILEC or CLEC affiliates have at any time used VNNX arrangements to establish a toll call as a local call for intercarrier compensation purposes. See Discussion of ICC Issue No. 4 at C.7.

e. Conclusion

ALJ Salapa’s ruling on ICC Issue No. 1 should be affirmed by the Commission.

6. ICC Issue No. 3 – Traffic Balance for True Local Traffic

a. Background

Windstream’s proposed ICA language in Section 3.0 of Attachment 12 would provide compensation mechanisms both for instances where local traffic is balanced (*i.e.*, subject to bill and keep) and where local traffic is not balanced (*i.e.*, subject to reciprocal compensation).

³² *Id.*

Core’s language on this issue would preclude bill and keep and would presume that the traffic between the parties is at all times not roughly balanced.³³

The ALJ recognized that “[t]his dispute is tied to the previous issue of how to classify VNXX enabled ISP-bound calls.”³⁴ Consistent with his ruling on ICC Issue 1 and recognizing that “[s]ince Core has indicated that most if not all of its traffic is VNXX enabled ISP-bound traffic,” the ALJ found that very little local traffic will be exchanged. He ruled, therefore, that under “these circumstances, it is reasonable for the Commission to presume, at least initially, that the traffic will be roughly balanced between the two carriers and will remain so. Core has not presented sufficient evidence pursuant to 47 C.F.R. §51.713(c) to rebut this presumption.”³⁵

b. Impact of FCC Order

As explained in Section C.5 *supra* (ICC Issue No. 1), the FCC’s *Transformation Order* amended several of the reciprocal compensation rules to incorporate the rate transition towards bill and keep but retain the type of traffic that is subject to either access or reciprocal compensation. To the extent Non-Access Telecommunications Traffic is roughly balanced, it makes sense to operate under a bill and keep regime since the billings between the parties would render bills of approximately the same amounts.³⁶

Even though 47 C.F.R. §51.713 was amended to remove sections (b) and (c), which permitted state commissions to impose a bill and keep arrangement if the traffic subject to reciprocal compensation was roughly balanced, the rule itself does not prohibit the establishment of bill and keep arrangements. In fact, when establishing an ILEC’s reciprocal compensation

³³ See also Windstream Reply Exceptions at 19 (Core Exception No. 7).

³⁴ ALJ RD at 28.

³⁵ *Id.*

³⁶ Windstream Main Brief at 45.

rates, 47 C.F.R. §51.705(b)(2) provides that state commissions may elect to establish a bill and keep arrangement. Windstream submits that a bill and keep arrangement should be established if the traffic subject to reciprocal compensation is roughly balanced.

c. Other Interim Authority

Windstream is not aware of any court or state commission decisions that have provided additional guidance on this issue.

d. Resolution in Other States

Neither Windstream nor any of its ILEC or CLEC affiliates have at any time entered into interconnection agreements or commercial agreements that establish reciprocal compensation payment obligations where local traffic is roughly in balance.

e. Conclusion

ALJ Salapa's ruling on ICC Issue No. 3 should be affirmed by the Commission.

7. ICC Issue No. 4 – Scope of *ISP Remand Order*

a. Background

Similar to ICC Issue No. 1, this dispute involves an interpretation of the scope of the FCC's *ISP Remand Order*. Core argues that the ruling applies to *all* ISP-bound traffic, including calls that would otherwise be rated as toll traffic to which access charges would otherwise apply. Windstream asserts that the *ISP Remand Order* does not encompass traffic exchanged through VNXX arrangements. Since Windstream has not elected the *ISP Remand Order* rate, the interconnection agreement should reflect compensation of local ISP traffic at Windstream's reciprocal compensation rate and for VNXX traffic Windstream would be compensated pursuant to Windstream's access charges.³⁷

³⁷ See also Windstream Reply Exceptions at 6-9 (Core Exception No. 2) and 20-21 (Core Exception No. 8).

