

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

In the Matter of )

Windstream Communications, LLC )

File No.: EB-FD-21-00032487

CD Acct. No.: 202232200001

FRN: 0014409924

**ORDER**

**Adopted: April 5, 2022****Released: April 5, 2022**

By the Acting Chief, Enforcement Bureau:

1. The Enforcement Bureau of the FCC has entered into a Consent Decree to resolve its investigation into whether Windstream Communications, LLC (Windstream) violated the Commission's RHC Program rules<sup>1</sup> governing the determination of rural rates.<sup>2</sup> To settle this matter, Windstream agrees to a total settlement value of \$1,204,445.24, including (a) a repayment to the Universal Service Fund in the amount of \$1,004,445.24 and (b) a civil penalty to the United States Treasury in the amount of \$200,000. Windstream also agrees to implement enhanced compliance measures in connection with its participation in the RHC Program. The Federal Communications Commission's (Commission or FCC) rules governing the Rural Health Care (RHC) Program<sup>3</sup> are vital to protecting the Program and its resources from waste, fraud, and abuse. This action will help further the Commission's goal of supporting as many health care providers as possible in delivering health care services to their rural communities

2. 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 associated investigation into Windstream's compliance with the RHC Program rules.

<sup>1</sup> The description of the Telecom Program herein refers to the Commission's rules in effect during the time period covered by the investigation, prior to the Commission's 2019 revision to the rural rate rules. *See e.g., Elimination of Main Studio Rule*, MB Docket No. 17-106, Report and Order, 32 FCC Rcd 8158, 8161 (2017) (a recent rule change does not relieve a licensee from its obligation to comply with the rule while it is in effect).

<sup>2</sup> *See* 47 CFR § 54.607 (2018).

<sup>3</sup> *See* 47 CFR §§ 54.600-54.680 (2018). The RHC Program includes two subprograms: the Telecommunications Program (Telecom Program) and the Healthcare Connect Fund (HCF). The Telecom Program provides support for the difference between the rural and urban rates for telecommunications services. *See Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335, 7433, para. 4 (2019) (*2019 Report and Order*); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9111-9112 (1997). The HCF promotes the use of broadband services and the formation of health care consortia by providing a 65% discount on an array of advanced telecommunications and information services such as Internet access, dark fiber, business data, traditional Digital Subscriber lines, and private carriage services. *See 2019 Report and Order*, 34 FCC Rcd at 7433, para. 4; *see also Rural Healthcare Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678 (2012) (establishing the Healthcare Connect Fund). While the Consent Decree references the RHC Program generally, the apparent rule violations at issue in the Consent Decree concern the Telecom Program.

3. 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.<sup>4</sup>

4. Accordingly, **IT IS ORDERED** that, pursuant to the authority delegated by sections 0.111 and 0.311 of the Commission's rules,<sup>5</sup> the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

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

6. **IT IS FURTHER ORDERED** that a copy of this Order and the Consent Decree shall be sent by e-mail to Kristi Moody, Executive Vice President, General Counsel & Corporate Secretary, Windstream Communications, LLC, at [kristi.moody@windstream.com](mailto:kristi.moody@windstream.com), and to Matthew Brill, Esq., Latham and Watkins, LLP, counsel for Windstream Communications, LLC, at [matthew.brill@lw.com](mailto:matthew.brill@lw.com).

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal  
Acting Chief  
Enforcement Bureau

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<sup>4</sup> See 47 CFR § 1.93(b).

<sup>5</sup> 47 CFR §§ 0.111, 0.311.

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Windstream Communications, LLC	)	File No.: EB-FD-21-00032487
	)	CD Acct. No.: 202232200001
	)	FRN: 0014409924
	)	
	)	

**CONSENT DECREE**

1. The Enforcement Bureau of the Federal Communications Commission (Commission or FCC) and Windstream Communications, LLC (Windstream or the Company), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether Windstream violated the Commission's Rural Health Care Program (RHC Program) rules<sup>1</sup> governing the determination of rural rates<sup>2</sup> and retention of RHC Program documents.<sup>3</sup> To resolve this matter, Windstream agrees to pay a settlement amount of \$1,204,445.24, which includes a \$200,000 civil penalty, and to implement enhanced compliance measures in connection with its participation in the RHC Program.

