

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

In the Matter of)	File No.: EB-IHD-13-00011781 ¹
)	
Windstream Corporation)	Acct. No.: 201432080020
)	
)	FRN: 0014400220

ORDER

Adopted: February 20, 2014

Released: February 20, 2014

By the Chief, Enforcement Bureau:

1. In this Order, we adopt a Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) and Windstream Corporation (Windstream). The Consent Decree resolves and terminates an investigation by the Commission against Windstream for possible violations of Sections 201(b) and 202(a) of the Communications Act of 1934, as amended (Act),² in connection with Windstream's call completion practices to rural areas.

2. A copy of the Consent Decree negotiated by the Bureau and Windstream is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Windstream possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), (j), and 503(b) of the Act,³ and Sections 0.111 and 0.311 of the Commission's rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ This investigation, initiated under File No. EB-12-IH-1679, was subsequently assigned to File No. EB-IHD-13-00011781.

² See 47 U.S.C. §§ 201(b), 202(a); see also *Developing an Unified Intercarrier Compensation Regime*, Declaratory Ruling, 27 FCC Rcd 1351 (Wireline Comp. Bur. 2012).

³ 47 U.S.C. §§ 154(i)-(j), 503(b).

⁴ 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to counsel for Windstream, David H. Solomon, Esq., Wilkinson Barker Knauer LLP, 2300 N Street, NW, Suite 700, Washington, DC 20037-1128.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	File No.: EB-IHD-13-00011781 ¹
)	
WINDSTREAM CORPORATION)	Acct. No.: 201432080020
)	
)	FRN: 0014400220

CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission and Windstream Corporation (Windstream or Company), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into possible violations of Sections 201(b) and 202(a) of the Communications Act of 1934, as amended (Act),² which ultimately focused on Windstream's call completion practices to rural areas via its Legacy PAETEC Network, including the use and monitoring of Intermediate Providers.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which the Company is subject by virtue of its business activities.
 - (f) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 15.
 - (g) "Covered Employees" means all employees and agents of the Company who supervise, oversee, or manage the performance of, duties that relate to the Company's responsibilities under Sections 201(b) and 202(a) of the Act, as

¹ This investigation was initiated under File No. EB-12-IH-1679 and subsequently assigned File No. EB-IHD-13-00011781.

² See 47 U.S.C. §§ 201(b), 202(a); see also *Developing an Unified Intercarrier Compensation Regime*, Declaratory Ruling, 27 FCC Rcd 1351 (Wireline Comp. Bur. 2012) (*Rural Call Completion Declaratory Ruling*).

interpreted in the *Rural Call Completion Declaratory Ruling*, and the rules adopted in the *Rural Call Completion Order*.³

- (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (i) “Intermediate Provider” has the meaning provided in Section 64.1600(f) of the Commission’s Rules,⁴ but excludes a tandem provider to which the terminating carrier subtends or a carrier to which the terminating carrier requires an indirectly interconnecting carrier to deliver traffic.
- (j) “Investigation” means the investigation commenced by the Bureau’s November 27, 2012 Letter of Inquiry (LOI) regarding Windstream’s possible violations of Sections 201(b) and 202(a) of the Act.
- (k) “Legacy PAETEC Network” means the North American voice network owned and operated by PAETEC Holding Corporation prior to its purchase by Windstream.
- (l) “Legacy Windstream Network” means the North American voice networks owned and operated by Windstream before it purchased PAETEC Holding Corporation.
- (m) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by the Company to implement the Compliance Plan.
- (n) “Parties” means Windstream and the Bureau, each of which is a “Party.”
- (o) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (p) “Windstream” or “Company” means Windstream Corporation, including all of its subsidiaries, affiliates, predecessors-in-interest, and successors-in-interest.

I. BACKGROUND

3. Section 201(b) of the Act provides, “[a]ll charges, practices, classifications, and regulations for and in connection with [interstate and foreign] communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful.”⁵ Section 202(a) states, “[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, . . . or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.”⁶

4. The Commission has emphasized that “it is vital that our Nation maintains a communications network that offers reliable and resilient service.”⁷ The Commission has also recognized

³ *Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154 (Nov. 8, 2013) (*Rural Call Completion Order*).

⁴ 47 C.F.R. § 64.1600(f).

⁵ 47 U.S.C. § 201(b).

