

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

In the Matter of)	
)	
Petition of Puerto Rico Telephone Company, Inc.,)	WC Docket No. 07-292
for Election of Price Cap Regulation and Limited)	
Waiver of Pricing and Universal Service Rules)	
)	
Consolidated Communications Petition for)	WC Docket No. 07-291
Conversion to Price Cap Regulation and for)	
Limited Waiver Relief)	
)	
Frontier Petition for Limited Waiver Relief upon)	WC Docket No. 08-18
Conversion of Global Valley Networks, Inc., to)	
Price Cap Regulation)	
)	

ORDER

Adopted: May 6, 2008

Released: May 6, 2008

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant, to the extent described below, modified petitions for waiver filed by Puerto Rico Telephone Company, Inc. (PRT),¹ Consolidated Communications Holdings, Inc. (Consolidated),² and Frontier Communications (Frontier).³ Each of these carriers seeks to convert certain

¹ Petition of Puerto Rico Telephone Company, Inc., for Election of Price Cap Regulation and for Limited Waiver of Pricing and Universal Service Rules, WC Docket No. 07-292 (filed Nov. 19, 2007) (PRT Petition). A Public Notice seeking comment on the petition was released on December 21, 2007. *Comment Sought on Puerto Rico Telephone Company Petition for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules*, WC Docket No. 07-292, Public Notice, 22 FCC Rcd 21594 (Wireline Comp. Bur. 2007).

² Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 07-291 (filed Dec. 4, 2007) (Consolidated Petition). A Public Notice seeking comment on the Consolidated petition was released on January 2, 2008. *Comment Sought on Consolidated Communications Holding, Inc., Petition for Conversion to Price Cap Regulation and for Limited Waiver of Pricing and Universal Service Rules*, WC Docket No. 07-291, Public Notice, 23 FCC Rcd 38 (Wireline Comp. Bur. 2008).

³ Frontier Petition for Limited Waiver Relief upon Conversion of Global Valley Networks, Inc., to Price Cap Regulation, WC Docket No. 08-18 (filed Dec. 18, 2007) (Frontier Petition). Citizens Communications Company, the parent of the Frontier and Citizens incumbent local exchange carriers (LECs), completed its acquisition of Global Valley on October 31, 2007. A Public Notice seeking comment on the petition was released on December (continued....)

of their operations from rate-of-return regulation to price cap regulation on July 1, 2008, pursuant to the framework the Commission established in the recent *Windstream Order*.⁴ As explained below, consistent with the relief granted in the *Windstream Order*, these carriers may convert their rate-of-return regulated properties to price cap regulation by establishing initial price cap indexes (PCIs) for their price cap baskets. In so doing, these carriers shall target their average traffic-sensitive (ATS) rate to the target specified in section 61.3(qq) of the Commission's rules as follows: PRT and Consolidated shall target their ATS rate to \$0.0065 per ATS minute of use⁵ and Frontier shall target its ATS rate for Global Valley to \$0.0095 per ATS minute of use.⁶ We also grant waivers to all three carriers to allow them to continue to receive interstate common line support (ICLS) for the converted study areas, subject to certain conditions. Consistent with the Commission's requirements in the *Windstream Order*, each carrier's per-line ICLS shall be calculated at its 2007 per-line disaggregated ICLS amounts, and frozen at those per-line levels going forward, and its aggregate annual ICLS support shall be capped at an amount equal to its overall 2007 ICLS (after application of any required true-ups). We find that these waivers will further the public interest by providing the carriers regulatory incentives to maintain and enhance efficient operations and requiring the reduction of some of the carriers' access rates. The waivers granted in this order are subject to any revisions addressing intercarrier compensation, price cap regulation, or universal service requirements that the Commission may adopt in the future.

II. BACKGROUND

2. *Windstream Order*. On March 18, 2008, the Commission released an order granting Windstream's request to convert rate-of-return regulated cost study areas to price cap regulation on July 1, 2008.⁷ In the *Windstream Order*, the Commission directed Windstream to establish initial PCIs for its price cap baskets using January 1, 2008, rates and 2007 base period demand.⁸ The Commission also required Windstream to target its ATS rate to \$0.0065 per ATS minute of use pursuant to section 61.3(qq)

(Continued from previous page) _____

21, 2007. *Comment Sought on Frontier Petition for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules*, WC Docket No. 07-292, Public Notice, 23 FCC Rcd 1922 (Wireline Comp. Bur. 2008).

⁴ *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-171, Order, FCC 08-81 at para. 2 (rel. Mar. 18, 2008) (*Windstream Order*) (granting Windstream requested waivers to convert rate-of-return regulated cost study areas to price cap regulation). Following the release of the *Windstream Order*, PRT, Consolidated and Frontier each notified the Commission that they were modifying the relief requested in their petitions to be consistent with the relief granted to Windstream. See Letter from Bennett Ross, Counsel for Puerto Rico Telephone Company, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-292 (Mar. 27, 2008) (PRT March 27 Letter); Letter from Troy F. Tanner, Counsel for Consolidated, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-291 (Apr. 1, 2008) (Consolidated April 1 Letter); Letter from Gregg C. Sayre, Associate General Counsel – Eastern Region, Frontier Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-18 (Mar. 28, 2008) (Frontier March 28 Letter).

⁵ 47 C.F.R. § 61.3(qq)(3).

⁶ 47 C.F.R. § 61.3(qq)(2). As discussed below, we grant Frontier a waiver of the requirement in section 61.3(qq)(2) of the Commission's rules that it own the affected exchanges as of July 1, 2000. See *infra* para. 13.