**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.<sup>4</sup>
  - (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 202232200001, associated with payment obligations described in paragraph 22 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 RHC Program Rules.
  - (g) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 17.
  - (h) "Covered Employees" means all employees, contractors and agents of Windstream who perform, supervise, oversee, or manage the performance of, duties that relate to

<sup>1</sup> See 47 CFR §§ 54.600-54.680 (2018).

<sup>2</sup> See 47 CFR §§ 1.1154, 52.17, 52.32, 54.706 through 54.713, 64.601 and 64.604 (2018).

<sup>3</sup> See 47 CFR § 54.631(b)(iii)(2020); prior version at 47 CFR § 54.619(d)(2013).

<sup>4</sup> 47 U.S.C. § 151 *et seq.*

Windstream's responsibilities under the Communications Laws, including the RHC Program 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) "Investigation" means the investigation commenced by the Bureau in File Nos. EB-FD-20-00030794 and EB-FD-21-00032487 regarding whether Windstream violated the RHC Program Rules through the Effective Date.
- (k) "First LOI" means the Letter of Inquiry issued by the Bureau to Windstream on April 13, 2020.
- (l) "Second LOI" means the Letter of Inquiry issued by the Bureau to Windstream on July 8, 2021.
- (m) "Operating Procedures" means the standard internal operating procedures and compliance policies established by Windstream to implement the Compliance Plan.
- (n) "Parties" Windstream and the Bureau, each of which is a "Party."
- (o) "RHC Program Rules" means Title 47, Code of Federal Regulations, sections 54.600-54.680, section 254 of the Act, and Commission orders related to the provision of service in the RHC Program.
- (p) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.
- (q) "USAC" means the Universal Service Administrative Company, which serves as the administrator for the federal Universal Service Fund (USF or Fund).
- (r) "Windstream or the Company" means Windstream Communications, LLC and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

## II. BACKGROUND

3. The RHC Program provides financial support to eligible rural health care providers so that all health care providers—regardless of whether they are located in rural or urban areas—can implement the modern communications systems that are vital to 21st century medical care.<sup>5</sup> The Telecommunications Program (Telecom Program) is part of the Commission's RHC Program and is paid for through the USF.<sup>6</sup> Through the Telecom Program,<sup>7</sup> eligible rural health care providers can obtain

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<sup>5</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8796, para. 35 (1997); see also 47 CFR § 54.602 (2018).

<sup>6</sup> The RHC Program also includes the Healthcare Connect Fund (HCF) which provides a 65% discount on eligible expenses related to broadband connectivity to both health care providers and consortia. See generally *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678 (2012) (*HCF Order*); see also 47 CFR §§ 54.630-649 (2018). Beginning in January 2014, rural health care providers receiving support for Internet access received support for these services through the HCF. See *HCF Order*, 27 FCC Rcd at 16819, para. 354.

<sup>7</sup> In August 2019, the Commission revised the rules governing the Telecom Program to simplify calculation of the rural rate, reform competitive bidding in the RHC Program, and provide more clarity regarding RHC Program procedures. See generally *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335 (2019). As a part of these changes, the Commission adopted a database to determine urban and rural rates for the Telecom Program. See *id.* at 7372, paras. 76-91. The Wireline Competition Bureau waived the requirement to use this database for Funding Years 2021 and 2022. See generally *Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17-310, Order, 36 FCC Rcd 7051, 7057, para. 16 (WCB 2021). The Commission's rules applicable before funding year 2020 therefore are binding on Windstream's conduct at issue and the description of the Telecom Program herein refers to the Commission's rules in effect at the time of the

(continued...)

rates for supported services that are no higher than the “urban rate,” defined as “a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state . . . .”<sup>8</sup> The carrier providing the eligible service(s) must provide services at the urban rate, and is entitled to support payments from the Fund to account for the difference between the urban rate and the rural rate (the rate for telecommunications services provided to commercial customers in rural areas, which is generally higher than the urban rate).<sup>9</sup>