⁶ *Id.* § 202(a).

⁷ *Reliability and Continuity of Communications Networks, Including Broadband Technologies*, Notice of Inquiry, 26 FCC Rcd 5614, 5616, para. 5 (2011); *see also Establishing Just and Reasonable Rates for Local Exchange Carriers*, Declaratory Ruling and Order, 22 FCC Rcd 11629, para. 1 (Wireline Comp. Bur. 2007) (*Call Blocking Declaratory*

that “permitting blocking or the refusal to deliver voice telephone traffic, whether as a means of ‘self-help’ to address perceived unreasonable intercarrier compensation charges or otherwise, risks ‘degradation of the country’s telecommunications network.’”⁸ To prevent that result, the Commission has consistently held that telecommunications carriers, including interexchange carriers, generally may not “‘block, choke, reduce or restrict traffic in any way.’”⁹

5. In June 2011, a coalition of trade associations representing rural rate-of-return incumbent local exchange carriers (LECs) sent a letter to the Bureau concerning “a nationwide and industry-wide epidemic” of calls to rural LEC service areas failing to complete or having poor call quality.¹⁰ In September 2011, the Commission announced that it had created a Rural Call Completion Task Force “to investigate and address the growing problem of calls to rural customers that are being delayed or that fail to connect.”¹¹

6. On February 6, 2012, the Wireline Competition Bureau (WCB) clarified in the *Rural Call Completion Declaratory Ruling* that “it is an unjust and unreasonable practice in violation of section 201 of the Act for a carrier that knows or should know that it is providing degraded service to certain areas to fail to correct the problem or to fail to ensure that intermediate providers, least-cost routers, or other entities acting for or employed by the carrier are performing adequately.”¹² Thus, for example, “if carriers continue to hand off calls to agents, intermediate providers, or others that a carrier knows are not completing a reasonable percentage of calls or are otherwise restricting traffic . . . , that is an unjust or unreasonable practice prohibited by section 201 of the Act.”¹³ WCB further clarified that “adopting or perpetuating routing practices that result in lower quality service to rural or high-cost localities than like service to urban or lower cost localities (including other lower cost rural areas) may, in the absence of a persuasive explanation, constitute unjust or unreasonable discrimination in practices, facilities, or services and violate section 202 of the Act.”¹⁴

7. Windstream offers telecommunications services in 49 states. In November 2011, the Commission approved the transfer of control of Commission licenses and authorizations from PAETEC

Ruling) (explaining that “the ubiquity and reliability of the nation’s telecommunications network is of paramount importance to the explicit goals of the Communications Act”).

⁸ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18029, para. 973 (2011), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 2011) (quoting *Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9933, para. 24 (2001)) (footnotes omitted).

⁹ *Id.* at 17903, para. 734 (quoting *Call Blocking Declaratory Ruling*, 22 FCC Rcd at 11631, para. 6). The Commission has permitted call blocking “only under rare and limited circumstances.” See *Call Blocking Declaratory Ruling*, 22 FCC Rcd at 11631, para. 6 n.20.

¹⁰ Letter from Michael Romano, National Telecommunications Cooperative Association, *et al.*, to Theresa Z. Cavanaugh, Acting Chief and Margaret Dailey, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau at 3 (June 13, 2011).

¹¹ *FCC Launches Rural Call Completion Task Force to Address Call Routing and Termination Problems in Rural America*, News Release, 2011 WL 4454097 (Sept. 26, 2011), available at <http://www.fcc.gov/document/fcc-launches-rural-call-completion-task-force-sets-oct-18-workshop>. The Task Force conducted a workshop on rural call completion issues on October 18, 2011. See <http://www.fcc.gov/events/rural-call-completion-workshop>.

¹² See *Rural Call Completion Declaratory Ruling*, 27 FCC Rcd at 1355–56, para. 12 (footnote omitted).

¹³ *Id.* (footnote omitted).

¹⁴ *Id.* at 1357–58, para. 14.

Holding Corporation to Windstream.¹⁵ Windstream serves its retail end users' long distance needs primarily through commercial relationships with Intermediate Providers.