⁷ In the *Windstream Order*, the Commission described the rate-of-return and price cap regulations that variously apply to LECs' provision of interstate access services. *Windstream Order* at paras. 2-4.

⁸ *Windstream Order* at paras. 11-14. For its two cost study areas that participate in the NECA interstate access tariffs, Windstream will initialize the rates of these two companies to meet its authorized rate-of-return and then adapt those rates to the price cap rate structure in a manner similar to that used for its other study areas.

of the Commission's rules, using an X-factor of 6.5 percent.⁹ Finally, the Commission granted Windstream a waiver to allow it to continue to receive ICLS for the converted study areas.¹⁰ Specifically, Windstream's per-line ICLS will be calculated at its trued-up 2007 per-line disaggregated ICLS amounts, and frozen at those per-line levels going forward.¹¹ This waiver is subject to several conditions. Windstream's aggregate annual ICLS support will be capped at an amount equal to its overall 2007 ICLS (after application of any required true-ups).¹² Windstream also must forego any recovery of a presubscribed interexchange carrier charge (PICC) or carrier common line (CCL) charge and forego assessing a \$7.00 non-primary residential line subscriber line charge (SLC) in conjunction with its receipt of frozen per-line ICLS.¹³ The *Windstream Order* also is subject to Commission modification in its intercarrier compensation, price cap, or universal service reform proceedings.¹⁴

3. *PRT proposal.* PRT's proposal seeks to allow it to convert from rate-of-return regulation to price cap regulation.¹⁵ PRT proposes to establish its initial special access PCIs using its current special access rates.¹⁶ In the PRT March 27 Letter, PRT proposes to target its ATS rate to \$0.0065 as required by section 61.3(qq)(3).¹⁷ Finally, consistent with the *Windstream Order*, PRT requests that the Commission grant the appropriate waivers to allow PRT to continue to receive ICLS support as a price cap carrier. Such support would be calculated on a per-line basis at PRT's 2007 per-line disaggregated ICLS amounts and frozen at those per-line levels going forward. PRT further proposes that its aggregate annual ICLS support be capped equal to its overall 2007 ICLS (after application of any required true-ups). PRT will forego any PICC or CCL charges that otherwise might be assessable under the *CALLS Order* and will forego any increase in the non-primary residential SLC cap from \$6.50 to \$7.00.¹⁸ PRT states that "the Commission's approach in facilitating Windstream's transition to price cap regulation is reasonable and would provide the same public interest benefits for the citizens of Puerto Rico."¹⁹

⁹ *Id.* at paras. 15-16.

¹⁰ *Id.* at paras. 19-22.

¹¹ *Id.* at para. 21.

¹² *Id.* at para. 22.

¹³ *Id.* at para. 20.

¹⁴ *Id.*

¹⁵ PRT Petition at 1; PRT March 27 Letter at 1.

¹⁶ PRT Petition at 15.

¹⁷ PRT March 27 Letter at 2. PRT initially sought a waiver of section 61.3(qq)(2) so it could target its ATS rate to \$0.0095. PRT Petition at 8-15. It subsequently withdrew this request. PRT March 27 Letter at 2.

¹⁸ PRT March 27 Letter at 2; *see also Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 12990-13013, paras. 75-128 (2000) (*CALLS Order*) (subsequent history omitted).

¹⁹ *Id.* AT&T Inc. (AT&T), Independent Telephone and Telecommunications Alliance (ITTA), and WorldNet Telecommunications, Inc. (WorldNet) filed comments on the PRT petition. *See* Petition of Puerto Rico Telephone Company, Inc., for Election of Price Cap Regulation and for Limited Waiver of Pricing and Universal Service Rules, WC Docket No. 07-292, AT&T Inc Comments on Election of Price Cap Regulation and Limited Waiver of (continued....)

4. *Consolidated proposal.* Consolidated proposes to convert to price cap regulation its three cost study areas that are subject to rate-of-return regulation and participate in the National Exchange Carrier Association (NECA) common line tariff.²⁰ Consolidated proposes to establish its initial PCIs using its current rates.²¹ Consolidated will target its ATS rate to \$0.0065, as required by section 61.3(qq)(3) of the Commission's rules.²² In the Consolidated April 1 Letter, Consolidated proposes that, consistent with the *Windstream Order*, it continue to receive ICLS support as a price cap carrier, and that such support be calculated on a per-line basis at Consolidated's 2007 per-line disaggregated ICLS amounts and frozen at those per-line levels going forward. Consolidated also agrees that its aggregate annual ICLS support will be capped at an amount equal to its overall 2007 ICLS (after application of any required true-ups). Consolidated will forego any PICC or CCL charges that otherwise might be permitted and will accept a non-primary residential SLC rate cap of \$6.50 instead of \$7.00.²³ Consolidated states that granting its request would provide the same public interest benefits to its customers as were provided to Windstream's customers.²⁴

(Continued from previous page) _____

Pricing and Universal Service Rules, (filed Jan. 22, 2008) (AT&T PRT Comments); Petition of Puerto Rico Telephone Company, Inc., for Election of Price Cap Regulation and for Limited Waiver of Pricing and Universal Service Rules, WC Docket No. 07-292, Comments of Independent Telephone and Telecommunications Alliance, (filed Jan. 22, 2008); Petition of Puerto Rico Telephone Company, Inc., for Election of Price Cap Regulation and for Limited Waiver of Pricing and Universal Service Rules, WC Docket No. 07-292, Opposition of WorldNet Telecommunications, Inc. (filed Jan. 22, 2008) (WorldNet Opposition). PRT filed a reply. Petition of Puerto Rico Telephone Company, Inc., for Election of Price Cap Regulation and for Limited Waiver of Pricing and Universal Service Rules, WC Docket No. 07-292, Reply Comments of Puerto Rico Telephone Company (filed Feb. 5, 2008) (PRT Reply).

