

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	File No.: EB-SED-20-00030717
Windstream Services II, LLC)	CD Acct. No.: 202132100006
)	FRN: 0030023899
)	

ORDER

Adopted: November 23, 2020

Released: November 23, 2020

By the Deputy Bureau Chief, Enforcement Bureau:

1. The Federal Communications Commission (Commission) takes seriously its role in preserving the environment and historic properties. To that end, before licensees or applicants for a Commission authorization start construction of certain wireless facilities, they must first assess whether the facility may have a significant impact on the environment or historic properties.¹ Commission rules also direct these entities to coordinate with relevant state and federal government offices and tribal nations. These requirements promote the nationwide deployment of wireless facilities while respecting other important federal, state, and sovereign tribal interests. Entities that unilaterally choose to begin construction of wireless facilities prior to completing Commission-required environmental and historic preservation reviews violate federal law and disrespect jurisdictional authorities.

2. The Commission’s Enforcement Bureau (Bureau) has therefore entered into a Consent Decree to resolve the Bureau’s investigation into allegations that Windstream Services II, LLC. (Windstream) constructed two wireless facilities without complying with the Commission’s environmental and historic preservation rules, including rules implementing the National Environmental Policy Act of 1969 (NEPA) and the National Historic Preservation Act (NHPA).² To settle this matter, Windstream admits that it violated the Commission’s environmental and historic preservation rules by prematurely constructing two tower sites without onsite monitoring requested by the affected tribes, will implement a robust compliance plan to ensure that it does not violate these rules in the future, and will pay a \$18,000 civil penalty.

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 referenced investigation regarding Windstream’s compliance with environmental protection and historic preservation requirements found in NEPA and NHPA, and sections 1.1307 and 1.1312 of the Commission’s rules.³

4. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Windstream’s basic qualifications to hold or obtain any Commission license or authorization.⁴

¹ See 47 CFR § 1.1301 *et seq.*

² See National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970) (codified as amended at 42 U.S.C. § 4321 *et seq.*) (NEPA); National Historic Preservation Act, Pub. L. No. 89-665, 80 Stat. 915 (1966) (codified as amended at 54 U.S.C. § 300101 *et seq.*) (NHPA).

³ 47 CFR §§ 1.1307, 1.1312.

⁴ See 47 CFR § 1.93(b).

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act⁵ and the authority delegated by sections 0.111 and 0.311 of the Commission's rules,⁶ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

6. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** in accordance with the terms of the attached Consent Decree.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by email to Christopher W. Savage, Counsel for Windstream Services II, Inc., David Wright Tremaine, LLP.

FEDERAL COMMUNICATIONS COMMISSION

Christopher L. Killion
Deputy Chief
Enforcement Bureau

⁵ 47 U.S.C. § 154(i).

⁶ 47 CFR §§ 0.111, 0.311.

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CONSENT DECREE

1. Licensees or applicants for a Commission authorization must complete environmental and historic preservation reviews, prior to any construction of a proposed wireless facility, so that the Commission may ascertain whether the proposed facility might adversely affect the environment or a historic property. Failure to undertake such reviews may pose a risk of adverse effects on the environment or historic properties. In furtherance of these objectives, the Enforcement Bureau and Windstream, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether Windstream violated sections 1.1307 and 1.1312 of the Commission’s rules in connection with its construction of two wireless telecommunications facilities before completing the required environmental and historic preservation reviews. To settle this investigation, Windstream admits that it violated the Commission’s rules, will implement a compliance plan, and will pay a \$18,000 civil penalty.

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.¹
 - (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) “CD Acct No.” means account number 202132100006, associated with payment obligations described in paragraph 17 of this Consent Decree.
 - (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Windstream is subject by virtue of its business activities, including but not limited to the Environmental Rules.
 - (g) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 13.
 - (h) “Covered Employees” means all employees and agents of Windstream who perform, supervise, oversee, or manage the performance of, duties that relate to Windstream

¹ 47 U.S.C. § 151 *et seq.*

responsibilities under the Communications Laws, including the Environmental Rules.