4. The Commission’s Rules established three, and only three, methods for a service provider to determine its rural rate. These methods need to be considered in sequence based on the factual circumstances.<sup>10</sup> The first method (Method 1) must be considered if the service provider itself offers comparable services to non-health care provider customers in the same rural area.<sup>11</sup> If so, the Commission’s Rules require that a service provider’s rural rate must “be the average of the rates actually being charged to commercial customers, other than health care providers, for identical or similar services provided by the telecommunications carrier providing the service in the rural area in which the health care provider is located.”<sup>12</sup>

5. However, where the telecommunications carrier “is not providing any identical or similar services in the rural area,” the second method (Method 2) must be considered:<sup>13</sup> “[T]he rural rate shall be the average of the tariffed and other publicly available rates, not including any rates reduced by universal service programs, charged for the same or similar services in that rural area over the same distance as the eligible service by other carriers.”<sup>14</sup>

6. The last and final method (Method 3) must be considered only if there are no tariffed or publicly available rates for such services in that rural area, or if the carrier reasonably determines that this method for calculating the rural rate is unfair.<sup>15</sup> In such cases, “the carrier shall submit for the state commission’s approval, for intrastate rates, or the Commission’s approval, for interstate rates, a cost-based rate for the provision of the service in the most economically efficient, reasonably available manner.”<sup>16</sup> Where a carrier seeks approval of a state commission for intrastate rates or the Commission

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Company’s actions described herein. *See e.g., Elimination of Main Studio Rule*, MB Docket No. 17-106, Report and Order, 32 FCC Rcd 8158, 8161 (2017) (a recent rule change does not relieve a licensee from its obligation to comply with the rule while it is in effect).

<sup>8</sup> 47 CFR §§ 54.605, 54.613 (2018). The urban rate is no greater than the rate provided for services over a distance equal to the “standard urban distance”, or “the average of the longest diameters of all cities with a population of 50,000 or more within the state.” 47 CFR § 54.605 (2018).

<sup>9</sup> 47 CFR §§ 54.602, 54.609 (2018). *See generally* 47 U.S.C. § 254(h)(1)(A); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546 (2003) (*2003 Order and Further Notice*).

<sup>10</sup> *See Updated Frequently Asked Questions on Universal Service for Rural Health Care Providers*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 13429, 13433 at part IV, Calculating Amount of Support, Question Nos. 19 - 21 (1997) (*1997 PN*). *See also* 47 CFR § 54.607 (2018); *The Wireline Competition Bureau Provides Guidance Regarding the Commission’s Rules For Determining Rural Rates in the Rural Health Care Telecommunications Program*, WC Docket No. 02-60, Public Notice, 34 FCC Rcd 533, 535 (WCB 2019) (*2019 WCB PN*).

<sup>11</sup> *See 1997 PN* at 13433, part IV. *See also* 47 CFR § 54.607(a) (2018); *2019 WCB PN* at 535.

<sup>12</sup> 47 CFR § 54.607(a) (2018). The rates averaged to calculate the rural rate must not include any rates reduced by universal service support mechanisms. *Id.* A service provider may consider its pre-discount prices for services provided to E-rate customers in determining its rural rates. *See 2019 WCB PN* at 536, para. 4.

<sup>13</sup> *See 1997 PN* at 13433, part IV. *See also* 47 CFR § 54.607(b) (2018); *2019 WCB PN* at 535, para. 1.

<sup>14</sup> 47 CFR § 54.607(b) (2018).

<sup>15</sup> *See 1997 PN* at 13433, part IV. *See also* 47 CFR § 54.607(b) (2018); *2019 WCB PN* at 535, para. 1.