²⁰ Consolidated Petition at 1. Subject to state commission approval, Consolidated is acquiring an average schedule carrier—North Pittsburgh Telephone Company—which will remain an average schedule carrier and is not included under this waiver request. Consolidated Petition at 2 n.4.

²¹ *Id.* at 16-18.

²² *Id.* 17-18.

²³ Consolidated April 1 Letter at 2.

²⁴ *Id.*; see also Consolidated Petition at 10-12. AT&T, the ITTA, Cellular One of East Central Illinois (Cellular One), and the United States Telecom Association filed comments on the Consolidated Petition. See Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 07-291, AT&T Inc. Comments on Petition for Election of Price Cap Regulation and for Limited Waiver Relief (filed Feb. 4, 2008) (AT&T Consolidated Comments); Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 07-291, Comments of the ITTA (filed Feb. 4, 2008); Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 07-291, Comments of Cellular One of East Central Illinois (filed Feb. 4, 2008) (Cellular One Comments); Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 07-291, Comments of the United States Telecom Association (filed Feb. 4, 2008). Consolidated filed a reply. Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 07-291, Reply Comments (filed Feb. 19, 2008) (Consolidated Reply).

5. *Frontier proposal.* Citizens Communications Company, the parent of the Frontier and Citizens incumbent LECs, completed its acquisition of Global Valley Networks, Inc. (Global Valley) on October 31, 2007.²⁵ Frontier proposes to convert Global Valley, which is subject to rate of return regulation and participates in the NECA common line and traffic-sensitive tariffs, to price cap regulation.²⁶ Frontier proposes to initialize Global Valley's switched and special access rates at a level designed to recover the authorized rate of return.²⁷ Noting that it meets the line density per square mile requirement of the Commission's rules such that it could target its ATS rate to \$0.0095, Frontier seeks a waiver of the additional requirement in section 61.3(qq)(2) that it must have owned the converting exchanges on July 1, 2000, or had a binding contract to purchase the exchanges as of April 1, 2000, to use the \$0.0095 ATS target.²⁸ In the Frontier March 28 Letter, Frontier proposes that, consistent with the *Windstream Order*, Global Valley continue to receive ICLS support as a price cap carrier, and such support would be calculated on a per-line basis at Global Valley's 2007 per-line disaggregated ICLS amounts and frozen at those per-line levels going forward. Frontier also agrees that Global Valley's aggregate annual ICLS support will be capped at an amount equal to its overall 2007 ICLS (after application of any required true-ups). Global Valley will forego any PICC or CCL charges that otherwise might be permitted and will accept a non-primary residential SLC rate cap of \$6.50 instead of \$7.00.²⁹ Frontier states that granting its request would provide the same public interest benefits to Global Valley's customers as were provided to Windstream's customers.³⁰

III. DISCUSSION

A. The Public Interest

6. We find that good cause exists to grant, to the extent described below, the three modified petitions for waivers to convert to price cap regulation on July 1, 2008.³¹ The Commission concluded in

²⁵ Frontier Petition at 4. Frontier must convert Global Valley to price cap regulation by October 31, 2008. 47 C.F.R. § 61.41(c)(2).

²⁶ Frontier Petition at 4.

²⁷ *Id.* at 7.

²⁸ *Id.* at 12-17.

²⁹ Frontier March 28 Letter at 2.

³⁰ *Id.* AT&T and ITTA filed comments on the Frontier Petition. See Frontier Petition for Limited Waiver Relief upon Conversion of Global Valley Networks, Inc., to Price Cap Regulation, WC Docket No. 08-18, AT&T Reply Comments (filed Mar. 14, 2008); Frontier Petition for Limited Waiver Relief upon Conversion of Global Valley Networks, Inc, to Price Cap Regulation, WC Docket No. 08-18, Reply Comments of ITTA (filed Mar. 14, 2008).

³¹ Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

1990 that incentive-based regulation is preferable to rate-of-return regulation.³² The Commission found that several benefits would flow from the adoption of price cap regulation, including incentives for carriers to become more productive, innovative, and efficient.³³ The Commission also found that price cap regulation is likely to benefit consumers directly or indirectly through lower access prices.³⁴ In subsequent annual tariff filings, several of the larger incumbent LECs adopted price cap regulation.

7. PRT, Consolidated, and Frontier seek to take advantage of the opportunity provided by section 61.41(a)(3) of the Commission's rules and the *Windstream Order* to convert to price cap regulation.³⁵ PRT and Consolidated have agreed to target their ATS rate to \$0.0065, and Frontier agreed to target its ATS rate to \$0.0095. The three carriers have agreed to accept the conditions applied to the relief granted in the *Windstream Order*. Consistent with the *Windstream Order*, we find that the modified requests presented by the three carriers offer the public interest benefits generally attributed to incentive regulation – specifically, they provide incentives for the carriers to become more efficient, innovative, and productive.³⁶

8. The question presented by these petitions is whether the public interest will be better served by strict enforcement of the current rules, or by waiving certain rules to allow each carrier to adopt its modified proposal. Based on the information provided by the carriers and the commenters, we find that the public interest will be better served by granting the requested relief. As the Commission found in the *Windstream Order*, grant of the waivers requested here will facilitate the achievement of Commission policies. Moreover, granting the requested relief will directly lower some access rates over time and will likely reduce the ICLS that the carriers receive in the future. The relief granted in this order is subject to any revisions addressing intercarrier compensation, price cap regulation, or universal service requirements that the Commission may adopt in the future.

