

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Joint Petition of Price Cap Holding)	
Companies for Conversion of Average)	WC Docket No. 12-63
Schedule Affiliates to Price Cap Regulation)	
and for Limited Waiver Relief)	
)	
Consolidated Communications Companies)	Transmittal No. 41
Tariff F.C.C. No. 2;)	
)	
Frontier Telephone Companies)	Transmittal No. 28
Tariff F.C.C. No. 10;)	
)	
Windstream Telephone System)	Transmittal No. 57
Tariff F.C.C. No. 7)	

ORDER

Adopted: July 31, 2012

Released: July 31, 2012

By the Acting Deputy Chief, Pricing Policy Division:

I. INTRODUCTION

1. Pursuant to section 204(a)(3) of the Communications Act of 1934 as amended,¹ Consolidated Communications, Inc. (Consolidated), Frontier Communications Corporation (Frontier), and Windstream Corporation (Windstream) (together Withdrawing Carriers) filed Transmittal Nos. 41, 28, and 57, respectively, proposing to establish new access tariffs to enable certain of its local exchange carrier affiliates to withdraw from the National Exchange Carrier Association, Inc. (NECA) administered pools. The Division granted each of the Withdrawing Carriers a special permission waiving various Part 61 rules, including section 61.39(a), which allowed these carriers to reference the NECA Tariff F.C.C. No. 5 for its terms and conditions while establishing their own rates in the tariff.² The proposed tariffs are scheduled to become effective August 1, 2012.

2. For the reasons discussed below, we suspend for one day and set for investigation all of the rates contained in the Withdrawing Carriers' transmittals referenced above.

¹ 47 U.S.C. § 204(a)(3).

² See Special Permission Nos. 12-025, 12-026, 12-027 (Pric. Pol. Div. July 16, 2012); 47 C.F.R. § 61.39(a). The Commission also waived sections 61.52(b)(1), 61.54(b)(2), and 61.59 for the Withdrawing Carriers, which allowed the Withdrawing Carriers to place the name of the Withdrawing Carriers on the title sheet and title page of the tariff and include the exact legal names of the carriers covered by the tariffs in the "Issuing Carriers" section of the tariff. See 47 C.F.R. §§ 61.52(b)(1), 61.54 (b)(2). The Commission also waived section 61.59 of its rules, permitting the Withdrawing Carriers to change rates that have not been in effect for 30 days. See 47 C.F.R. § 61.59.

II. DISCUSSION

3. On March 1, 2012, Consolidated, Frontier, and Windstream filed a Joint Petition seeking to convert their average schedule incumbent local exchange carrier (LEC) affiliates from average schedule companies to price cap regulation.³ Issues raised in the Joint Petition include the appropriate methodology to set the Withdrawing Carriers' initial rates under price caps. The Withdrawing Carriers filed rates in their new access tariffs based on the methodology under consideration in the still pending Joint Petition. Incumbent LECs that are participating in the NECA-administered tariffs may exit those tariffs, and average schedule carriers may elect to become cost carriers, or upon grant of a waiver, become price cap carriers. Because the Commission has not yet acted on the Joint Petition, it has not yet approved a methodology for setting the Withdrawing Carriers' initial rates or granted the Withdrawing Carriers the waivers necessary to convert the subject affiliates. Thus, we conclude that substantial questions exist regarding the lawfulness of the rates contained in the Consolidated Tariff FCC No. 2, Transmittal No. 41; the Windstream Tariff F.C.C. No. 7, Transmittal No. 57; and the Frontier Tariff FCC No. 10, Transmittal No. 28, which require further investigation. We will, accordingly, suspend all of the rates contained in those tariff filings for one day, impose an accounting order, and initiate an investigation into the lawfulness of the proposed tariffs. The investigation will be conducted pursuant to the docketed proceeding addressing the Joint Petition. However, the Bureau reserves the right to issue a designation order to identify specific issues that will be the subject of this investigation. Those issues may include, but are not limited to, the issues identified in this paragraph. We may also, by order, identify discrete issues that do not warrant further investigation.

III. EX PARTE REQUIREMENTS

4. This investigation is a permit-but-disclose proceeding and is subject to the requirements of section 1.1206(b) of the Commission's rules.⁴ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.⁵ Other rules pertaining to oral and written presentations are also set forth in section 1.1206(b).

IV. ORDERING CLAUSES

5. Accordingly, IT IS ORDERED that, pursuant to sections 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 204(a), and through the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, all of the rates filed by Consolidated in Transmittal No. 41, Frontier in Transmittal No. 28, and Windstream in Transmittal No. 57, ARE SUSPENDED for one day and an investigation IS INSTITUTED.

6. IT IS FURTHER ORDERED that Consolidated, Frontier, and Windstream SHALL FILE a supplement advancing the currently scheduled effective date to July 31, 2012, and then SUSPEND its tariff revision for one day, until August 1, 2012. For this purpose, we waive sections 61.58, 61.59, and 61.86 of the Commission's rules, 47 C.F.R. §§ 61.58, 61.59, 61.86.

7. IT IS FURTHER ORDERED that Consolidated, Frontier, and Windstream SHALL FILE a supplement within five business days from the release date of this order reflecting the suspension.

³ See Joint Petition of Price Cap Holding Companies for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 12-63 (filed Mar. 1, 2012) (Joint Petition).

⁴ 47 C.F.R. § 1.1206(b).

⁵ *Id.*

Carriers should cite the “DA” number on the instant order as the authority for the filing.

8. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 204(a), and pursuant to the authority delegated by sections 0.91 and 0.291 of the Commission’s rules, 47 C.F.R. §§ 0.91 and 0.291, Consolidated, Frontier, and Windstream SHALL KEEP ACCURATE ACCOUNT of all amounts received that are associated with the rates that are subject to this investigation.

FEDERAL COMMUNICATIONS COMMISSION

Nicholas G. Alexander
Acting Deputy Chief, Pricing Policy Division
Wireline Competition Bureau