ALJ Salapa ruled in favor of Windstream. “Contrary to Core’s assertions, its definition is not consistent with the *ISP Remand Order*” and “Core has not cited any Commission decisions indicating that the Commission ever intended that all ISP-bound traffic should be subject to reciprocal compensation.”³⁸

b. Impact of FCC Order

The FCC’s *Transformation Order* did not address, clarify, or update the FCC’s findings in the *ISP Remand Order* and its application to ISP-bound traffic using VNXX arrangements. The FCC asserted jurisdiction over access and non-access traffic and provided a transition towards bill and keep. However, with the exception of VoIP traffic, the FCC was careful not to alter the types of traffic that were subject to interstate or intrastate access charges or reciprocal compensation. As mentioned in Section C.5. above, Non-Access Telecommunications Traffic (i.e. traffic subject to reciprocal compensation), excludes telecommunications traffic that is interstate or intrastate exchange access, such as the VNXX traffic at issue here.³⁹ Accordingly, the previous conclusion that the *ISP Remand Order* did not incorporate compensation requirements for ISP-bound VNXX traffic continues to be true.

c. Other Interim Authority

Level 3 Communications, LLC v. Public Utility Commission of Oregon

In *Level 3 Communications, LLC v. Public Utility Commission of Oregon*⁴⁰, the key question before the District Court was whether ISP-bound traffic using VNXX arrangements is subject to the reciprocal compensation requirements of Section 251(b)(5) of the

³⁸ ALJ RD at 35.

³⁹ 47 C.F.R. § 51.701(b)(1).

⁴⁰ *Level 3 Communications, LLC v. Public Utility Commission of Oregon*, 855 F. Supp. 2d 1179 (US District Court for the District of Oregon Portland Division 2011).

Telecommunications Act of 1996. The District Court correctly held that ISP-bound traffic using VNXX arrangements was not subject to reciprocal compensation. At the time of the arbitration before the Oregon Commission, the use of virtual NXX numbers was not permitted in Oregon.⁴¹ The Arbitrator provided, and the Oregon Commission accepted, the following recommendations: first, to lift the ban on the use of virtual NXXs; second to require Level 3 (the CLEC in this case) to be responsible for all costs associated with transporting VNXX traffic; and third, it rejected Level 3's request for reciprocal compensation from Qwest for VNXX traffic. Level 3 appealed the Oregon Commission's findings.⁴²

The District Court upheld the Oregon Commission's order in its entirety relying in part in case law cited by Windstream in its Main Brief. Specifically the court held that the *ISP Remand Order* and subsequent decisions, including the Mandamus Order, did not impose any reciprocal compensation requirements on ISP-bound traffic routed via VNXXs.⁴³ According to the District Court, this holding is consistent with those from the courts in the First, Ninth and D.C. circuits.⁴⁴

Global NAPs, Inc. v. Verizon New England, Inc.

As discussed in Windstream's Main Brief, the United States Circuit Court of Appeals for the First Circuit held in 1996 that the FCC's focus in the *First ISP Remand Order* was exclusively upon customers accessing dial-up ISPs located *in the same local calling area*.⁴⁵ In November 2008, the FCC released an order confirming the existing ISP compensation regime

⁴¹ Id. at 1183.

⁴² Id. at 1184.

⁴³ Id. at 1198.

⁴⁴ Id. Citing *Mandamus Order in Core Commc'ns, Inc. v. Fed. Commc'ns Comm'n*, 592 F.3d 139 (D.C. Cir. 2010), *Global NAPs, Inc. v. Verizon New England, Inc.*, 444 F.3d 59 (1st. Cir. 2006) and *AT&T Commc'ns of Cat., Inc. v. Pac-West Telecomm, Inc.*, 651 F.3d 980 (9th Cir. 2011).

⁴⁵ Windstream Main Brief at 47.

and limiting its decision on an alternative basis for the FCC's jurisdiction over ISP traffic.⁴⁶ It was this FCC Order which the Parties here addressed in their comments filed with the Commission in early 2009.

In proceedings in Massachusetts, Global Naps argued that this new order clarified that the *First ISP Remand Order* was, in fact, inclusive of all ISP-bound traffic, including interexchange VNXX traffic, for intercarrier compensation purposes.⁴⁷ The First Circuit rejected this view, finding that the FCC's November 2008 order "simply clarified the legal basis for the authority the FCC has asserted in earlier orders to regulate local ISP traffic and prevent regulatory arbitrage."⁴⁸ In fact, according to the First Circuit, the November 2008 Order's "express purpose was to justify-not change-a particular rate system."⁴⁹ As a result, the First Circuit's reiterated that the *FCC Second ISP Remand Order* addressed ***only compensation for local ISP traffic***.⁵⁰ This is consistent with the position taken by Windstream consistently throughout this arbitration.

d. Resolution in Other States

Windstream and its ILEC affiliates have entered into Interconnection Agreements with Verizon Business that established reciprocal compensation arrangements for ISP-bound traffic, regardless of whether a VNXX arrangement is employed.⁵¹ The agreement with Verizon Business provides a lower reciprocal compensation rate for ISP-bound traffic than for other local

⁴⁶ *FCC Second ISP Remand Order*, supra.