9. *PRT*. As modified by the PRT March 27 Letter, PRT's requested relief is consistent with the relief granted in the *Windstream Order*, and we are not persuaded by WorldNet's arguments opposing a grant of the PRT Petition.³⁷ First, WorldNet asserts that PRT's request is not "justified based on the Commission's decision in the *MAG Further Notice*," referring to the Commission's tentative conclusion that the price cap regime adopted in the *CALLS Order* was not open to new price cap carriers.³⁸ In the *Windstream Order*, however, the Commission specifically acknowledged this earlier tentative conclusion and nonetheless found that allowing conversion of a rate-of-return regulated carrier to price cap regulation

³² See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6789, para. 21 (1990) (*LEC Price Cap Order*).

³³ *Id.* at 6791, para. 31.

³⁴ *Id.* at 6791, para. 33.

³⁵ 47 C.F.R. § 61.41(a)(3).

³⁶ See *LEC Price Cap Order*, 5 FCC Rcd at 6791, para. 31.

³⁷ AT&T opposed PRT's original waiver request to adopt an ATS target of \$0.0095. AT&T PRT Comments at 3-5. Since PRT modified its request to target its ATS rate to \$0.0065, we find AT&T's opposition moot.

³⁸ WorldNet Opposition at 1, 3 (citing *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122, 4163-64 (2004) (*Second MAG Further Notice*)).

is in the public interest.³⁹ Second, WorldNet argues that the Puerto Rico market is not sufficiently competitive and that, as a competitor, it is dependent on PRT for necessary inputs, such as multiplexing for its enhanced extended links (EELs).⁴⁰ WorldNet is wrong, however, when it suggests that only “[u]nder rate-of-return regulation, competitors dependent on vital inputs from PRT can at least contest the incumbent’s rates on the ground that they are unjust and unreasonable, something that they cannot do under the price cap structure.”⁴¹ A grant of PRT’s requested relief to permit its conversion to price cap regulation does not affect the statutory requirement that PRT provide its services at just and reasonable rates, terms, and conditions, as required by section 201 of the Communications Act of 1934, as amended.⁴²

10. WorldNet also suggests that if PRT’s request is granted, the Commission should require PRT to lower its special access rates.⁴³ Carriers electing price cap regulation after the initial carriers were required to adopt price caps have used rates as of January 1st of the year in which price cap regulation was elected to initialize their rates.⁴⁴ In the *Windstream Order*, the Commission found that Windstream “shall set its initial PCIs for special access using its January 1, 2008, special access rates times the appropriate 2007 base period demand.”⁴⁵ PRT (as well as Consolidated and Frontier) must do likewise, consistent with the Commission’s rules and the *Windstream Order*. We find no justification to require a reduction in PRT’s special access rates at this time.⁴⁶

11. *Consolidated*. As modified by the Consolidated April 1 Letter, Consolidated’s requested relief is consistent with the relief granted in the *Windstream Order*, and we are not persuaded by comments arguing otherwise. Cellular One “agrees that Consolidated ought to be able to convert to a price cap regime in order to respond to the growing competitive pressures where Consolidated serves,” but contends that Consolidated should not be permitted to maintain “high levels of high-cost universal service support.”⁴⁷ Cellular One claims that, if the Consolidated request is granted, Cellular One “would receive significantly less high-cost support under the Commission’s identical support rules.”⁴⁸ Consistent with the *Windstream Order*, Consolidated’s ICLS is being frozen at its 2007 per line amounts, which,

³⁹ *Windstream Order* at para. 9.

⁴⁰ WorldNet Opposition at 2, 5-6.

⁴¹ *Id.* at 3.

⁴² 47 U.S.C. § 201. WorldNet may challenge PRT’s price cap rates on this basis when PRT files tariff revisions and also may seek prospective relief on this basis through enforcement proceedings.

⁴³ WorldNet Opposition at 1.

⁴⁴ 47 C.F.R. § 61.48(d)(2) (1996).

⁴⁵ *Windstream Order* at para. 18.

⁴⁶ *See infra* para. 21. We disagree with WorldNet’s assertion that, because wholesale unbundled network element (UNE) rates are significantly below PRT’s retail special access rates, those special access rates should be reduced. *See* WorldNet Opposition at 4-6. Commission rules require incumbent LECs to price UNEs at total element long run incremental cost (TELRIC) rates. *See* 47 C.F.R. § 51.501 *et seq.* Those rules do not apply to special access services. Thus, WorldNet does not demonstrate the relevance of that price difference here.

⁴⁷ Cellular One Comments at 2.

⁴⁸ *Id.* at 4 n.10.

under the current rules, competitive eligible telecommunications carriers (ETCs) will also receive. If Consolidated should lose access lines, its universal service support will decline in absolute terms, but Cellular One's per-line support will not be affected.⁴⁹

12. Although generally supporting conversion to price cap regulation, AT&T notes that Consolidated has a \$0.0357 ATS rate in its Illinois study area, which it contends could allow Consolidated to engage in access stimulation, and proposes several safeguards Consolidated could implement.⁵⁰ In response, Consolidated states that it would not be opposed, for its Illinois study area, to include a trigger provision in its tariff similar to that used in the 2007 tariff investigation—a 100 percent monthly increase in local switching demand over the same month of the prior year.⁵¹ In the event that the trigger is exceeded in any month, Consolidated will “refile its rates at the target ATS level within 60 days of the end of [that] month.”⁵² We find that Consolidated's proposed demand trigger is sufficient to address AT&T's concerns. The demand trigger that Consolidated will include in its tariff is the same trigger the Commission accepted when it terminated its investigation of certain switched access rates contained in 2007 annual access tariff filings.⁵³ Finally, we note that these issues, more generally, are pending in the *Access Stimulation NPRM*, and nothing in this order prejudices Commission action in that proceeding.⁵⁴ As noted above, the relief granted in this order is subject to any revisions addressing intercarrier compensation, price cap regulation, or universal service requirements that the Commission may adopt in the future.