- (i) “Effective Date” means the date by which both the Bureau and Windstream have signed the Consent Decree and the Bureau has released an Adopting Order.
- (j) “Environmental Rules” means sections 1.1301-1.1319 of the Rules² and other Communications Laws implementing the National Environmental Policy Act of 1969, as amended (NEPA),³ and the National Historic Preservation Act, as amended (NHPA).⁴
- (k) “Investigation” means the investigation commenced by the Bureau in EB-SED-20-00030717 regarding whether Windstream violated the Environmental Rules.
- (l) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Windstream to implement the Compliance Plan.
- (m) “Parties” means Windstream and the Bureau, each of which is a “Party.”
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (o) “Windstream” means Windstream Services II, LLC and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

II. BACKGROUND

3. Under the Commission’s Environmental Rules, applicants and licensees are required to assess whether proposed facilities may significantly affect the environment, as defined in section 1.1307 of the Rules.⁵ Section 1.1307(a) addresses facilities that may significantly affect the environment, including those that: (a) affect threatened or endangered species or their critical habitats, or are likely to jeopardize proposed threatened or endangered species, or destroy or adversely modify proposed critical habitats; (b) may affect districts, sites, buildings, structures or objects that are listed, or eligible for listing, in the National Register; (c) may affect Native American religious sites; or (d) will involve significant change in surface features.⁶ In considering potential effects on historic properties, section 1.1307(a)(4) requires applicants to follow the prescribed procedures set forth in the rules of the Advisory Council on Historic Preservation (Advisory Council),⁷ as modified by the Nationwide Programmatic Agreement for

² 47 CFR §§ 1.1301-1.1319.

³ National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970) (codified as amended at 42 U.S.C. § 4321 *et seq.*) (NEPA).

⁴ National Historic Preservation Act, Pub. L. No. 89-665, 80 Stat. 915 (1966) (codified as amended at 54 U.S.C. § 300101 *et seq.*) (NHPA).

⁵ As part of the assessment, a licensee or applicant must consider several factors, including, but not limited to, whether the site of the proposed tower will be located in an officially designated wilderness area or wildlife preserve, or whether the proposed site may affect listed threatened or endangered species or designated critical habitats. *See* 47 CFR § 1.1307. Pursuant to section 1.1312, this obligation expressly applies to facilities for which no Commission authorization prior to construction is required, unless they meet an exemption. *See id.* § 1.1312(a), (e).

⁶ *Id.* § 1.1307(a). National Register refers to the National Register of Historic Places, which is maintained by the Secretary of the Interior’s Office of the Keeper of the National Register. 47 CFR Pt. 1, App. C, Section II. A. 10.

⁷ 36 CFR Pt. 800.

the Collocation of Wireless Antennas (Collocation Agreement)⁸ and the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (Wireless Facilities Agreement).⁹ These agreements tailor and streamline the review and consultation procedures routinely required by the NHPA¹⁰ and the implementing regulations issued by the Advisory Council.

4. Windstream is an FCC licensee and through its affiliates offers telecommunications services in the United States. In late 2019, Windstream engaged an independent contractor to manage the construction of two wireless facilities, one in Nebraska City, Nebraska (Nebraska Tower) and the other in Harrison, Arkansas (Arkansas Tower). To meet its compliance obligations under the Commission's rules implementing NEPA and the NHPA, Windstream, as required, solicited the views of the State Historical Preservation Officers (SHPOs) and appropriate tribal representatives. The SHPOs sent Windstream their concurrence, however the tribes requested onsite monitoring of construction during all ground disturbance activity.

5. In December 2019, the Wireless Telecommunications Bureau (WTB) received a statement from Windstream, self-reporting that despite telling its contractor not to begin construction without a site monitor present, construction activities had occurred at the Nebraska Tower and Arkansas Tower without the onsite monitoring requested by the affected tribes.¹¹ The WTB referred the matter to the Bureau. The Bureau's Spectrum Enforcement Division opened the Investigation and issued a Letter of Inquiry to Windstream on February 20, 2020, directing the Company to submit sworn written responses to a series of questions relating to Windstream's compliance with the Commission's

⁸ 47 CFR Pt. 1, App. B. See *Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with respect to Collocating Wireless Antennas on Existing Structures*, Public Notice, 16 FCC Rcd 5574 (WTB 2001), *recons. denied*, 20 FCC Rcd 4084 (WTB 2005).

