

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

In the Matter of)
)
International Comparison and Consumer) GN Docket No. 09-47
Survey Requirements in the Broadband Data)
Improvement Act)
)
A National Broadband Plan for Our Future) GN Docket No. 09-51
)
Inquiry Concerning the Deployment of) GN Docket No. 09-137
Advanced Telecommunications Capability)
To All Americans in a Reasonable and Timely)
Fashion, and Possible Steps to Accelerate Such)
Deployment Pursuant to Section 706 of the)
Telecommunications Act of 1996, as Amended)
by the Broadband Data Improvement Act)

To: The Commission

COMMENTS OF WINDSTREAM COMMUNICATIONS, INC. – NBP PN # 28

Windstream Communications, Inc., on behalf of itself and its affiliates (collectively “Windstream”), submits the following comments in response to the Federal Communications Commission’s (“Commission’s”) request for comment on issues relating to the challenges associated with broadband deployment financing.¹ Windstream welcomes this opportunity to provide input on these challenges. As the largest broadband provider focused on serving primarily rural areas, Windstream is particularly well situated to address broadband deployment and adoption in unserved and underserved areas.

¹ Public Notice, *Comment Sought on Addressing Challenges to Broadband Deployment Financing – NBP Public Notice # 28*, GN Docket Nos. 09-47, 09-51, 09-137, DA 09-2610 (rel. Dec. 18, 2009) (“Notice”).

I. THE NATIONAL BROADBAND PLAN SHOULD PROPOSE GRANTS AND/OR OTHER MEANS OF DIRECT FINANCING FOR DEPLOYMENT IN HIGH-COST AREAS.

As Windstream has explained in this docket and elsewhere, reliance on private capital alone will not satisfy the nation's broadband deployment goals.² In aggregate, broadband providers, including Windstream, have invested many tens of billions of dollars to connect most Americans to broadband services. However, as Congress recognized in the Recovery Act³ and as the Commission has also made clear,⁴ there remains a subset of consumers to whom providers simply cannot deploy broadband services without substantial additional investment assistance. Put differently, for these customers, there is no sustainable business case for deploying services absent government subsidies. In many cases, there will be no such business case for the foreseeable future.

Windstream's own experience underscores the problems faced by providers wishing to serve hard-to-reach end users. Windstream serves primarily rural regions, where often costs are high and subscriber density is low.⁵ Notwithstanding these challenges, Windstream has devoted

² See, e.g., Comments of CenturyLink, Consolidated Communications, Frontier Communications Corporation, Iowa Telecommunications Services, Inc., and Windstream Communications, Inc., GN Docket No. 09-51 (Dec. 7, 2009).

³ See generally American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) ("Recovery Act").

⁴ See, e.g., Notice of Inquiry, *A National Broadband Plan For Our Future*, GN Docket No. 09-51 ¶ 37 (rel. Apr. 8, 2009) ("For example, what lessons can be learned with regard to whether market forces alone can deliver broadband to rural areas, or areas such as many tribal lands, where marketplace forces alone have not yet delivered even older technologies, such as telephone service?"). See also Acting Chairman Michael J. Copps, Federal Communications Commission, BRINGING BROADBAND TO RURAL AMERICA: REPORT ON A RURAL BROADBAND STRATEGY (May 22, 2009) at ¶ 13 ("Relying on market forces alone will not bring robust and affordable broadband services to all parts of rural America.").

⁵ Windstream's average subscriber density is approximately 19 access lines per square mile.

hundreds of millions of dollars to deploy broadband service, and has built out such service to 89 percent of its voice customers. Now, more than one million of Windstream's three million voice customers subscribe to one of Windstream's broadband offerings. But without government support, Windstream cannot develop an economically rational case for deploying too much of the remaining 11 percent of its voice customers who lack broadband access. To deploy broadband to the vast majority of these customers, Windstream would need to install fiber facilities and DSL access multiplexers along rural roads to reach closer to individual residences. As Windstream has detailed in previous comments in this docket,⁶ it would cost the company approximately \$1.5 billion to deploy 6 Mbps service to its approximately 364,000 unserved households – an average per-household cost of roughly \$4,000.⁷ Even this average figure well understates the costs that would be incurred in reaching the most remote households:

Windstream has calculated that it would incur costs of \$14,000 per home passed in some parts of its territory.⁸ These costs are prohibitive, as Windstream could not earn back that investment at affordable rates, even assuming high and steady subscription.

Grants and other direct financing (for example, an extension of universal service funding to cover broadband service) could fundamentally alter the economics for deploying broadband in high-cost areas by offsetting the up-front costs just described and blunting risks faced by investors, permitting a broadband provider to deploy and earn sufficient returns at affordable

⁶ See Comments of Windstream Communications, Inc. – NBP Public Notice #16, GN Docket 09-47 et al. (filed Dec. 2, 2009); Comments of Windstream Communications, Inc. – NBP Public Notice #11, GN Docket 09-47 et al. (filed Nov. 4, 2009).

⁷ See *id.* at 4-6.