13. *Frontier*. As modified by the Frontier March 28 Letter, Frontier's requested relief is consistent with the relief granted in the *Windstream Order*, except for the need to waive the requirement in section 61.3(qq)(2) of the Commission's rules that it must have owned the exchanges converting to price caps on July 1, 2000, or had a binding contract to purchase the exchanges on April 1, 2000.⁵⁵ No party has challenged Frontier's request to waive this requirement, and we find no public interest reason to enforce this limitation in these circumstances. Both Frontier and Global Valley each meet the line density requirement of section 61.3(qq)(2). Although the date limitation in this rule was not discussed in the *CALLS Order* when it was adopted, its effect was to prevent carriers at that time from buying or selling exchanges to realize unintended windfalls under the then new price cap regime at the expense of the other participating price cap carriers. The conversion of Frontier to price caps will also not affect any current price cap regulated carriers.

⁴⁹ See *infra* para. 24.

⁵⁰ AT&T Consolidated Comments at 3-4. AT&T notes that “no evidence available to AT&T indicates that Consolidated is now engaged in ‘traffic pumping’ and that carrier also has no track record of having done so.” *Id.* at 4.

⁵¹ Consolidated Reply at 2-3.

⁵² *Id.*

⁵³ See *Investigation of Certain 2007 Annual Access Tariffs*, WC Docket No. 07-184, WCB/Pricing No. 07-10, Order, 22 FCC Rcd 21261, 21263 (2007).

⁵⁴ See *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Notice of Proposed Rulemaking, 22 FCC Rcd 17989 (2007) (*Access Stimulation NPRM*).

⁵⁵ 47 C.F.R. § 61.3(qq)(2).

14. Finally, Global Valley is a cost company currently in the NECA common line and traffic-sensitive tariffs and does not have existing rates based on its own costs.⁵⁶ As Windstream did for its study areas that participated in NECA's interstate access tariffs, Frontier indicates that it will initialize Global Valley's rates to meet its authorized rate-of-return and then adapt those rates to the price cap rate structure in a manner similar to that used for its other study areas.⁵⁷ We find this is a reasonable approach for initializing the rates and PCIs for Global Valley and is consistent with the *Windstream Order*.⁵⁸ The rates so determined shall be the January 1 rates used in establishing its PCIs for all its price cap baskets.⁵⁹ Frontier shall include the cost studies used to develop the rates for Global Valley in the supporting materials filed with its initial price cap tariff.

B. Price Cap Baskets

15. Part 69 of the Commission's rules establishes interstate access rate elements that are designed to recover the costs of various parts of the local network. Under price cap regulation, these rate elements are grouped together into five price cap baskets: the common line, marketing and transport interconnection charge (CMT) basket; the traffic sensitive switched interstate access basket (traffic sensitive basket); the trunking basket; the special access basket; and the interexchange basket.⁶⁰ Each basket is subject to its own price cap.⁶¹ The interstate access rates associated with these baskets may be assessed on either end-user customers or carriers.

1. CMT Basket

16. To recover costs associated with the local loop, or common line, rate-of-return LECs assess certain interstate access charges on end-user customers. Price cap LECs generally assess the same types of common line-related charges on their end-user customers, although the levels of such charges are determined differently. The common-line related end-user charges assessed by both rate-of-return and price cap LECs include SLCs, Line Port Costs in Excess Of Analog, and Special Access Surcharges.⁶² Price cap LECs may also assess PICCs and CCL charges on interexchange carriers in certain instances.⁶³ A price cap LEC's common line rates are limited by a CMT basket PCI and by its average price cap CMT

⁵⁶ Frontier Petition at 7.

⁵⁷ *Id.*

⁵⁸ *Windstream Order* at para. 17.

⁵⁹ *Id.*

⁶⁰ See 47 C.F.R. § 61.42. The interexchange basket is established only by price cap LECs that offer interstate interexchange services that are not classified as access services for the purposes of Part 69 of the Commission's rules. 47 C.F.R. § 61.42(d)(4). PRT, Consolidated, and Frontier do not indicate whether they offer such services. To the extent that any of them does, it must establish a price cap interexchange basket consistent with the Commission's rules. *Id.*

⁶¹ 47 C.F.R. § 61.42.

⁶² 47 C.F.R. §§ 69.104, 69.130 (rate-of-return carrier SLC and line port surcharge in excess of analog rules); 47 C.F.R. §§ 69.152, 69.157 (price cap carrier SLC and line port surcharge in excess of analog rules); 47 C.F.R. § 69.115 (special access surcharge rules applicable to both rate-of-return and price cap carriers).

⁶³ 47 C.F.R. §§ 69.153, 69.154.

revenues per-line month,⁶⁴ in addition to the SLC caps imposed by Part 69 of the Commission's rules. We describe in some detail how PRT, Consolidated, and Frontier shall convert their common line rates to the price cap common line structure in the following paragraphs.