⁹ 47 CFR Pt. 1, App. C; see *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd 1073 (2004), *clarified*, 20 FCC Rcd 17995 (2005), *aff'd*, *CTIA-The Wireless Ass'n. v. FCC*, 466 F.3d 105 (D.C. Cir. 2006) (*NPA Report and Order*); see also *Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, WT Docket No. 19-250, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 20-75, 24-27, paras. 45-50 (2020) (an applicant or licensee is not required to file an environmental assessment if a proposed facility may have an adverse effect on the environment, provided that the FCC and the applicant or licensee enters into a memorandum of agreement to mitigate the effects of the proposed facility).

¹⁰ 54 U.S.C. § 300101 *et seq.* The NHPA requires that a federal agency consider the effects of its federal undertakings, including actions that it authorizes or approves, on historic properties prior to issuing federal licenses, permits, or approvals. See 54 U.S.C. §§ 306108, 300320. This review is commonly referred to as "Section 106 Review" because the provision requiring the review was originally enacted as section 106 of the NHPA. In considering such effects, the NHPA further requires the federal agency to consider the views of expert agencies. Specifically, the NHPA requires the federal agency to consider the views of the Advisory Council on Historic Preservation (Advisory Council), which is the federal agency responsible for implementing the NHPA; the appropriate State Historic Preservation Officer; and, if historic properties of religious or cultural significance to federally recognized tribal nations or Native Hawaiian organizations may be affected, their representatives. See 54 U.S.C. §§ 302104, 302706, 306108, 304101. As authorized by the Advisory Council, the Commission's Environmental Rules delegate to its licensees, permittees, and applicants initial responsibility for identifying historic properties and evaluating the effects that their proposed facilities may have on such properties, but the Commission remains ultimately responsible for ensuring that the "Section 106 Review" occurs in accordance with applicable statutory and regulatory provisions, as well as for government-to-government consultation with federally recognized tribal nations. See 47 CFR § 1.1307(a)(4); see also 36 CFR § 800.2(a)(3); *NPA Report and Order*, 20 FCC Rcd at 1076-77, para. 5.

¹¹ See Letter from Nicole Winters, Counsel II, Windstream Services, LLC., to Jill Springer, Federal Preservation Officer, Federal Communications Commission (Dec. 23, 2019) (on file in EB-SED-20-00030717).

Environmental Rules.¹² Windstream filed a response to the Letter of Inquiry on April 13, 2020 (Windstream Response)¹³ and supplemental responses on May 1, 2020 (Windstream Supplemental Response)¹⁴ and May 11, 2020.¹⁵ In the Windstream Supplemental Response, as well as its earlier letter to the WTB, Windstream admits that it constructed at the Nebraska Tower and Arkansas Tower without the onsite monitoring requested by the affected tribes.¹⁶

6. The evidence in the record shows that Windstream violated the Environmental Rules. Specifically, Windstream failed to comply with tribal notification procedures by failing to meet the tribal representative requests to have tribal onsite monitoring of construction during all ground disturbance activity. The Bureau and Windstream subsequently negotiated the terms and conditions of the Consent Decree.

III. TERMS OF AGREEMENT

7. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

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

9. **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 Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

10. **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, Windstream agrees to the terms, conditions, and procedures contained herein. The Bureau further 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, any new proceeding on its own motion against Windstream concerning the matters that were the subject of the Investigation, or to set for hearing the question of Windstream's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.¹⁷

11. **Admission of Liability.** Windstream admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 10 herein, that its actions violated the Environmental Rules.

¹² See Letter from JoAnn Lucanik, Deputy Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Nicole Winters, Counsel II, Windstream Services, LLC (Feb. 27, 2020) (on file in EB-SED-20-00030717).

¹³ See Letter from Nicole Winters, Counsel II, Windstream Services, LLC., to Josh Zeldis, Spectrum Enforcement Division, FCC Enforcement Bureau (Apr. 13, 2020) (on file in EB-SED-20-00030717).

¹⁴ See Letter from Christopher W. Savage, Davis Wright Tremaine LLP, Counsel for Windstream Services, LLC to Josh Zeldis, Attorney, Spectrum Enforcement Division, FCC Enforcement Bureau (May 1, 2020) (on file in EB-SED-20-00030717).