⁸ In fact, the cost of increasing Windstream's broadband addressability from 89 percent to 98 percent of households is roughly equal to the amount required to deploy broadband to the final 2 percent of Windstream's customer base.

rates collected from a smaller customer base. Governmental support literally can create a viable business case where none would otherwise exist. Windstream, therefore, has consistently supported the adoption of programs offering direct financial assistance to the deployment of broadband networks to hard-to-reach unserved areas.

To this end, Windstream notes that it and four other mid-sized incumbent local exchange carriers (“LECs”) recently submitted the “Broadband Now Plan,” which proposes a number of universal service and intercarrier compensation reforms that would make near-term progress on the Commission’s goal of bringing broadband to unserved consumers, while the Commission simultaneously develops more wide-ranging reforms.⁹ The Broadband Now Plan would target support on a wire-center basis, and make it possible for price-cap carriers to have all of their high-cost loop and high-cost model support determined under a single, consistent regime. Carriers that would receive more funding under the Plan than they do under the existing regime would be required to invest the incremental support in deployment of high-speed (6 Mbps or greater) broadband in their unserved and underserved service territories and to make a significant investment of their own capital as well. This sort of direct support has the potential to change business realities and bring broadband service delivering at least 6 Mbps throughput to 95 percent of the signatory mid-sized carriers’ voice connections within 5 years.

There are also other steps that the U.S. Government could take to maximize the effectiveness of the direct financial assistance it provides. For example, under current Internal Revenue Service (“IRS”) policy, as upheld by the courts, universal service support is considered

⁹ Comments of CenturyLink, Consolidated Communications, Frontier Communications Corporation, Iowa Telecommunications Services, Inc., and Windstream Communications, Inc., GN Docket. No. 09-51 (Dec. 7, 2009).

taxable income.¹⁰ This effectively reduces the amount available to support deployment by an amount equal to the marginal tax rate, which for Windstream is approximately 38 percent. The National Broadband Plan should recommend concrete steps to end this counterproductive cycle, in which the government takes away with one hand what it gives with the other. For example, the Commission could clarify that universal service (and other direct financial assistance for broadband) is provided with the intent to induce capital expenditures and not to supplement recipients' incomes¹¹; could propose concrete changes to relevant, IRS interpretations and guidelines; could propose legislative changes necessary to ensure that support funding is not taxed; or could take some combination of these actions.

II. THE COMMISSION SHOULD REJECT PROPOSALS ADVOCATING RELIANCE ON LOANS, LOAN GUARANTEES, OR OTHER TYPES OF DEBT FINANCING.

While grants and other types of direct funding can play a very important role in fulfilling our collective broadband deployment goals, the same cannot be said for loans, loan guarantees, or other types of debt financing. The Commission should reject suggestions that debt financing can effectuate the sort of fundamental economic shift necessary to make pervasive rural deployment viable in otherwise unserved areas. Loans and loan guarantees simply lack the requisite potency offered by grants and other forms of direct financing.

The availability or cost of credit is *not* a significant impediment to broadband deployment in unserved areas. Instead, lack of broadband availability is due to the high cost of deployment, coupled with difficulties in recouping the investment from a small potential base of broadband

¹⁰ *U.S. v. Coastal Utilities*, 483 F.Supp.2d 1232 (S.D. Ga. 2007), *aff'd* 514 F.3d 1184 (11th Cir. 2008).

¹¹ *See generally id.*

customers. As noted above, direct assistance targeted directly to unserved areas can significantly improve the economic case for broadband deployment. The same cannot be said for loans or loan guarantees. While public loans and loan guarantees could marginally ease deployment costs, their supposed advantages – namely, the extremely limited nature of the governmental outlay – render them incapable of materially reworking business incentives. Only substantial *support* can cure a substantial *gap* in the business case for deployment. A rational provider would not knowingly invest in a losing proposition, even if it could attain a zero-interest loan.

In any case, there already exist options for providers whose deployment would be furthered by government loans and loan guarantees. The U.S. Department of Agriculture (“USDA”) and others already have loan programs for broadband deployment in unserved areas, and there is no need for the Commission to duplicate these efforts. Since 2002, USDA’s Rural Utilities Service (“RUS”) has operated a loan and loan guarantee program for construction, improvement and acquisition of facilities and equipment necessary to deploy rural broadband. This program has abundant resources available for such loans, but remains undersubscribed. For every \$1 made available for RUS loans, only 25 cents have actually been borrowed. The remainder of the funding has been rescinded or carried over for future use. By the end of fiscal year 2008, RUS could have loaned \$5.7 billion, but had actually loaned only \$1.42 billion.¹² As of spring 2006, RUS had received no requests for loan guarantees.¹³ And even where loans have been made, RUS funding has focused overwhelmingly on areas with existing broadband service

¹² See Audit Report, “Rural Utilities Service Broadband Loan and Loan Guarantee Program,” U.S. Department of Agriculture, Office of Inspector General, Southwest Region, at 11 (March 2009) (“*Audit Report*”). See also *id.* at Ex. A (presenting FY2008 end-of-year figures).

