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VIA ECFS

EX PARTE

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *WC Docket No. 10-90, Connect America Fund; GN Docket No. 09-51, National Broadband Plan for our Future; WC Docket No. 07-135, Establishing Just and Reasonable Rates for Local Exchange Carriers; WC Docket No. 05-337, High-Cost Universal Service Support; CC Docket No. 01-92, Developing a Unified Intercarrier Compensation Regime; CC Docket No. 96-45, Federal State Joint Board on Universal Service; WC Docket No. 03-109, Lifeline and Link-Up*

Dear Ms. Dortch:

On April 12, 2012, Michael Rhoda, Eric Einhorn, and I met with FCC Commissioner Robert McDowell and Christine Kurth, the Commissioner's Policy Director and Wireline Counsel, regarding Connect America Fund Phase I and intercarrier compensation treatment of VoIP-PSTN traffic.

Windstream urged that the Commission reform CAF Phase I so that the \$300 million allocated to the program can be utilized fully for near-term broadband deployment. In particular, we requested that the Commission adopt Windstream's proposal to allow more CAF Phase I support to be spent on replacing second-mile copper facilities with fiber. Adoption of this proposal would enable new broadband service for many unserved consumers. It also would ensure that sufficient broadband service is maintained in high-cost areas where subscribers' growing demands for capacity are beginning to outstrip abilities of second-mile copper facilities.

In addition, we discussed Windstream's request that the Commission clarify that it did not intend to flash cut existing originating access rates for PSTN-to-VoIP traffic to interstate rate levels—or at least adopt measures to provide a carrier like Windstream a reasonable opportunity to recover losses resulting from any further rate reforms.¹ Windstream observed that providing

¹ See Petition for Reconsideration and/or Clarification filed by Frontier Communications Corp. and Windstream Communications, Inc., WC Docket 10-90, et al. (Dec. 29, 2011).

additional access recovery would be consistent with the Commission’s recognition, in the context of terminating access reductions, that recovery is necessary “to provide predictability to” carriers, “mitigate market disruption during the reform transition,” and ensure that reforms “do not unintentionally undermine [the Commission’s] objectives for universal service reform.”² Moreover, Windstream noted that the distinct characteristics of originating access and context of any further reductions make ARM recovery particularly essential. In the typical toll call flow for equal access traffic, the interexchange carrier (“IXC”), not the originating carrier, has a customer relationship with the end user for the relevant service, so the originating carrier may not be able to recover originating access from end users. And even if such recovery is theoretically possible, the originating carrier, in practice, may have little or no room to recover additional revenues from end users given the Access Recovery Charges, local rate benchmarks, and reductions in legacy high-cost support adopted by the *Comprehensive Reform Order*.

If the Commission does not extend ARM support, Windstream asserted that the Commission, at a minimum, must forbear from enforcing the “equal access obligation,” originally imposed by the AT&T Consent decree and now applicable through 47 U.S.C. § 251(g),³ and give LECs a one-time opportunity to move third-party IXC customers over to their own long-distance service.⁴ Without both of these measures, some incumbent LECs essentially would be forced to make their networks available to competitors at an unjustifiably low rate.⁵ IXCs with minimal or no end user facilities effectively would hit the jackpot, because they would have to contribute far less to the last-mile facilities on which they rely.⁶ Large incumbent LECs with affiliated, national facilities-based IXCs would gain or, at worst, essentially break even, with reductions in originating access revenues offset by reductions in originating access payments. And incumbent LECs and competitive LECs like Windstream, which do not have affiliated, national facilities-based IXCs and which provide equal access to

² *Id.* at ¶ 858.

³ *See generally* Notice of Inquiry, *Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, 17 FCC Rcd 4015, 4017-18 ¶ 6 (2002).

⁴ More limited relief—for example, relief only from the equal access scripting requirement—would be insufficient, given a carrier still would suffer significant losses in originating access revenues associated with customers utilizing a grandfathered IXC service.

⁵ *See* FNPRM Comments of GVNW Consulting, Inc. on ICC Issues, WC Docket No. 10-90 et al., at 8-9 (February 24, 2012) (noting that with the equal access obligation and obligation to perform call origination functions for 8YY service, “it is reasonable to continue to reflect originating compensation for such calls” and “[t]o do otherwise would deprive a carrier the ability to recover an appropriate portion of applicable network costs”); Comments of the Nebraska Rural Independent Companies in Response to Sections XVII. L Through R of the Further Notice of Proposed Rulemaking, WC Docket No. 10-90 et al., at 8 (February 24, 2012) (“Where the network of an [incumbent LEC] is being used by another carrier, that carrier should pay for that use. In the case of the telecommunications market, access charges are the appropriate means to provide payment for the use of the network. These common sense notions should be reflected in any determination by the Commission.”).

⁶ *See* Comments of the National Association of State Utility Consumer Advocates, Maine Office of the Public Advocate, the New Jersey Division of Rate Counsel, and the Utility Reform Network on Sections XVII L-R of the Further Notice of Proposed Rulemaking, WC Docket No. 10-90 et al., at 5 (February 23, 2012) (noting that IXCs that have no end user facilities “get a terrific deal”).

non-affiliated IXCs, would experience an immediate and massive reduction in revenues⁷—a reduction that they would have no significant means of recovering.

Please contact me if you have any questions regarding this submission.

Sincerely,

/s/ Jennie B. Chandra

Jennie B. Chandra

cc: Robert McDowell
Christine Kurth

⁷ See Comments of HyperCube Telecom, LLC on Further Notice of Proposed Rulemaking, WC Docket No. 10-90 et al., at 15 (February 24, 2012) (explaining that “[t]o eliminate originating access charges during the transition . . . would disadvantage carriers that are not vertically integrated, causing them to lose revenues they now receive that are related to their role in traffic carriage”).