⁴⁷ *Global NAPs, Inc. v. Verizon New England, Inc.*, 603 F.3d 71 (1st Cir. 2010) at 81.

⁴⁸ *Id.* at 82.

⁴⁹ *Id.*

⁵⁰ *Id.* at 83.

⁵¹ Amendment effective November 1, 2008 Section 1.0 to ICAs involving ILEC entities Windstream owned as of November 1, 2008 in Alabama, Florida, Kentucky (excluding Windstream Kentucky West, LLC), Mississippi, Nebraska, North Carolina, Ohio, Pennsylvania and South Carolina.

traffic (\$0.0009 v. \$0.01066) and requires Verizon Business to establish direct interconnection to Windstream's end office if it exceeds a DS1 level of traffic.⁵² As mentioned in Section C.3. above, negotiations are a give and take endeavor that results in a careful compromise between carriers. For this reason, the FCC does not permit CLECs to adopt portions of Interconnection Agreements; they must adopt them in their entirety.⁵³ Windstream cautions the Commission to alter this delicate balance by requiring Windstream to require offering portions of the Verizon Business Interconnection Agreement to Core.

Windstream's CLEC affiliates do use VNXX under the provisions of some of their Interconnection Agreements, but, as discussed in Section C.2. above, the Point of Interconnection is located in ILEC territory. With regards to intercarrier compensation, reciprocal compensation is not applicable to such VNXX traffic. In fact, USLEC of Pennsylvania, Inc., a CLEC affiliate of Windstream, pays originating access to Verizon Pennsylvania, Inc. for toll traffic originated via VNXX arrangements.⁵⁴

e. Conclusion

ALJ Salapa's ruling on ICC Issue No. 4 should be affirmed by the Commission.

8. ICC Issue No. 5 – Numbering Assignment

a. Background

Windstream's language in Section 5.0 of ICA Attachment 12 requires Core to establish different NXX codes for each exchange or group of exchanges that share a common mandatory

⁵² Id. at Section 1.2.2.

⁵³ 47 C.F.R. § 51.809.

⁵⁴ Interconnection Agreement between Verizon Pennsylvania, Inc. and USLEC of Pennsylvania, Inc., Attachment X, Section 7.2.9. This Interconnection Agreement was arbitrated and the Commission's order required that VNXX traffic be subject to a bill and keep arrangement. See Petition of *US LEC of Pennsylvania, Inc. for Arbitration with Verizon Pennsylvania Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. A-310814F7000, Opinion and Order.

local calling scope.⁵⁵ Core believes this is an undue imposition.

ALJ Salapa found that telephone numbers serve as proxies for geographic location for billing purposes and that “Windstream has no other method of determining whether a call is local when Core uses VNXX. Core's use of VNXX will mask the actual location of its customers and prevent Windstream from determining appropriate compensation.”⁵⁶ He ruled, therefore, in favor of Windstream.

b. Impact of FCC Order

The FCC’s *Transformation Order* did not address this issue.

c. Other Interim Authority

Windstream is not aware that any other court or other state commission have addressed this issue since the Recommended Decision was issued.

d. Resolution in Other States

Neither Windstream nor any of its ILEC or CLEC affiliates have entered at any time into interconnection agreements or commercial agreements that would allow the use of the same NPA-NXX codes for different exchanges.

e. Conclusion

ALJ Salapa’s ruling on ICC Issue No. 5 should be affirmed by the Commission.

9. Definition Issue Nos. 1-4

a. Background

The substance of several definition contained in the draft ICA have also become

⁵⁵ See also Windstream Reply Exceptions at 21-22 (Core Exception No. 9).

⁵⁶ ALJ RD at 31.

platforms for extension of the POI and VNXX disputes described above.⁵⁷ ALJ Salapa adopted Windstream's proposed definitions in order to ensure consistency with the other substantive ICA language adopted in the Recommended Decision.⁵⁸

b. Impact of FCC Order

The FCC's *Transformation Order* simply is transitioning switched access and reciprocal compensation rates towards a bill and keep regime. Even though the FCC adopted two new different definitions, Non-Access Telecommunications Traffic and Non-Access Reciprocal Compensation, the same traffic that was subject to access charges remains subject to access charges and the same traffic that was subject to reciprocal compensation remains subject to reciprocal compensation. As a result, including the definitions of "Exchange Services", "intra-LATA toll traffic" is appropriate and Core's amorphous definition of "Section 251(b)(5) Traffic" continues to be unnecessary and confusing.

