REDACTED – FOR PUBLIC INSPECTION

Eric N. Einhorn
Senior Vice President, Government Affairs
Windstream Communications, Inc.
1101 17th Street, N.W., Suite 802
Washington, DC 20036

(202) 223-7668
eric.n.einhorn@windstream.com

VIA COURIER AND ECFS

July 24, 2012

FILED/ACCEPTED

JUL 24 2012

Federal Communications Commission
Office of the Secretary

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

Re: *Connect America Fund*, WC Docket No. 10-90; *High-Cost Universal Service Support*, WC Docket No. 05-337

Dear Ms. Dortch:

Windstream Corporation, on behalf of its incumbent local exchange carrier affiliates (hereinafter "Windstream"), submits the enclosed Election and Petition for Waiver. By this document, Windstream elects to accept $653,325 in incremental support under Phase I of the Connect America Fund ("CAF") and conditionally accepts $59,750,985, the remainder of the support allocated to its service territory, to the extent its Petition for Waiver is granted.

As described in greater detail in that Petition, Windstream requests that the Commission waive Section 54.312(b)(2) of the rules to the extent it requires a price cap carrier to deploy broadband to one unserved location for every $775 in incremental support, so long as the carrier (1) first deploys 4 Mbps service to all unserved locations where $775 in incremental support is sufficient to make an economic case for deployment and, after that, (2) spends additional, specified levels of funding on the deployment of second-mile fiber facilities that will enable broadband access at speeds of at least 4 Mbps downstream and 768 Kbps upstream for unserved consumers.

If the waiver is granted, it would permit Windstream to use all of its allocated CAF Phase I funding to extend 1,688 miles of fiber-optic, second-mile infrastructure into remote areas of 15 states, and bring robust broadband service to 16,981 locations that today lack any broadband access. If the waiver is not granted, Windstream can only accept a small fraction of its funding allocation to reach 843 unserved locations, and many thousands of rural Americans will be denied the benefits of broadband for several more years notwithstanding the availability of more than $59 million that could be used to deliver service much sooner.

No. of Copies rec'd 0+1
List ABCDE

Associated with this cover letter are the following documents:

- Windstream Election and Petition for Waiver
- Attachment 1 -- .csv file identifying, by 2010 Census Block FIPS code and wire center CLLI code, the locations where Windstream will deploy broadband service in satisfaction of its requirements if the Petition for Waiver is not granted
- Attachment 2 -- .csv file identifying, by wire center CLLI code, the locations where Windstream will deploy broadband service in satisfaction of its requirements if the Petition for Waiver is granted
- Attachment 3 – Certification required by 47 C.F.R. § 54.312(b)
- Attachment 4 – Requested distribution of funding to Windstream's ILEC subsidiaries in the events that the Petition for Waiver is and is not granted
- Attachment 5 – Summary of Election and Conditional Election
- Attachment 6 – Declaration of Mike Skudin

Windstream submits Attachments 1 and 2 pursuant to the Protective Order in CC Docket No. 01-92, WC Docket Nos. 05-337, 07-135, and 10-90 and GN Docket No. 09-51 (DA 10-1749, rel. Sept. 16, 2010) (Protective Order). This confidential treatment is required to protect proprietary and confidential information about Windstream's network. Pursuant to the Protective Order, Windstream is submitting to the Secretary one copy of the Stamped Confidential Document—a CD-ROM with both attachments, labeled "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN CC DOCKET NO. 01-92, WC DOCKET NOS. 05-337, 07-135, 10-90, AND GN DOCKET NO. 09-51 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION"—and two copies of the Redacted Confidential Document, as defined in the Protective Order. Windstream also is sending two copies of the Stamped Confidential Document to Ms. Lynne Hewitt Engledow, Pricing Policy Division, Wireline Competition Bureau, and is filing the Redacted Confidential Document electronically via ECFS.