8. On November 27, 2012, the Bureau issued an LOI to Windstream seeking information about its performance, and the performance of its Intermediate Providers, in completing long-distance calls.¹⁶ On February 1, 2013, Windstream submitted narrative responses to most of the questions in the LOI and produced relevant documents.¹⁷ On March 1, 2013, Windstream responded to the remaining questions in the LOI and separately produced call answer data for the Legacy Windstream Network and the Legacy PAETEC Network.¹⁸ Windstream provided multiple supplemental responses to the LOI from April through August 2013, and cooperated fully with the Investigation.¹⁹ Based on the Company's responses, the Bureau's concerns ultimately focused on the Legacy PAETEC Network, not the Legacy Windstream Network.

9. On November 8, 2013, the Commission released the *Rural Call Completion Order*, which adopted rules requiring covered providers to record, retain, and report to the Commission call answer rates for long-distance calls.²⁰ The Commission found that "rural call completion problems are serious and widespread,"²¹ and that "[t]hese failures have significant and immediate public interest ramifications, causing rural businesses to lose customers, cutting families off from their relatives in rural areas, and creating potential for dangerous delays in public safety communications in rural areas."²² The new rules require covered providers to record and retain detailed information about long-distance calls to customers of incumbent rural LECs,²³ as identified by operating company numbers (OCNs).²⁴ The rules

¹⁵ See *Applications Granted for the Transfer of Control of PAETEC Holding Corporation to Windstream Corporation*, Public Notice, 26 FCC Rcd 16078 (WCB/IB 2011).

¹⁶ Letter from Theresa Cavanaugh, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Jeffrey Gardner, President and CEO, Windstream Corp. (Nov. 27, 2012) (on file in EB-IHD-13-00011781).

¹⁷ See Letter from Malena Barzilai, Senior Counsel, Government Affairs, Windstream Corp., to Marlene Dortch, Secretary, FCC (Feb. 1, 2013) (on file in EB-IHD-13-00011781).

¹⁸ See Letter from Malena Barzilai, Senior Counsel, Government Affairs, Windstream Corp., to Marlene Dortch, Secretary, FCC (Mar. 1, 2013) (on file in EB-IHD-13-00011781).

¹⁹ See Letter from Malena Barzilai, Senior Counsel, Government Affairs, Windstream Corp., to Marlene Dortch, Secretary, FCC (Aug. 21, 2013) (on file in EB-IHD-13-00011781); Letter from Malena Barzilai, Senior Counsel, Government Affairs, Windstream Corp., to Marlene Dortch, Secretary, FCC (Aug. 9, 2013) (on file in EB-IHD-13-00011781); Letter from Malena Barzilai, Senior Counsel, Government Affairs, Windstream Corp., to Marlene Dortch, Secretary, FCC (July 30, 2013) (on file in EB-IHD-13-00011781); E-mail from Cesar Caballero, Windstream, to Christopher Killion, FCC Enforcement Bureau (July 17, 2013, 11:20 EDT) (on file in EB-IHD-13-00011781); Letter from Malena Barzilai, Senior Counsel, Government Affairs, Windstream Corp., to Marlene Dortch, Secretary, FCC (June 28, 2013) (on file in EB-IHD-13-00011781); Letter from Malena Barzilai, Senior Counsel, Government Affairs, Windstream Corp., to Marlene Dortch, Secretary, FCC (June 7, 2013) (on file in EB-IHD-13-00011781); Letter from Malena Barzilai, Senior Counsel, Government Affairs, Windstream Corp., to Marlene Dortch, Secretary, FCC (Apr. 30, 2013) (on file in EB-IHD-13-00011781); Letter from Malena Barzilai, Senior Counsel, Government Affairs, Windstream Corp., to Marlene Dortch, Secretary, FCC (Apr. 5, 2013) (on file in EB-IHD-13-00011781).

²⁰ See *Rural Call Completion Order*, 28 FCC Rcd at 16211–14, Appendix A.

²¹ *Id.* at 16161, para. 14.

²² *Id.* at 16155, para. 1.

²³ The Commission concluded that "the only call attempts that need to be retained are those to incumbent LECs that are rural telephone companies" because "rural call completion problems are largely confined to such carriers." *Id.* at 16177–78, para. 49; see also 47 U.S.C. § 153(44).

also require covered providers to report to the Commission, on a quarterly basis, answer rates for long-distance calls delivered to each rural OCN and answer rates for long-distance calls delivered to nonrural OCNs in the aggregate.²⁵ The information collections required by the *Rural Call Completion Order* will go into effect after the Office of Management and Budget approves the information collections and the Commission publishes a notice in the Federal Register announcing their effective date(s).²⁶

II. TERMS OF AGREEMENT

10. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

11. **Jurisdiction.** The Company agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

12. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

13. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, the Company agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against the Company concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against the Company with respect to the Company's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission licenses or authorizations.

14. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, the Company shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring the Company's compliance with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the

²⁴ An OCN is an alphanumeric code that uniquely identifies providers of local telecommunications service. See Alliance for Telecommunications Industry Solutions, *ATIS Telecom Glossary*, available at <http://www.atis.org/glossary/definition.aspx?id=8448> (last accessed Jan. 28, 2014). The Commission ordered the National Exchange Carrier Association, Inc. (NECA), which maintains lists of incumbent LEC OCNs, to update those lists annually. See *Rural Call Completion Order*, 28 FCC Rcd at 16187-88, para. 73. A list of incumbent rural LEC OCNs is available at <http://www.neca.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=8874&libID=8894> (last accessed Jan. 28, 2014).

²⁵ *Rural Call Completion Order*, 28 FCC Rcd at 16184, para. 65.

²⁶ *Id.* at 16207, para. 131.

Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of Sections 201(b) and 202(a) of the Act, as interpreted in the *Rural Call Completion Declaratory Ruling*, and the rules adopted in the *Rural Call Completion Order* prior to assuming his/her duties.

15. **Compliance Plan.** For purposes of settling the matters set forth herein, the Company agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with Sections 201(b) and 202(a) of the Act, as interpreted in the *Rural Call Completion Declaratory Ruling*, with the rules adopted in the *Rural Call Completion Order*,²⁷ and with the terms and conditions of this Consent Decree. With respect to Sections 201(b) and 202(a) of the Act, as interpreted in the *Rural Call Completion Declaratory Ruling*, and the rules adopted in the *Rural Call Completion Order*, the Company shall implement the following procedures:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, the Company shall establish Operating Procedures that all Covered Employees shall follow to help ensure the Company's compliance with Sections 201(b) and 202(a) of the Act, as interpreted in the *Rural Call Completion Declaratory Ruling*, and with the rules adopted in the *Rural Call Completion Order*. The Company's Operating Procedures shall include internal procedures and policies specifically designed to ensure the Company's compliance with Sections 201(b) and 202(a) of the Act, as interpreted in the *Rural Call Completion Declaratory Ruling*, and the rules adopted in the *Rural Call Completion Order*. The Company shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with Sections 201(b) and 202(a) of the Act, as interpreted in the *Rural Call Completion Declaratory Ruling*, and the rules adopted in the *Rural Call Completion Order*.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees, all of whom shall follow the procedures detailed in the Compliance Manual. Distribution of the Compliance Manual by email or an email link to an internal intranet site shall be deemed to comply with the distribution requirement in this paragraph. The Compliance Manual shall explain Sections 201(b) and 202(a) of the Act, as interpreted in the *Rural Call Completion Declaratory Ruling*, and the rules adopted in the *Rural Call Completion Order*, and set forth the Operating Procedures that Covered Employees shall follow to help ensure the Company's compliance with Sections 201(b) and 202(a) of the Act, as interpreted in the *Rural Call Completion Declaratory Ruling*, and the rules adopted in the *Rural Call Completion Order*. At least once annually, the Company shall review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. The Company shall distribute any revisions to the Compliance Manual promptly to Covered Employees. The Compliance Manual shall require Covered Employees to contact the Company's Compliance Officer and, if appropriate, regulatory legal counsel with any questions or concerns that arise with respect to the Company's obligations under Sections 201(b) and 202(a) of the Act, as interpreted in the *Rural Call Completion Declaratory Ruling*, and the rules adopted in the *Rural Call Completion Order*.
- (c) **Compliance Training Program.** The Company shall establish and implement a Compliance Training Program on compliance with Sections 201(b) and 202(a) of the Act,

²⁷ The Company shall have no obligation to comply with the information collections required by the *Rural Call Completion Order* until they become effective. See *supra* n.26 and accompanying text.