¹³ See Government Accountability Office, *Broadband Deployment Is Extensive throughout the United States, but It Is Difficult to Assess the Extent of Deployment Gaps in Rural Areas* at 24 (May 2006) (“*GAO Report*”).

– not the most remote, most expensive, and hardest-to-reach rural areas.¹⁴ Indeed, nearly 80 percent of the projects it has funded are actually in areas where the private sector has already deployed broadband. Policymakers should not replicate the RUS experience by establishing *new* loan or loan guarantee programs.

III. THERE IS NO NEED TO INVESTIGATE NEW AND NOVEL FINANCING MECHANISMS.

The *Notice* seeks comment on “new financing methods” that might be used to promote broadband deployment,¹⁵ and pays special attention to proposals made by Hiawatha Broadband Communications, Inc. (“HBC”).¹⁶ HBC has proposed the use of what it terms “Government Backed Credit Enhancements,” which appear to involve some combination of loans, loan guarantees, and small amounts of grant financing.¹⁷ The Commission should recognize, however, that the problem plaguing rural broadband deployment is *not* a lack of creativity in the structuring of financing – it is simply the lack of a viable business plan to serve the most high-cost areas. As discussed above, no provider would borrow money to fund a project that cannot be expected to generate sufficient capital. Therefore, no loan or other financing instrument short of direct funding, however attractive, can rework incentives in a manner that will promote

¹⁴ Although RUS has not collected statistics on the number of unserved households in project areas, the Agriculture Department’s Inspector General found that 77 percent of communities receiving RUS loans had pre-existing broadband service. *See Audit Report* at 6, 9. Underlying this underwhelming demand for loans and loan guarantees are factors that will persist no what agency is involved. First, lack of interest by borrowers, for reasons detailed previously. Second, many prospective borrowers come to RUS without a viable business plan. To help ensure repayment, RUS requires that applicants submit an economically viable business plan. Because rural areas typically have steep per-household deployment costs and modest potential revenues, RUS has rejected many applications. *See GAO Report* at 33.

¹⁵ *See Notice* at 2.

¹⁶ *See id.* at 1.

¹⁷ *See, e.g.*, Letter from Thomas Cohen, Kelley Drye & Warren LLP, counsel for Hiawatha Broadband Communications, Inc., to Marlene H. Dortch, Secretary, FCC (filed Nov. 5, 2009).

deployment where deployment is not economically feasible. Windstream's experience in deploying broadband networks in high-cost areas indicates that only grants and other forms of direct assistance can fulfill this goal.

Proposals advocating novel financing techniques should only be evaluated in the context of specific deployment challenges, not in the abstract, and parties like HBC that propose such novel approaches should be required to describe in detail cases in which their proposals would bear fruit. Parties should be given the opportunity to review and comment on the proposed financing mechanisms and the cases where they would be employed. Ultimately, to the extent HBC believes that its financing scheme could serve the nation's needs, it should be required to come forward with specifics regarding projects that it could and would pursue if its proposal were adopted. For example, it is not at all clear that HBC has any intention of building facilities in truly rural areas: Although it speaks of "rural" deployment, HBC characterizes "[r]ural America markets" as markets that "approximate 100 to 300 persons per linear mile."¹⁸ This "100 to 300 persons" range, however, simply does not represent the conditions of truly rural areas, such as those served by Windstream. In Windstream's service territory, there is an average of only 32.9 persons per linear mile – that is, less than one-third the low end of HBC's range, and just over 10 percent of the high end of that range. This vast difference between Windstream's density and HBC's suggests that HBC intends only to *overbuild* in areas already served by at least one incumbent.

¹⁸ See, e.g., Letter from Thomas Cohen, Kelley Drye & Warren LLP, counsel for Hiawatha Broadband Communications, Inc., to Marlene H. Dortch, Secretary, FCC (filed Nov. 25, 2009) ("*HBC Nov. 25 Ex Parte*"), Attachment 2 at 1.

In reviewing further details, policymakers evaluating financing proposals like HBC's should seek to ensure the proposed government funding would be directed to high-cost areas that lack meaningful access to broadband service. Otherwise allocating funds to overbuilds in markets already served by one or more providers would not advance the paramount goal of ubiquitous broadband access. Even worse, funding to overbuilders would disrupt and undermine investment incentives to existing providers that already have staked and continue to stake their own capital on providing broadband services with no guarantee of return.

CONCLUSION

For the reasons discussed herein, the Commission's efforts to finance broadband deployment should focus on grants, universal service support, and other forms of direct financing, rather than on loans, loan guarantees, and other types of debt financing. Grants and other forms of direct financing can fundamentally alter the business decisions made by providers determining whether or not to deploy to new areas, while loans and loan guarantees cannot. Hence, the Commission should reject efforts to focus on debt financing options, as well as novel, untested financing options when such options are not supported by substantial and specific details about how the schemes would work and what deployments they would fund. The missing link in rural broadband deployment is not a more creative way to account for funds, or a clever way to provide as little support as possible. To produce feasible deployment in areas that otherwise cannot support a rational business case, Windstream's experience demonstrates that broadband providers need grants and/or other forms of direct assistance.

Respectfully submitted,

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