Please feel free to contact me if you have any questions or need any more information.

Sincerely yours,

/s/ Eric N. Einhorn

Eric N. Einhorn

cc: Amy Bender
Joe Cavender
Alabama Public Service Commission
Arkansas Public Service Commission
Florida Public Service Commission
Georgia Public Service Commission
Iowa Utilities Board
Kentucky Public Service Commission
Missouri Public Service Commission
Mississippi Public Service Commission
North Carolina Utilities Commission
Nebraska Public Service Commission
New Mexico Public Regulation Commission
Public Utilities Commission of Ohio
Oklahoma Corporation Commission
Pennsylvania Public Utility Commission
Public Utility Commission of Texas
Cherokee Nation
Cheyenne-Arapaho Tribes of Oklahoma
Chickasaw Nation
Choctaw Nation of Oklahoma
Citizen Potawatomi Nation
Jicarilla Apache Nation
Sac and Fox Tribe of the Mississippi
Muscogee (Creek) Nation
Ohkay Owingeh
Pueblo of Santa Clara

FILED/ACCEPTED
JUL 24 2012
Federal Communications Commission
Office of the Secretary

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

WINDSTREAM ELECTION AND PETITION FOR WAIVER

Russell P. Hanser
WILKINSON BARKER KNAUER, LLP
2300 N Street, N.W., Suite 700
Washington, DC 20037
(202) 383-3408 (phone)

Malena F. Barzilai
Jennie B. Chandra
Eric N. Einhorn
Windstream Communications, Inc.
1101 17th St., N.W., Suite 802
Washington, DC 20036
(202) 223-7664 (phone)

Windstream Communications, Inc.

July 24, 2012

TABLE OF CONTENTS

ELECTION OF FUNDING 4

WAIVER REQUEST 5

I. QUICK DEPLOYMENT OF BROADBAND SERVICE TO UNSERVED AMERICANS IS CRITICAL TO ACHIEVING WIDELY SHARED FEDERAL POLICY GOALS. 7

II. THE COMMISSION SHOULD WAIVE ITS RULES TO PERMIT WINDSTREAM TO USE CAF PHASE I FUNDING TO DEPLOY BROADBAND TO APPROXIMATELY 44,000 UNSERVED AMERICANS 11

III. CONCLUSION 16

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

WINDSTREAM ELECTION AND PETITION FOR WAIVER

Windstream Corporation, on behalf of its incumbent local exchange carrier ("ILEC") affiliates (hereinafter "Windstream"), hereby elects to accept $653,325 in incremental support under Phase I of the Connect America Fund ("CAF") and conditionally elects to accept an additional $59,750,985 to the extent the Commission waives certain CAF Phase I requirements, as described herein.

There is no doubt that Windstream has worked extremely hard and in a sustained fashion to achieve the broadest and quickest possible deployment of broadband to rural consumers—a build-out effort that has advanced the goals of Congress, the White House, and the Commission. This filing provides further evidence of the company's commitment to consumers in the high-cost areas it serves and the company's willingness to invest its own capital aggressively where and when it is economic to do so.

CAF Phase I was implemented to expand broadband deployment by price cap carriers expeditiously, as the Commission determines how to implement large-scale reforms under CAF Phase II. In recognition of rural broadband deployment goals, the Commission has allocated available CAF Phase I funding to each carrier based on how cost conditions in its wire centers compare to those of other incumbent carriers. As a result of this analysis, Windstream has been

allocated $60.4 million in CAF Phase I funding based on the very rural nature of its service areas.

Unfortunately, the CAF Phase I rules as written incongruously permit the use of the funding only in relatively *low-cost* areas. The rules cap support for broadband deployment to $775 per unserved location, an amount that is insufficient to make deployment economic in a truly high-cost area. Thus, absent a waiver, Windstream is only able to accept a small fraction of its funding allocation—$653,325 of $60.4 million set aside for the company—to reach 843 unserved locations that can be served for $775 in incremental federal support, or less than one half of one percent of the company's non-addressable access lines.