With regards to the definition of Interconnection Point, it is imperative that the definition is included in the Interconnection Agreement. First, the Telecommunications Act and the FCC rules provide that the point of interconnection must be at any technically feasible point in the ILECs network⁵⁹ and the FCC made no changes at this time to any of the interconnection obligations set forth in Section 251(c) of the Act and accompanying rules. The FCC is seeking comment on possible changes to the interconnection obligations, particularly as it relates to IP-IP interconnection; however it was explicit that at this time it was not changing its interconnection rules. In fact, as it relates to the Rural Transport rule applicable between ILECs and CMRS providers, the FCC clarified that the "Commission did not intend to affect the existing rules

⁵⁷ See also Windstream Reply Exceptions at 22 (Core Exception Nos. 10-13).

⁵⁸ ALJ RD at 31-36.

⁵⁹ See 47 U.S.C. §251(c)(2)(B); See also 47 C.F.R. §51.305(a)(2).

governing points of interconnection (“POIs”) between CMRS providers and price cap carriers. Indeed the Commission sought additional comment on issues concerning POI obligations in the Further Notice of Proposed Rulemaking.”⁶⁰ Until the FCC issues a final order once comments on this issue are filed in the Further Notice of Proposed Rulemaking, the POI must be clearly defined in the Interconnection Agreement to ensure that it occurs at any technically feasible point in Windstream’s network.

c. Other Interim Authority

Windstream is not aware of any other courts or state commissions addressing these definitional issues.

d. Resolution in Other States

Since the filing of exceptions, Windstream and its ILEC affiliates have executed ICAs with other CLECs that incorporate the definitions proposed by Windstream in this proceeding. See Interconnection Agreements between Windstream and AT&T approved by the Commission in October 2009 and between Windstream and Verizon Business approved by the Commission in July 2005.⁶¹ Windstream does not have 251(b)(5) Traffic defined in any interconnection agreement.

e. Conclusion

ALJ Salapa’s ruling on Definitional Issue Nos. 1-4 should be affirmed by the Commission.

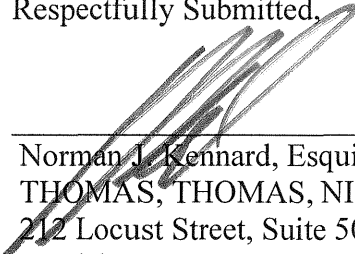
⁶⁰ *In Re Connect America Fund, et al.*, WC Docket No. 10-90 et al., Order, DA 12-147, 27 FCC Rcd 605 at ¶ 28 (Rel. February 3, 2012).

⁶¹ The definition of IntraLATA Toll is slightly different in the AT&T and Verizon Business interconnection agreements. However it would be acceptable to Windstream to use with Core the definition of IntraLATA toll used in the AT&T and Verizon Business interconnection agreements.

III. CONCLUSION

Windstream requests that the Commission affirm ALJ Salapa in all respects.