¹⁵ See Letter from Christopher W. Savage, Davis Wright Tremaine LLP, Counsel for Windstream Services, LLC to Josh Zeldis, Attorney, Spectrum Enforcement Division, FCC Enforcement Bureau (May 11, 2020) (on file in EB-SED-20-00030717).

¹⁶ See Letter from Christopher W. Savage, Davis Wright Tremaine LLP, Counsel for Windstream Services, LLC to Josh Zeldis, Attorney, Spectrum Enforcement Division, FCC Enforcement Bureau (May 1, 2020) (on file in EB-SED-20-00030717); Letter from Nicole Winters, Counsel II, Windstream Services, LLC., to Jill Springer, Federal Preservation Officer, Federal Communications Commission (Dec. 23, 2019) (on file in EB-SED-20-00030717).

¹⁷ See 47 CFR § 1.93(b).

12. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Windstream shall designate a senior corporate manager with the requisite corporate, budgetary, 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 that Windstream complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Environmental Rules prior to assuming his/her duties.

13. **Compliance Plan.** For purposes of settling the matters set forth herein, Windstream 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 the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Environmental Rules, Windstream will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, Windstream shall establish Operating Procedures that all Covered Employees must follow to help ensure Windstream's compliance with the Environmental Rules. Windstream's Operating Procedures shall include internal procedures and policies specifically designed to ensure that all environmental review and consultation obligations are fully satisfied prior to commencing construction on any proposed wireless facilities. Windstream shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Environmental Rules.
- (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. The Compliance Manual shall explain the Environmental Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Windstream's compliance with the Environmental Rules. Windstream shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Windstream shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Windstream shall establish and implement a Compliance Training Program in compliance with the Environmental Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Windstream's obligation to report any noncompliance with the Environmental Rules under paragraph 14 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 sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Windstream shall repeat compliance training on an annual basis and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

14. **Reporting Noncompliance.** Windstream shall report any noncompliance with the Environmental Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Windstream 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 Windstream has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted electronically to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, at EB-SED-Response@fcc.gov, with a copy submitted electronically to Josh Zeldis at Josh.Zeldis@fcc.gov.

15. **Compliance Reports.** Windstream 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 Windstream's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Environmental Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Windstream, stating that the Compliance Officer has personal knowledge that Windstream: (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 14 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.¹⁸
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Windstream, 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 Windstream 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 Windstream 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 electronically to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, at EB-SED-Response@fcc.gov, with a copy submitted electronically to Josh Zeldis at Josh.Zeldis@fcc.gov.

16. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 12 through 15 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

17. **Civil Penalty.** Windstream will pay a civil penalty to the United States Treasury in the amount of eighteen thousand dollars (\$18,000) within thirty (30) calendar days of the Effective Date. Windstream acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).¹⁹ Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. Windstream shall send electronic notification of payment to Josh.Zeldis@fcc.gov and EB-SED-Response@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee

¹⁸ 47 CFR § 1.16.

¹⁹ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

Filer (the Commission's online payment system),²⁰ or by wire transfer. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:²¹

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²² For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the CD Acct. No. – the bill number is the CD Acct. No. with the first two digits excluded – and then choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the CD Acct. No. – the bill number is the CD Acct. No. with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

18. **Event of Default.** Windstream agrees that an Event of Default shall occur upon the failure by Windstream to pay the full amount of the Civil Penalty on or before the due date specified in this Consent Decree.

19. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Civil Penalty shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75%, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Civil Penalty, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, 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 Windstream.

20. **Waivers.** As of the Effective Date, Windstream 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. Windstream shall retain the right to

²⁰ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

²¹ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

²² Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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 Consent Decree or the Adopting Order, neither Windstream nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Windstream shall waive any statutory right to a trial *de novo*. Windstream hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act²³ relating to the matters addressed in this Consent Decree.

21. **Severability**. The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

22. **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.

23. **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 Windstream does not expressly consent) that provision will be superseded by such Rule or order.

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

25. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

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

27. **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.

28. **Authorized Representative**. Each Party represents and warrants to the other 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.

²³ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

29. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). 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.

Christopher L. Killion
Deputy Chief
Enforcement Bureau

Date

Carol M. Keith
Deputy General Counsel
Windstream Services II, LLC

Date