Retaining current funding restrictions means that Windstream will not be able to use approximately *99 percent* of the CAF Phase I funding allocated to its service territory, and thereby still will not be able to address the needs of the vast majority of its many unserved rural customers. Despite Windstream's laser focus on serving its high-cost areas and its willingness to invest its own money to reach each unserved location, these consumers, who reside in areas where deployment costs are high and subscriber density is low, require government support to make their otherwise uneconomic areas economic to serve. Many of these unserved consumers have contacted Windstream, the Commission or members of Congress or state commissions to express their frustration at being unable to take advantage of the well-known benefits of broadband, including the ability to engage in distance-learning or telework, seek jobs from their homes, video-chat with far-away relatives, engage in civic action online, and consult virtually with medical specialists practicing in large urban centers. Government officials from both parties likewise have urged Windstream to move forward with deployment to these customers as expeditiously as possible.

Windstream shares that sense of urgency and seeks to move ahead quickly toward ubiquitous broadband deployment in all corners of rural America. To that end, Windstream proposes a waiver that would permit it to use all of its $60.4 million CAF Phase I allotment to extend 1,688 miles of fiber-optic, second-mile infrastructure into areas of 15 states. This approach, by shortening copper loop lengths in the network, would bring robust broadband service to 16,981 unserved locations—and the approximately 44,000 Americans who live there—and would ensure significant new private investment that would otherwise not be made.

Windstream recognizes that the areas that would be addressed under its waiver are more remote and thus more expensive to serve than the present CAF Phase I rules permit, but they are the lowest-cost areas within Windstream's footprint that have no fixed broadband service. In the absence of government support, it is highly unlikely that areas addressed by Windstream's waiver would attain access to robust broadband services—from Windstream or any other provider—in the foreseeable future. Providing government support for deployment of second-mile fiber in these rural areas would be tantamount to laying the foundation for a house that otherwise cannot be built by Windstream or any other entity. The Commission should not delay in enabling this important investment in rural America. The choice before the Commission is clear: It can waive the rules in the limited fashion described below or it can consign these thousands of rural Americans to more years of waiting for the benefits of broadband notwithstanding the availability of more than $59 million that could be used to deliver service much sooner. Windstream respectfully asks the Commission to grant its waiver request so these consumers may cross the digital divide in the near future, rather than continue to wait for the possibility to do so at some later time.

ELECTION OF FUNDING

The Wireline Competition Bureau has allocated $60,404,310 of incremental CAF Phase I support to Windstream based upon the very rural nature of the company's service areas.[1] Windstream hereby makes the following elections regarding this funding:

1. Windstream elects to accept $653,325 of the $60,404,310 allocated to its service territory. This funding will be used to serve 843 locations, the total number of locations in Windstream's service territory that can be served economically with $775 or less in incremental support per unserved location. Attachment 1 identifies, by 2010 Census Block FIPS code and wire center CLLI code the locations where Windstream will deploy broadband service in satisfaction of this requirement.[2] Attachment 3 includes the attendant certifications required by 47 C.F.R. § 54.312(b) with respect to this election. Attachment 4 includes the requested distribution of the funding to Windstream's ILEC subsidiaries.

2. Windstream conditionally elects to accept an additional $59,750,985 of the allocated $60.4 million to the extent the waiver request presented herein is granted.[3] As described in greater detail below, Windstream requests that the Commission waive Section 54.312(b)(2) of the rules to the extent it requires a price cap carrier to deploy broadband to one unserved location for every $775 in incremental support, so long as the carrier (1) first deploys 4 Mbps service to all unserved locations where $775 in incremental support is sufficient for carriers to make an economic case for deployment and, after that, (2) spends additional, specified levels of funding on the deployment of second-mile fiber facilities that will enable broadband access at speeds of at least 4 Mbps downstream and 768

---

[1] *See* Public Notice, *Wireline Competition Bureau Announces Support Amounts for Connect America Fund Phase One Incremental Support*, WC Docket Nos. 10-90, 05-337 at ¶ 9 (rel. Apr. 25, 2012).