Respectfully Submitted,



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Dated: January 11, 2013

ATTACHMENT 1

Unresolved Arbitration Issues between Windstream and Core in Pennsylvania

Issue	Windstream's Position	Legal Authority
<p>1. <u>GT&C Issue 3</u>: Should Windstream be permitted to require Core to post a security deposit prior to Windstream providing service or processing orders and to increase said deposit if circumstances warrant or forfeit same in the event of breach by Core?</p>	<p>Windstream has the right and fiduciary duty to review the financial stability of a company prior to providing service and requesting a deposit if necessary to ensure payment of outstanding charges. In fact, this is no different than any other company that requests a deposit from a customer due to a poor credit rating. In the event Core is delinquent on payments to Windstream or the monthly billing has increased from the original forecast provided by Core, Windstream should have the ability to increase the deposit to guarantee recovery of Windstream's cost of providing service.</p>	<p>Interconnection Agreements entered into by Core with Verizon Pennsylvania and Sprint Communications Company, LP filed with the Commission</p>
<p>2. <u>NIA Issue 1</u>: Should Windstream be required to interconnect with Core at dual points of interconnection, one of which would be a point outside of Windstream's existing network, and further, should the parties be required to bear the cost to deliver originating interconnection traffic to one another at each other's designated switch location?</p>	<p>Core's proposal would result in direct interconnection outside of Windstream's network. The 1996 Act requires ILECs to provide interconnection at any technically feasible point <i>within</i> the carrier's (in this case Windstream's) network. See 47 U.S.C. §251(c)(2)(B). As an ILEC, therefore, Windstream is not required to directly interconnect or to incur any charges associated with such direct interconnection outside of its network (<i>i.e.</i>, outside of Windstream's ILEC territory).</p>	<ol style="list-style-type: none"> 1. Windstream Pennsylvania, LLC certificate, final order in Docket Nos. A-310325F00006 and A-312050F00006 2. 47 U.S.C. § 251(c)(2)(B) 3. 47 C.F.R. § 51.305(a)(2)
<p>3. <u>NIA Issue 4</u>: Should Core be permitted to indirectly interconnect with Windstream without volume limitations that would necessitate direct interconnection?</p>	<p>Establishing volume limitations at a DS1 level for direct interconnection is reasonable because it represents a standard unit of network capacity, is an efficient network design, and is generally acceptable to most parties. Consistent with the Commission's prior precedent, the parties' interconnection agreement should require the establishment of direct interconnection when the level of traffic exchanged between the parties reaches 257,000 MOU.</p>	<p><i>In the Matter of Petition of Cellco Partnership d/b/a Verizon Wireless for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Inteconnection Agreement with Alltel Pennsylvania, Inc.</i>, Opinion and Order, Docket No. A-310489F70004 at 81.</p>
<p>4. <u>NIA Issue 5</u>: Should the Agreement require each Party to arrange and pay</p>	<p>Each party is responsible for its own arrangements with third parties with respect to that party's originating traffic.</p>	<p><i>In the Matter of Petition of Cellco Partnership d/b/a Verizon Wireless for Arbitration Pursuant to Section</i></p>

Unresolved Arbitration Issues between Windstream and Core in Pennsylvania

Issue	Windstream's Position	Legal Authority
for third-party tandem services relative to its own originating traffic?	However, any such arrangements that Core or Windstream may have with outside third parties are not appropriately the subject of an interconnection agreement between Core and Windstream. Consistent with the Commission's prior precedent, the terms and conditions of an agreement between a party choosing to interconnect indirectly and a third-party transiting provider are legally immaterial to an interconnection agreement between two negotiating parties (here, Windstream and Core).	<i>252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Alltel Pennsylvania, Inc.</i> , Opinion and Order, Docket No. A-310489F70004 at 53.
5. <u>ICC Issue 1</u> : How should the jurisdiction of VNxx traffic be determined, and what compensation should apply?	Issues with respect to jurisdiction and compensation of VNxx traffic are not properly the subject of this arbitration. These issues were not in dispute between the parties in the negotiations, and Appendix 33 of Core's Petition for Arbitration (which contains the final redlined interconnection agreement exchanged between the parties) does not include any language with respect to these VNxx issues. Therefore, pursuant to 47 U.S.C. §252(b)(1)(A)(i), Core may not now arbitrate this issue. Further, pursuant to this Commission's statement of policy, the compensation of VNxx traffic cannot be determined by the Commission until the Federal Communications Commission rules on the proper jurisdiction and compensation with respect to VNxx traffic. Therefore, this issue is not ripe for arbitration or determination in this proceeding between Windstream and Core.	<ol style="list-style-type: none"> 1. FCC has not ruled on the proper jurisdiction of VNxx traffic (see Commission Docket No. I-00040105) 2. Windstream Pennsylvania, LLC General Exchange Tariff, Section S4 Extensions and Foreign Exchange Service 3. Telephone PA P.U.C. No. 7; Section S8.2(B)(15). 4. <i>Global NAPs, Inc. v. Verizon New Eng., Inc.</i>, 454 F.3d 91 (2nd Cir. 2006) 5. <i>S. New Eng. Tel. Co. v. MCI WorldCom Communs.</i>, 2006 U.S. Dist. LEXIS 81298 (D. Conn. 2006) 6. <i>Global NAPs, Inc. v. Verizon New Eng. Inc.</i>, 444 F.3d 59 (1st Cir. 2006). 7. <i>Global NAPs, Inc. v. Verizon New England, Inc.</i>, 603 F.3d 71 (1st Cir. 2010) at 81.
6. <u>ICC Issue 3</u> : Should reciprocal compensation apply to local traffic that is roughly balanced?	Pursuant to 47 C.F.R. §51.705(a)(3) and §51.713(b), bill and keep is a compensation method that is available when traffic from one party's network to another party's network is roughly balanced. While reciprocal compensation applies to §251(b)(5) traffic when traffic exchanged between two parties is not roughly balanced, the compensation mechanism set forth in §51.713(b) should be used by parties when the traffic exchanged is roughly balanced.	<ol style="list-style-type: none"> 1. 47 C.F.R. §51.705(a)(3) 2. 47 C.F.R. §51.713(b)