<sup>16</sup> 47 CFR § 54.607(b) (2018).

for interstate rates, “a justification of the proposed rural rate, including an itemization of the costs of providing the requested service” is required.<sup>17</sup>

7. Carriers participating in the Telecom Program are required to retain documents “related to the delivery of discounted services” for “at least five years” after providing the services.<sup>18</sup> The Telecom Program’s recordkeeping rule states that “any other document that demonstrates compliance with the statutory or regulatory requirements for the rural health care mechanism shall be retained as well.”<sup>19</sup>

8. Through its investigation, the Bureau determined that Windstream failed to use any of the three rate-setting methods available to service providers under 47 CFR § 54.607. In response to the Bureau’s inquiries regarding how the Company determined its rural rates, Windstream stated that the Company did not comply with the specific methodology prescribed by the Commission.<sup>20</sup> Instead of following Method 1, 2, or 3, Windstream informed the Bureau that it “prepares competitive bids that are designed to offer the best available prices to customers participating in the RHC Program. To achieve this objective, Sales representatives and the Pricing team utilize processes designed to identify competitive rates available in a particular customer’s region and rely on those rates when preparing bids and seeking USF support.”<sup>21</sup> Windstream has not been able to provide the Commission with documents sufficient to demonstrate the processes used to set its rural rates.<sup>22</sup>

9. For the period covered by the Investigation, the Bureau determined that Windstream received \$1,004,445.24 in payments from the USF related to rural rate violations in connection with services provided in Funding Year 2017 through Funding Year 2020. The funding requests associated with these payments are listed in the Appendix.

10. Windstream has acknowledged that the Company lacked proper document retention policies and has been unable to produce documents sufficient to demonstrate compliance with the Commission’s RHC Program Rules.<sup>23</sup>

### III. TERMS OF AGREEMENT

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

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<sup>17</sup> 47 CFR § 54.607(b)(1) (2018).

<sup>18</sup> 47 CFR § 54.631(b)(iii)(2020); prior version at 47 CFR § 54.619(d) (2013).

<sup>19</sup> *Id.*

<sup>20</sup> Letter from Matthew Brill, Latham & Watkins LLP, Counsel to Windstream Communications, LLC, to Jodi Schulz, Investigative Counsel, Fraud Division, Enforcement Bureau, FCC, responding to the Bureau’s November 20, 2020 (Dec. 18, 2020); January 11, 2021 Teleconference between Windstream Counsel and Fraud Division Staff; July 7, 2021 Teleconference between Windstream Counsel and Fraud Division Staff.

<sup>21</sup> Letter from Matthew Brill, Latham & Watkins LLP, Counsel to Windstream Communications, LLC, to Marlene Dortch, Secretary, FCC, responding to First LOI (July 13, 2020).

<sup>22</sup> *See* Letter from Rakesh Patel, Chief, Fraud Division, Enforcement Bureau, FCC, to Tony Thomas President & Chief Executive Officer, Windstream Communications, LLC (Apr. 13, 2020) (First LOI); Letter from Rakesh Patel, Chief, Fraud Division, Enforcement Bureau, FCC, to Matthew Brill, Latham & Watkins LLP, Counsel to Windstream Communications, LLC (July 8, 2021) (Second LOI); Letter from Jodi Schulz, Investigative Counsel, Fraud Division, Enforcement Bureau, FCC, to Matthew Brill, Latham & Watkins LLP, Counsel to Windstream Communications, LLC (Nov. 20, 2020); Letter from Jodi Schulz, Investigative Counsel, Fraud Division, Enforcement Bureau, FCC, to Matthew Brill, Latham & Watkins LLP, Counsel to Windstream Communications, LLC (Dec. 29, 2020).

<sup>23</sup> January 11, 2021 Teleconference between Windstream Counsel and Fraud Division Staff; July 7, 2021 Teleconference between Windstream Counsel and Fraud Division Staff; August 16, 2021 Teleconference between Windstream Counsel and Fraud Division Staff.

12. **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.

13. **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.

14. **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.<sup>24</sup>

15. **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 15 herein, that its actions in paragraphs 8 through 10 violated sections 47 CFR § 54.607 and 47 CFR § 54.631(b)(iii) of the Commission's rules, and that it accepts sole responsibility for those actions.