17. We begin with the calculation of each carrier's initial average price cap CMT revenues per-line month. Price cap CMT revenue is the maximum total revenue a filing entity would be permitted to receive from SLCs, PICCs, CCL charges, and marketing expenses, using base period lines. Price cap CMT revenue does not include price cap LEC universal service contributions.⁶⁵ Thus, for purposes of the conversion, each carrier's CMT revenues will include its 2007 SLC revenues plus the marketing expenses shifted to the CMT basket from the traffic-sensitive and trunking baskets pursuant to section 69.156 of the Commission's rules.⁶⁶ Each carrier's average price cap CMT revenues per-line month will then be its CMT revenues divided by its 2007 base period demand.⁶⁷ The average price cap CMT revenues per-line month, in conjunction with the \$6.50 per-line cap on residential and single line business lines and the \$9.20 per-line cap on multiline business lines, will create the ceiling on the SLC charges that each carrier may assess end users.⁶⁸

18. The other control on the CMT basket is the common line PCI. To create its common line PCI, each carrier shall multiply its January 1, 2008, end user rates by 2007 base period demand. To this result, each carrier shall add the marketing expenses shifted to the CMT basket pursuant to section 69.156 of the Commission's rules.⁶⁹ One final adjustment will be necessary for each carrier to establish its initial CMT basket PCI. PRT, Consolidated, and Frontier each have committed, in conjunction with its receipt of universal service at a level equal to its 2007 ICLS receipts frozen on a per-line basis, to forego the recovery of any PICC or CCL charge.⁷⁰ To reflect this commitment, and to avoid any headroom that may be created by foregoing this recovery, each carrier must reduce its CMT basket PCI by an amount equal to the PICC and CCL revenues it is foregoing.

2. Traffic Sensitive and Trunking Baskets

19. Rate-of-return and price cap LECs assess local switching and transport charges on interexchange carriers. Price cap LECs reflect the appropriate rates and demands in PCIs for the traffic-sensitive and trunking baskets. PRT and Consolidated propose to set their initial traffic-sensitive and trunking basket PCIs using current switched access rates. As discussed above, Frontier will initialize

⁶⁴ Price cap CMT revenues are a carrier's common line, marketing, and transport interconnection charge revenues. 47 C.F.R. §§ 61.3(cc), 61.42(d)(1).

⁶⁵ 47 C.F.R. § 61.3(cc).

⁶⁶ 47 C.F.R. § 69.156. The use of the \$6.50 SLC from 2007 in calculating the price cap CMT revenues will reflect each carrier's commitment to not assess a \$7.00 SLC on non-primary residential lines, as would otherwise be permitted for price cap carriers, as part of its receipt of frozen per-line ICLS support.

⁶⁷ 47 C.F.R. § 61.3(d).

⁶⁸ See generally 47 C.F.R. § 69.152.

⁶⁹ 47 C.F.R. § 69.156.

⁷⁰ PRT March 27 Letter at 2-3; Consolidated April 1 Letter at 2; Frontier March 28 Letter at 2. Although IAS is included in the common line PCI and adjusted annually as projected IAS receipts change, the ICLS amount here will be frozen. PRT, Consolidated, and Frontier should, therefore, exclude their ICLS receipts from the PCI calculations since they will have no effect on the PCI. This will also simplify the ICLS true-up process.

Global Valley's rates to meet its authorized rate-of-return⁷¹ and then adapt those rates to the price cap rate structure.⁷² Under their modified proposals, PRT and Consolidated will target their ATS rates to \$0.0065, and Frontier will target its ATS rate to \$0.0095. Each carrier will use an X-factor of 6.5 percent to reduce its tariffed charges to the ATS target rate.

20. Each carrier's modified proposal for converting its switched access rates to price caps is reasonable. Each carrier must establish initial traffic-sensitive and trunking basket PCIs using its January 1, 2008, switched access rates multiplied by 2007 base period demand.⁷³ The PCIs must be reduced to eliminate any marketing expenses that were recovered through switched access rates in 2007.⁷⁴ Each carrier shall begin reducing its ATS rates to its respective target ATS rate through the use of a 6.5 percent X-factor in its 2008 annual access tariff filing consistent with the requirements of section 61.45(i) of the Commission's rules.⁷⁵ This will further the public interest by ensuring that carrier customers receive reduced local switching and transport rates. Consistent with the Commission's price cap rules, each carrier must establish actual price indexes (APIs), service categories, and service band indexes (SBIs) for the traffic sensitive and trunking baskets.⁷⁶

3. Special Access Basket

21. Each carrier proposes to use its current special access rates to set its PCI for the special access basket. We agree that current special access rates are the appropriate rates to use in setting initial PCIs for the special access basket. Under the rules adopted in the *CALLS Order*, there is no requirement for further reductions in the special access PCIs.⁷⁷ Accordingly, each carrier shall set its initial PCIs for special access using its January 1, 2008, special access rates multiplied by the appropriate 2007 base period demand. Consistent with the Commission's price cap rules, each carrier must establish APIs, service categories, and SBIs for the special access basket.⁷⁸

C. Universal Service

22. PRT, Consolidated, and Frontier propose to continue to receive high-cost universal service support to recover explicitly a portion of their common line costs after they convert their rate-of-return cost study areas to price cap regulation.⁷⁹ The high-cost support mechanisms available to allow ETCs to

⁷¹ As noted in paragraph 14, Frontier will use these rates as its January 1, 2008, rates.

⁷² See *supra* para. 14.

