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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 19, 2012, Michael Rhoda and Eric Einhorn met by telephone with Commissioner Mignon Clyburn and her legal advisor, Angela Kronenberg, to discuss Connect America Fund Phase I ("CAF Phase I"). On this call, Windstream explained that the current CAF Phase I regime will not realize the Commission's objectives, because a significant portion of the funding will go unspent and pressing rural broadband needs will be unmet. But Windstream noted that, with some easily implemented adjustments to CAF Phase I, important progress could be made in deploying rural broadband service. Specific issues discussed in the meeting are described in the text below.

Windstream's Second-Mile Fiber Funding Proposal Would Efficiently and Rapidly Enable Broadband Access for Thousands of Unserved Consumers That Otherwise Would Not Be Addressed by CAF Phase I Funding

Windstream explained that it already has deployed broadband service to almost all unserved locations that can be addressed with $775 per location in federal support plus a matching company investment, so capping support at $775 per unserved location will cause the vast majority of CAF Phase I funding allotted for consumers in Windstream's service territory to go unclaimed and unused in the near term. Until CAF Phase II is implemented, the $775 support cap will have the effect of severely curtailing progress on the central goal of enabling robust broadband access for consumers who otherwise would not be served.

To maximize the consumer benefits of CAF Phase I, Windstream urged Commissioner Clyburn to support Windstream's second-mile fiber funding proposal (filed separately with the Commission this week).[1] Under this proposal, a carrier first would certify that it has fully deployed broadband to all households that can be reached for $775 in universal service support per unserved location, and then use remaining funds allocated to its service territory to replace second-mile copper connections to core network nodes with fiber optic lines. Windstream projects that just one year of CAF Phase I funding under this two-step formulation would enable new broadband access for between 24,000 and 39,000 unserved locations in Windstream's service territory—encompassing up to 100,000 consumers who otherwise would lack broadband access for the foreseeable future. Effectively reforms would enable Windstream to *address eight to twelve times more unserved locations* than it could under the existing CAF Phase I regime. Moreover, thousands of underserved consumers who currently lack access to robust broadband would benefit from new second-mile fiber that traverses through their areas en route to more remote areas where unserved consumers reside.

Windstream also expressed support for the following parameters to ensure the integrity of its second-mile fiber plan:

- **Adjust CAF Phase II funding**: Windstream recognized that it would be reasonable for the Commission to take into account CAF Phase I funding awards when determining appropriate funding for CAF Phase II. While ongoing support no doubt will be required for operation of existing networks in high-cost areas,[2] Windstream understands that CAF Phase II may be reduced to ensure there is no "double-funding" of broadband augmentation costs. Any such offset would need to address $775-per-unserved-location funding, as well as second-mile fiber funding—as both have the potential to reduce CAF Phase II funding requirements. Indeed, the only way $775-per-unserved-location funding would not touch areas to be addressed by CAF Phase II would be if the funding were spent exclusively in areas that are *not* truly high-cost, an irrational approach that would be contrary to Section 254 of the Communications Act[3] and the Commission's express intention that CAF funding supplement, not displace, normal levels of private sector investment.[4]

- **Require matching funds**: Windstream recommended that the Commission maximize the "bang for its buck" by seeking to ensure CAF Phase I funding is augmented by private sector investment. To that end, Windstream noted that, under its proposal for the first tranche of CAF Phase I support, its accompanying private sector investment would cover 35 percent of

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[1] *See* Letter from Michael Rhoda, Senior Vice President, Government Affairs, Windstream, to Chairman Julius Genachowski, Commissioner Robert McDowell, and Commission Mignon Clyburn, WC Docket No. 10-90 et al., and Attachment (April 16, 2012).

[2] For example, CAF Phase I support would not address the cost of maintaining the last-mile copper loop to the customer premise—a significant expense that often cannot be sufficiently offset with revenues from the relatively small number of locations present in a high-cost area.

[3] 47 U.S.C. § 254.

[4] *See Comprehensive Reform Order* at ¶ 144 (noting the Commission's "expectation that carriers will supplement [CAF Phase I] incremental support with their own investment").