16. **Compliance Officer.** In the event it has not already done so, within thirty (30) calendar days after the Effective Date, Windstream 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. Windstream will notify the Enforcement Bureau of the name of the individual so designated and will advise the Enforcement Bureau upon any change in such designation.<sup>25</sup> 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 RHC Program Rules prior to assuming his/her duties.

17. **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. Windstream will provide the Enforcement Bureau with a draft of this plan for its review and approval within forty-five (45) calendar days of the Effective Date. With respect to the RHC Program Rules, Windstream will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within sixty (60) 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 RHC Program Rules. Windstream's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Windstream's operations comply with the RHC Program rules, including document retention policies to ensure preservation of RHC Program participation records for the period required under Commission rules. Windstream shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the RHC Program

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<sup>24</sup> See 47 CFR § 1.93(b).

<sup>25</sup> Notification shall be made to Rakesh Patel, Chief, Fraud Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554, or his successor or designee, with a copy submitted electronically to Rakesh Patel at [Rakesh.Patel@fcc.gov](mailto:Rakesh.Patel@fcc.gov).

Rules. The Compliance Officer shall ensure that Covered Employees adhere to the Operating Procedures and utilize the Compliance Checklist.

- (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 RHC Program Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Windstream's compliance with the RHC Program 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. Copies of the most recent updated Compliance Manual shall be available to all Covered Employees online.
- (c) **Compliance Training Program.** Windstream shall establish and implement a Compliance Training Program on compliance with the RHC Program Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Windstream's obligation to report any alleged, suspected or known noncompliance with the RHC Program Rules under paragraph 18 of this Consent Decree and shall be instructed on how to disclose noncompliance directly to the Compliance Officer or to a toll-free Hotline number to which Covered Employees may report this information anonymously. Windstream shall publish this Hotline number in a prominent location on its intranet as well as its internet website. All Covered Employees shall be trained pursuant to the Compliance Training Program within ninety (90) 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. The training shall be no less than 45 minutes and shall be recorded and made easily accessible on Windstream's intranet system. The training may be delivered through a combination of live or prerecorded webcast and interactive training and assessments, as appropriate. Any Covered Employee who does not complete such training, verified by appropriate training certifications, by the applicable deadline may not continue to perform any work related to the RHC Program until such training has been completed and verified by appropriate training certifications. 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. The Compliance Officer shall ensure that all Covered Employees certify that they received Compliance Training and will abide by the requirements at the time of their hiring and thereafter annually.

18. **Reporting Noncompliance.** Windstream shall report any instances of alleged, suspected, or known noncompliance with the RHC Program Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery or reports thereof. Such reports shall include a detailed explanation of: (i) each instance or report of alleged, suspected or known noncompliance; (ii) the steps that Windstream has taken or will take to investigate such allegations and, if noncompliance is found, remedy such noncompliance; (iii) the schedule on which any 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. The Compliance Officer must maintain a log of all reports received concerning suspected, alleged or known non-compliance, and shall identify the date and time the report was received, the name of the person making the report, details about the reported conduct or activities, and actions Windstream plans to take to address the report. The logs shall be provided to the FCC upon request. All reports of alleged, suspected or known noncompliance shall be submitted to Rakesh Patel, Chief, Fraud Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE,



Washington, D.C. 20554, or his successor or designee, with a copy submitted electronically to Rakesh Patel at [Rakesh.Patel@fcc.gov](mailto:Rakesh.Patel@fcc.gov).

19. **Compliance Reports.** Windstream shall file compliance reports with the Commission one hundred and twenty (120) 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 RHC Program 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 18 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.<sup>26</sup>
- (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 to Rakesh Patel, Chief, Fraud Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554, or his successor or designee, with a copy submitted electronically to Rakesh Patel at [Rakesh.Patel@fcc.gov](mailto:Rakesh.Patel@fcc.gov).

20. **Termination Date.** Unless stated otherwise, the requirements set forth in this Consent Decree shall expire thirty-six (36) months after the Effective Date, provided that Windstream has substantially complied in all material respects with its obligations under paragraphs 16 through 19. If it has failed to do so, the provisions of paragraphs 16 through 19 shall remain in effect until Windstream has been in compliance with those obligations for at least a full calendar year.