⁷³ Any local switching support (LSS) PRT, Consolidated, or Frontier may receive will be excluded from the PCI calculations, as is done by other price cap LECs. We note that if the carriers become more efficient, LSS will decrease.

⁷⁴ See 47 C.F.R. § 69.156.

⁷⁵ 47 C.F.R. § 61.45(i).

⁷⁶ 47 C.F.R. §§ 61.46; 61.42(e)(1) and (2); 61.47.

⁷⁷ 47 C.F.R. § 61.45(b)(1)(iv).

⁷⁸ 47 C.F.R. §§ 61.46; 61.42(e)(3); 61.47.

⁷⁹ See PRT Petition at 16-18; PRT March 27 Letter at 2; Consolidated Petition at 9; Consolidated April 1 Letter at 2; Frontier Petition at 7-8; Frontier April 1 Letter at 2.

recover common line costs through explicit universal service support, rather than implicitly through a portion of access charge rates, are ICLS for rate-of-return carriers, and interstate access support (IAS) for price cap carriers.⁸⁰ The Commission's rules do not make ICLS available to price cap carriers,⁸¹ and the Commission tentatively has concluded that carriers converting from rate-of-return regulation to price cap regulation are ineligible for IAS established in the *CALLS Order*.⁸² Accordingly, absent Commission intervention, the requested conversions to price cap regulation could result in the loss of explicit support by these carriers to offset the interstate portion of their loop costs that are not recovered through interstate access charges.

23. Each carrier argues that realization of all of the public interest benefits of its conversion to price cap regulation depends upon its continued receipt of some high-cost universal service support for its loop costs.⁸³ In its petition, each carrier requested that the Commission grant a partial waiver of applicable rules so it could receive ICLS set at a frozen per-line amount, based on a calculation of the IAS that it would have received in a prior year if it had been eligible to receive IAS.⁸⁴ Subsequent to the release of the *Windstream Order*, each carrier modified its initial waiver request so it could continue to receive ICLS for the converted study areas, but at 2007 per-line disaggregated ICLS amounts, and frozen at those per-line levels going forward.⁸⁵ Under this approach, as discussed above, each carrier agrees to forego any PICC or CCL charges that might otherwise be assessable under the price cap rules, and would forego an increase in the non-primary residential SLC cap from \$6.50 to \$7.00.⁸⁶ The Commission has previously expressed a preference for explicit support, through universal service support mechanisms, as opposed to implicit support, through access charges.⁸⁷ Therefore, we find that PRT, Consolidated, and Frontier should continue to receive high-cost support for loop costs via ICLS. We find good cause to grant these partial waiver requests so these carriers may continue to receive ICLS at 2007 per-line disaggregated ICLS amounts, and frozen at those per-line levels going forward. Furthermore, as the Commission did with *Windstream*, we cap each carrier's future overall annual ICLS at an amount equal to its overall 2007 ICLS, after application of any required true-ups. This waiver is conditioned upon each

⁸⁰ 47 C.F.R. §§ 54.901; 54.801.

⁸¹ See 47 C.F.R. § 54.901(a) (providing ICLS for rate-of-return carriers).

⁸² See *Second MAG Further Notice*, 19 FCC Rcd at 4163, para. 93.

⁸³ See PRT Petition at 16; Consolidated Petition at 9; Frontier Petition at 7-8.

⁸⁴ See PRT Petition at 16-18; Consolidated Petition at 9; Frontier Petition at 7-8.

⁸⁵ PRT March 27 Letter at 2; Consolidated April 1 Letter at 2; Frontier March 28 Letter at 2. ICLS is provided to both rate-of-return incumbent LEC ETCs and competitive ETCs in a study area based on the incumbent LECs' embedded costs. 47 C.F.R. § 54.901.

⁸⁶ See PRT March 27 Letter at 2; Consolidated April 1 Letter at 2; Frontier March 28 Letter at 2.

⁸⁷ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19621-22, 19642-46, paras. 15, 62-68 (2001) (*MAG Order*); *CALLS Order*, 15 FCC Rcd at 13006, para. 111.

carrier's adherence to the commitments discussed above and subject to Commission modification in its access charge or universal service reform proceedings.⁸⁸

24. For each study area, the frozen per-line ICLS amount will be based on the amount of per-line ICLS the carrier received in 2007, after the application of any true-ups based on actual cost and revenue data for 2007.⁸⁹ The monthly frozen per-line ICLS amount will be calculated by dividing the final annual 2007 ICLS amount by twelve times the average of the carrier's line counts as of December 31, 2006, and December 31, 2007.⁹⁰ Because this final frozen per-line ICLS cannot be determined until after the carriers file their 2007 cost and revenue data, PRT, Consolidated, and Frontier will each receive an interim per-line ICLS amount until the final amount can be determined. For each carrier, this interim amount will be calculated by dividing the amount of ICLS disbursed to each study area in December 2007, not including any prior period true-ups, by the number of lines served in each respective study area as of December 31, 2007. When the carrier's final frozen per-line ICLS amount is determined, any support distributed to that carrier pursuant to the interim per-line ICLS amount will be true'd up to the final per-line level.⁹¹ Consistent with section 54.307 of the Commission's rules and subject to any revisions addressing universal service requirements that the Commission may adopt in the future, competitive ETCs serving the affected study areas will receive the same per-line support amounts and be subject to the same true-ups as PRT, Consolidated, and Frontier.⁹²