as interpreted in the *Rural Call Completion Declaratory Ruling*, the rules adopted in the *Rural Call Completion Order*, and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of the Company's obligation to report any noncompliance with the rules adopted in the *Rural Call Completion Order* under paragraph 16 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Effective Date. Any person who becomes a Covered Employee at any time thereafter shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. The Company shall repeat the compliance training on an annual basis. At least once annually, the Company shall review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

- (d) **Testing.** The Company will cooperate with the FCC and with rural LECs to undertake commercially reasonable steps to establish test points and uniform test criteria to evaluate rural call completion when complaints, or data collected in accordance with the *Rural Call Completion Order*, indicate potential rural call completion problems.
- (e) **Resolution of Call Completion Problems.** The Company will notify any Intermediate Provider it has reason to believe is causing call completion problems, and will work cooperatively with each such Intermediate Provider to analyze and resolve such problems as soon as practicable. If complaints, testing, or data collected in accordance with the *Rural Call Completion Order* show that an Intermediate Provider has sustained inadequate performance on a particular route, as reasonably determined by the Company, the Company will cease using the Intermediate Provider on that route, provided that other Intermediate Providers offer commercially reasonable options for reaching that location.

16. **Reporting Noncompliance.** The Company shall report any noncompliance with the rules adopted in the *Rural Call Completion Order* or with the terms and conditions of this Consent Decree within fifteen (15) calendar days after the Compliance Officer or any Covered Employee becomes aware of the matter (whether from a report from an employee or otherwise). Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that the Company has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that the Company has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, SW, Washington, DC 20554, with a copy submitted electronically to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov and Margaret S. Dailey at Margaret.Dailey@fcc.gov.

17. **Compliance Reports.** The Company shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of the Company's efforts during the relevant period to comply with the terms and conditions of this Consent Decree, with Sections 201(b) and 202(a) of the Act, as interpreted in the *Rural Call Completion Declaratory Ruling*, and with the rules adopted in the *Rural Call Completion Order*. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of the Company, stating that the Compliance Officer has personal knowledge that the Company (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of

noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 16 of this Consent Decree.

- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.²⁸
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of the Company, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that the Company has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that the Company has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, SW, Washington, DC 20554, with a copy submitted electronically to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov and Margaret S. Dailey at Margaret.Dailey@fcc.gov.

18. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 14 through 17 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

19. **Section 208 Complaints: Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act²⁹ against the Company or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by the Company with the Communications Laws.

20. **Voluntary Contribution.** The Company agrees that it will make a voluntary contribution to the United States Treasury in the amount of two million five hundred thousand dollars (\$2,500,000) within thirty (30) calendar days after the Effective Date (Voluntary Contribution). The Company shall also send electronic notification of payment to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov and Margaret S. Dailey at Margaret.Dailey@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.³⁰ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions regarding the form of payment:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-

²⁸ 47 C.F.R. § 1.16.

²⁹ 47 U.S.C. § 208.

³⁰ FCC Form 159 and instructions for completing it are available at <http://transition.fcc.gov/fees/form159.html>.

9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

21. **Event of Default.** The Company agrees that an Event of Default shall occur upon failure by the Company to pay the full amount of the Voluntary Contribution on or before the due date specified in this Consent Decree.

22. **Interest, Charges for Collection.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Voluntary Contribution shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Voluntary Contribution, together with interest, as aforesaid, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charge(s), plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by the Company.

23. **Waivers.** The Company waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues the Adopting Order as defined in this Consent Decree. The Company shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither the Company nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Company shall waive any statutory right to a trial *de novo*. The Company hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act³¹ relating to the matters addressed in this Consent Decree.

24. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

25. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which the Company does not expressly consent) that provision will be superseded by such Commission rule or order.

26. **Successors and Assigns.** The Company agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

³¹ See 5 U.S.C. § 504; 47 C.F.R. Part 1, Subpart K.

27. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute and shall not be construed as either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Communications Laws. The Parties also agree that this Consent Decree does not constitute an admission of liability by the Company or a concession by the Commission that its Investigation was not well-founded.

28. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

29. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

30. **Authorized Representative.** Each Party represents and warrants to the other Parties that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

31. **Counterparts.** This Consent Decree may be signed in counterparts and may be delivered by facsimile or electronic delivery. Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

John P. Fletcher
Executive Vice President, General Counsel
and Secretary
Windstream Corporation