21. **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 Act<sup>27</sup> against Windstream 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 Windstream with the Communications Laws.

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<sup>26</sup> 47 CFR § 1.16.

<sup>27</sup> 47 U.S.C. § 208.

22. **Settlement Amount and Civil Penalty.** Windstream agrees to a Settlement Amount of \$1,204,445.24 (Settlement Amount) to fully resolve the Investigation.
- (a) Within thirty (30) calendar days of the Effective Date, Windstream will repay to the USF the amount of \$1,004,445.24 (Repayment Amount).
  - (b) Within thirty (30) calendar days of the Effective Date, Windstream will pay a civil penalty to the United States Treasury in the amount of \$200,000 (Civil Penalty).
  - (c) Windstream acknowledges and agrees that upon execution of this Consent Decree, the Settlement Amount shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).<sup>28</sup> Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated.
  - (d) Windstream releases any and all claims it has asserted, could have asserted, or may assert in the future before or against USAC and/or the Commission relating to the funding requests identified in Appendix A.
  - (e) Windstream shall send electronic notification of payment of the Repayment Amount and payment of the Civil Penalty to Rakesh Patel, Chief, Fraud Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554, or his successor or designee, with a copy submitted electronically to Rakesh Patel at [Rakesh.Patel@fcc.gov](mailto:Rakesh.Patel@fcc.gov), on the date each said payment is made. Payment of the Repayment Amount and Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account, or by wire transfer using the Commission’s Registration System (the Commission’s FRN Management and Financial system).<sup>29</sup> 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:<sup>30</sup>
    - 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](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated.<sup>31</sup> 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).<sup>32</sup> 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 Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill

<sup>28</sup> Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

<sup>29</sup> Payments made using CORES do not require the submission of an FCC Form 159.

<sup>30</sup> 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](mailto:ARINQUIRIES@fcc.gov).

<sup>31</sup> FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

<sup>32</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Number 12345678). After selecting the bill for payment, 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 Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). Finally, 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.

23. **Event of Default.** Windstream agrees that an Event of Default shall occur upon the failure by Windstream to pay the full Settlement Amount on or before the due date specified in this Consent Decree Or failure to abide by the requirements of this Consent Decree pertaining to compliance obligations as set forth in paragraphs 16 through 19.

24. **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 Repayment Amount or 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 Repayment Amount or 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.

25. **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 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 Act<sup>33</sup> relating to the matters addressed in this Consent Decree.

26. **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.

27. **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.

28. **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

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<sup>33</sup> See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

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.

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

30. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. In furtherance of settlement, and subject to the other terms of this Consent Decree, the Parties agree as follows:

- (a) This Consent Decree does not settle any other investigations that have been or might be conducted by other law enforcement agencies, offices, or USAC.
- (b) Windstream will not pursue any monies from the USF related to Windstream’s participation in the RHC Program in connection with the funding requests listed in the attached Appendix A.

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

32. **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.

33. **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.

34. **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.

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Loyaan A. Egal  
Acting Chief  
Enforcement Bureau  
Federal Communications Commission

\_\_\_\_\_  
Date

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Kristi Moody  
Executive Vice President, General Counsel & Corporate Secretary  
Windstream Communications, LLC