25. We partially waive section 54.901(a) of the Commission's rules, which makes ICLS available only to rate-of-return carriers, so that PRT, Consolidated, and Frontier may convert their rate-of-return study areas to price cap regulation but continue to receive ICLS for those study areas.⁹³ Because these carriers will be receiving ICLS on a frozen per-line basis, the amount of ICLS each receives will decline if their number of lines declines. Further, we partially waive the ICLS reporting and support calculation provisions of sections 54.901 and 54.903 of the Commission's rules so that each carrier's ICLS may be set at 2007 per-line disaggregated ICLS amounts and frozen at those per-line levels going

⁸⁸ 47 C.F.R. § 1.3; see also *WAIT Radio* 418 F.2d at 1159; see also *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, Memorandum Opinion and Order, 22 FCC Rcd 16304, 16337 n.211 (2007) (finding that, "because a condition of the forbearance granted by this order requires ACS to receive ICLS at the existing per-line rate, rather than based on the rate-of-return regulated carrier requirements in section 54.901(a), there is good cause to waive these rules").

⁸⁹ The actual cost and revenue data required to true-up each carrier's 2007 ICLS must be filed by December 31, 2008. See 47 C.F.R. § 54.903(a)(4).

⁹⁰ For example, if a study area had a final 2007 ICLS of \$4,800, and its line counts as of the end of 2006 and 2007 were, respectively, 110 and 90, that study area would have a frozen ICLS per-line of \$4 per month – $\$4,800 / (((110+90)/2) * 12)$.

⁹¹ We also note that each carrier will be subject to regular ICLS true-ups for the period up until its conversion to price cap status. Accordingly, PRT, Consolidated, and Frontier will be required to file actual cost and revenue data for 2008 pursuant to section 54.903(a)(4). See 47 C.F.R. § 54.903(a)(4).

⁹² 47 C.F.R. § 54.307.

⁹³ 47 C.F.R. § 54.901.

forward.⁹⁴ Finally, we waive any portions of sections 54.802 through 54.806 of the Commission's rules that would preclude the carriers from receiving ICLS at the 2007 per-line disaggregated ICLS amounts.⁹⁵ To ensure that these waivers do not result in PRT, Consolidated, and Frontier receiving increased ICLS in the future due to any increases in its line counts, as a condition of these waivers, we cap each carrier's future overall annual ICLS at an amount equal to its overall 2007 ICLS, after application of any required true-ups.⁹⁶

D. Other Waivers

26. Incumbent LECs that plan to leave one or both of the NECA tariffs are required by section 69.3(i)(1) of the Commission's rules to notify NECA of their intent by March 1 of the tariff filing year in which they plan to leave the tariff(s).⁹⁷ PRT and Consolidated each request a waiver of section 69.3(i)(1) to allow it to notify NECA of its intent to leave the common line tariff once the Commission has reached a decision on its waiver request.⁹⁸

27. As noted above, the Commission may waive its rules for good cause shown.⁹⁹ We find good cause exists to waive section 69.3(i)(1) of the Commission's rules to permit PRT and Consolidated to each notify NECA of its intent to withdraw study areas from the NECA common line tariff within thirty (30) days of the release of this order. Absent a waiver, the relief we grant PRT and Consolidated in this order would be nullified because of this procedural limitation. We find that grant of this waiver will not impose an undue hardship on NECA in developing its annual access tariff filing given the limited number of study areas involved.

28. Price cap carriers are required to file a short-form Tariff Review Plan (TRP) by May 1, 2008.¹⁰⁰ Because of the timing of this decision, we extend that date to May 20, 2008 for PRT, Consolidated and Frontier (for its Global Valley study area).¹⁰¹

⁹⁴ See 47 C.F.R. §§ 54.901, 54.903. We note that each carrier must comply with those reporting requirements for all true-ups and calculations necessary to determine the ultimate frozen per-line ICLS amount, as described in paras. 23-24 *supra*.

⁹⁵ See 47 C.F.R. §§ 54.802 - 54.806.

⁹⁶ See PRT March 27 Letter at 2; Consolidated April 1 Letter at 2; Frontier March 28 Letter at 2; *Windstream Order* at para. 22. The annual ICLS cap would apply only to those converting study areas that are the subject of this order.

⁹⁷ 47 C.F.R. § 69.3(i)(1).

⁹⁸ PRT March 27 Letter at 2; Consolidated April 1 Letter at 2.

⁹⁹ See *supra* note 31; 47 C.F.R. § 1.3.

¹⁰⁰ See *July 1, 2008 Annual Access Charge Tariff Filings*, WCB/Pricing File No. 08-14, Order, DA 08-758 (Wireline Comp. Bur., rel. Mar. 28, 2008).

¹⁰¹ Comments on those short-form TRPs should be filed by May 30, 2008, and reply comments should be filed by June 6, 2008.

IV. ORDERING CLAUSES

29. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 201-203, and 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201-203, and 254(g), and pursuant to the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the Puerto Rico Telephone Company, Inc., petition for waiver IS GRANTED to the extent described herein.

30. IT IS FURTHER ORDERED, pursuant to sections 4(i), 201-203, and 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201-203, and 254(g), and pursuant to the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the Consolidated Communications Holdings, Inc., petition for waiver IS GRANTED to the extent described herein.

31. IT IS FURTHER ORDERED, pursuant to sections 4(i), 201-203, and 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201-203, and 254(g), and pursuant to the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the Frontier Communications petition for waiver IS GRANTED to the extent described herein.

32. IT IS FURTHER ORDERED, pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and pursuant to the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that section 69.3(i)(1) of the Commission's rules IS WAIVED to the extent indicated herein.

33. IT IS FURTHER ORDERED that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Dana R. Shaffer
Chief, Wireline Competition Bureau