Unresolved Arbitration Issues between Windstream and Core in Pennsylvania

Issue	Windstream's Position	Legal Authority
<p>7. <u>ICC Issue 4</u>: Does the FCC's <i>ISP Remand Order</i> apply to the parties and facts in this proceeding?</p>	<p>The <i>ISP Remand Order</i> by its own terms does not apply to the parties and facts in this proceeding. The <i>ISP Remand Order</i>, through application of the <i>Core Petition Order</i>, does apply to the parties in this proceeding and may require compensation for termination of ISP-bound traffic. However, the <i>Core Petition Order</i> does not require Windstream to elect, or likewise preclude Windstream from electing at a later time, the rates for termination of ISP-bound traffic set forth thereunder</p>	<ol style="list-style-type: none"> 1. <i>In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic</i>, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, 16 FCC Rcd. 9610 (2001) ("ISP Remand Order") 2. FCC's Brief for <i>Amicus Curiae</i> filed in the First Circuit United States Court of Appeals in the case between Global NAPs and Verizon New England (No. 05-2657) at 12-13. 3. <i>Qwest Corporation v. Washington State Utilities and Transportation Commission</i>, 484 F. Supp. 2d 1160 (April 9, 2007).
<p>8. <u>ICC Issue 5</u>: Should Windstream or Core determine for which Nxx codes Core may apply?</p>	<p>The industry standard for determining the compensation due to a party for termination of a call is based upon the NPA-Nxx. If one party uses the same NPA-Nxx for multiple locations, the other party cannot determine the location of the call to determine the accurate compensation method (e.g., local reciprocal compensation or access compensation). Core's objection to the use of multiple NPA-Nxxs contradicts its position on ICC Issue 2. In ICC Issue 2, Core states in its Arbitration Petition, "ANI and CPN are the data which permit parties to properly rate calls based on the NPA-Nxx of the calling party". The use of a single NPA-Nxx for multiple locations allows Core to mask the actual location of its customer(s) and, thereby, avoid payment of appropriate compensation due to Windstream. Further, Core's proposal precludes Windstream from complying with dialing parity rules.</p>	

Unresolved Arbitration Issues between Windstream and Core in Pennsylvania

Issue	Windstream's Position	Legal Authority
<p>9. <u>Definitions Issues</u>: How should "ANI," "Exchange Services," "Intra-LATA Toll Traffic," "Interconnection Point," and "Section 251(b)(5) Traffic" be defined in the Agreement?</p>	<p>Issue resolved as to the definition of ANI.</p> <p>The parties' interconnection agreement should define these terms as follows:</p> <p><u>"Exchange Services"</u> are two-way switched voice grade telecommunications services with access to the public switched network, which originate and terminate within an exchange.</p> <p><u>"Intra-LATA Toll Traffic"</u> means all IntraLATA calls provided by a LEC other than traffic completed in the LECs local exchange boundary.</p> <p><u>"Interconnection Point"</u> is the point of demarcation at a technically feasible point within Windstream's interconnected network within the LATA, as specified in <i>Attachment 4</i> Section 2.1.1, where the networks of Windstream and Core interconnect for the exchange of traffic.</p> <p><u>"Section 251(b)(5) Traffic"</u> Local traffic has been defined in Attachment 12 – Compensation, therefore a definition is not needed.</p>	<p>.</p>

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by participant).

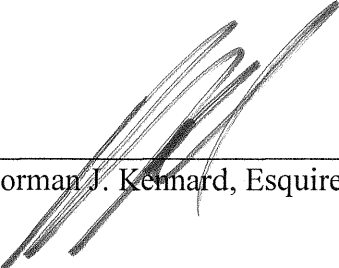
Via Electronic and First Class Mail

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Dated: January 11, 2013