\_\_\_\_\_  
Date

## APPENDIX

## Funding Requests Associated with Repayment

17113381	18337671	18362431	18393271	18418671
17118801	18337691	18362451	18393371	18418681
17125451	18337731	18362461	18393401	18418691
17153191	18338601	18362491	18393411	18418701
17153231	18340821	18362501	18394281	18418791
17153251	18341121	18363621	18394341	18418811
17153421	18341501	18365041	18394371	18418831
17157931	18342081	18365191	18394391	18418871
17157951	18342091	18365741	18394651	18418881
17169971	18342121	18365751	18395221	18418941
17197261	18342141	18365851	18395501	18420521
18307591	18343051	18366231	18398501	18420541
18307621	18343281	18368001	18398521	18420571
18307661	18345751	18368481	18398551	18420591
18307741	18346781	18368491	18400021	18420901
18307801	18347471	18368831	18400121	18421091
18307871	18347531	18370001	18400821	18421781
18307941	18348041	18371091	18400851	18421951
18308101	18348071	18372241	18401041	18422331
18308161	18348121	18372321	18402541	18422341
18308191	18348191	18372381	18403551	18422351
18308531	18348901	18372391	18407051	18422381
18308581	18348931	18374061	18408891	18428201
18308601	18349151	18378181	18408931	18428901
18308611	18349281	18378421	18408941	18429861
18308621	18349301	18378561	18408971	18430051
18317221	18349311	18379881	18408991	18430081
18321931	18349321	18379921	18409001	18433071
18322201	18349331	18381101	18411151	18433951
18322211	18349361	18381241	18416441	18434081
18322291	18349381	18382771	18416461	18434101
18322731	18349591	18382781	18416471	18434111
18325871	18349651	18383141	18416531	18434121
18328001	18349671	18383161	18418311	18434761
18328061	18352101	18383651	18418431	18435251
18329041	18352151	18383681	18418441	18435291
18329051	18352511	18384341	18418491	18435361
18332121	18354361	18384711	18418501	18436011
18334071	18355961	18385791	18418511	18436771
18334761	18355981	18385871	18418531	18437271
18335121	18356001	18387411	18418541	18437331
18335151	18356011	18389311	18418561	18437381
18335161	18356031	18390661	18418591	18437431
18336791	18357891	18392261	18418601	18437491
18336831	18359601	18392311	18418611	18437521
18337221	18359851	18393201	18418621	18437651
18337361	18361191	18393241	18418641	18437681
18337611	18361211	18393261	18418651	18438291

18442191	19556481	19569511	19586661	20786561
18446271	19556571	19570121	19587111	20788161
18457421	19556681	19570281	19587171	
18462891	19556721	19570301	19587271	
18463011	19556761	19570351	19587361	
18463111	19556801	19570361	19587521	
18563271	19556831	19570391	19587571	
19515141	19556851	19570431	19588651	
19515161	19556871	19570491	19589121	
19515171	19556891	19570511	19589341	
19515181	19557941	19570551	19589361	
19515191	19558571	19570601	19589471	
19515211	19558791	19570661	19590361	
19515221	19559581	19570931	19593001	
19518161	19559651	19570951	19593061	
19518251	19559661	19571081	19594971	
19523581	19559681	19571331	19596941	
19527881	19559731	19572611	19596971	
19527951	19559761	19573371	19601151	
19528031	19560181	19573381	19601171	
19530551	19560211	19573391	19604451	
19531061	19562301	19573401	19604521	
19531201	19562451	19573411	19605471	
19531521	19562591	19573421	19609801	
19540681	19562631	19573431	19610071	
19540801	19564661	19573441	19611821	
19540811	19564821	19573481	19611911	
19541441	19564851	19573491	19611961	
19541451	19564901	19573701	19612511	
19541461	19566061	19573801	19613691	
19541491	19566081	19573841	19613741	
19541521	19566091	19573861	19617671	
19543721	19566101	19573941	19618021	
19547501	19566131	19573971	19618141	
19547611	19566621	19574051	19618241	
19548931	19566641	19574581	19618291	
19549061	19566681	19574651	19618461	
19549171	19566691	19576091	19619031	
19549811	19568061	19576121	19619181	
19549871	19568551	19577511	19622561	
19549891	19568561	19577531	19627531	
19549931	19568571	19577571	19627611	
19550431	19568721	19577611	19628521	
19554481	19568751	19577671	19628571	
19554511	19568781	19577721	19628591	
19554531	19568811	19577781	19628611	
19554561	19568851	19578081	19631041	
19555061	19568881	19578321	19646131	
19555071	19568931	19580621	19646281	
19555101	19569231	19580671	19646361	
19555141	19569241	19582341	19648441	
19556391	19569251	19584241	19648771	
19556441	19569481	19585671	19655171	