> second-mile fiber deployment costs. This aggressive private sector commitment—exceeding that required by the Obama Administration's Rural Utilities Service ("RUS") broadband stimulus program—is unparalleled.

Moreover, Windstream asserted that full participation in CAF Phase I will not disincent carriers like Windstream from participating in the more comprehensive CAF Phase II. ***If the funding levels established by the new model are sufficient, Windstream will accept the CAF Phase II statewide commitments—and we expect that other carriers will do the same.*** Windstream wants to be able to offer quality service to its rural consumers. The costs of operating and maintaining existing voice networks in high-cost areas are significant, and will not be addressed by a one-time infusion of funding to replace copper second-mile facilities with fiber. As existing high-cost support is phased out, Windstream will continue to need CAF support to meet its carrier-of-last-resort obligations in high-cost areas, as well as to upgrade facilities to address unserved and underserved consumers who have significantly higher per-location costs and will not be able to be addressed with the limited CAF Phase I funds. Indeed, as Windstream invests more in high-cost areas, it will be *more* motivated to accept Phase II support to maintain and enhance voice and broadband facilities in those places. A carrier is far less likely to walk away from an area where it has invested a large amount of its own money.

Windstream's Second-Mile Fiber Funding Proposal Would Not Enable Cherry Picking

Windstream also responded to concerns about "cherry picking"—whereby a carrier picks specific projects where universal service funding is excessive—and noted that these concerns do not apply to its second-mile fiber proposal. Areas presenting an opportunity for cherry picking are any areas where universal service support is greater than the actual need; such areas ripe for cherry picking may be at the lower or upper end of the high-cost spectrum.[5] Windstream believes that a CAF Phase I recipient should be required to match universal service funding at a level comparable to investments made in areas that are economic to serve. To that end, Windstream's second-mile fiber proposal would produce government funding that is well below, and certainly not in excess of, the costs to deploy second-mile fiber, and the remainder of the costs would have to be addressed by the CAF Phase I recipient's own investment. This approach is consistent with the Obama Administration's RUS broadband stimulus program, which recognized that requiring a company to assume a significant percentage of broadband deployment project costs offers meaningful assurance that federal funding is not excessive.

In fact, denial of Windstream's proposal on the basis of cherry picking concerns would be tantamount to holding it to a far higher standard than the $775-per-unserved-location funding regime—in which no company contribution is required and the $775 funding level is fixed regardless of the actual cost of serving a location. Windstream acknowledged that there is a significant risk that some carriers may use the $775-per-unserved-location support to preempt readily foreseeable competition with other broadband providers. Unserved areas with the very lowest costs are areas that wireless providers likely are intending to address with 4G wireless service in the next couple years, before broadband projects funded with CAF Phase I support are

[5] For example, one area with average costs of $2,000 per location and another with average costs of $4,000 per location would be equally ripe for cherry picking if the support allocated to the areas, respectively, were $2,500 and $4,500 per location.

even required to be complete. Subsidizing broadband service in these low-cost areas where there already is an economic case to deploy broadband effectively will supplant competitors' readily foreseeable investments and distort competition—while truly high-cost areas lacking an economic case for deploying broadband will remain unserved for the foreseeable future.

In addition, Windstream observed that a carrier, under its second-mile fiber funding proposal, would not be able to use fiber funding to target and claim support for areas where funding conditions will be most favorable in CAF Phase II. Because funding for CAF Phase II has not yet been determined, a CAF Phase I recipient has no way of knowing which, if any, areas will produce cherry picking opportunities in CAF Phase II. Moreover, even if it could accurately predict such opportunities, the CAF Phase I recipient would not be able to realize any of these excess benefits with proposed second-mile fiber funding, which would be awarded on a standalone, per-mile cost basis and entail a sizable accompanying company investment.

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In sum, the Commission made a commitment to deploy broadband to high-cost rural areas. CAF Phase I offers the first test to see whether the Commission is willing to deliver on this promise. Windstream's aggressive proposal for second-mile fiber funding would turn the promise of rural broadband service into near-term reality—and the company urged the Commission to adopt its second-mile fiber funding proposal without delay.

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

Sincerely,

/s/ Jennie B. Chandra

Jennie B. Chandra

cc: Commissioner Mignon Clyburn
Angela Kronenberg