[2] Windstream will provide additional data for such locations, such as latitude and longitude, when such information becomes available, which shall be no later than one year from the date of this letter, as required by 47 C.F.R. § 54.312(b).

[3] This proposal should be viewed as a complement to Windstream's prior proposal that would permit price cap carriers to focus CAF Phase I support on deploying second-mile fiber to underserved locations that otherwise would lack access to any fiber-based broadband service. *See* Letter from Jennie B. Chandra, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92 and 96-45, and Attachments (April 16, 2012). Windstream continues to support that proposal as a productive near-term step to advance the Commission's broadband deployment goals.

Kbps upstream for unserved consumers.[4] Attachment 2 identifies, by wire center CLLI code, the locations where Windstream will deploy broadband service in satisfaction of this requirement.[5] With respect to this conditional election, Windstream also requests a temporary waiver of the Section 54.312(b)(3) requirement that the company identify the areas by census block in which it will deploy broadband to meet its obligations. Attachment 3 includes the attendant certifications required by 47 C.F.R. § 54.312(b) with respect to the conditional election. Attachment 4 includes the requested distribution of the funding to Windstream's ILEC subsidiaries. Attachment 5 is a summary of Windstream's election and conditional election.

WAIVER REQUEST

The Commission should take all reasonable steps—including grant of the present waiver request—to ensure that CAF Phase I funding for price cap LECs can be utilized to the fullest extent possible, thus expanding broadband availability and moving toward closure of the "rural-

---

[4] Windstream modeled the costs for this proposal assuming deployment of broadband delivering at least 768 Kbps actual upload speed. As Windstream and others have previously noted—and as the Commission has acknowledged through the provision of a process for seeking a waiver of the CAF Phase I 1 Mbps upload speed requirement, *see Connect America Fund*, 26 FCC Rcd 17663, at ¶ 147 fn.234 (2011) ("*Comprehensive Reform Order*")—current technologies can deliver 768 Kbps upload speed with significantly lower deployment costs than 1 Mbps would require, and the incremental benefit of 232 Kbps is arguably not worth the incremental additional deployment costs and added strain on the Universal Service Fund, especially in light of the already high deployment costs for these locations. *See, e.g.*, Comments of Windstream Communications, Inc., WC Docket Nos. 10-90, 05-337, 07-135, 03-109, GN Docket No. 09-51, CC Docket Nos. 96-45, 01-92, at 18 (April 18, 2011); Comments of AT&T, CC Docket Nos. 01-92 and 96-45, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, and GN Docket No. 09-51, at 94 (April 18, 2011); Comments of ADTRAN, Inc., CC Docket Nos. 01-92 and 96-45, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, and GN Docket No. 09-51, at 10-11, 22 (April 18, 2011); Comments of Windstream Communications, Inc., WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, Appendix at 6 (July 12, 2010). In addition, a 768 Kbps target would be responsive to consumer demand. The Commission's March 2012 Internet Access Services Report noted that 57 percent of reported connections have upload speeds of *less than* 768 Kbps, though upload speeds of at least 1.5 Mbps are available to 87 percent of customers. Industry Analysis and Technology Division, Wireline Competition Bureau, Internet Access Services: Status as of June 30, 2011, at 2, 8 (June 2012) (June 2012 Internet Access Services Report).

[5] Assuming this waiver request is granted, Windstream will provide additional data for such locations, such as latitude and longitude, when such information becomes available, which shall be no later than one year from the date of this letter, as required by 47 C.F.R. § 54.312(b).

rural divide." CAF Phase I funding is clearly intended to address urgent broadband needs in the near term. For Windstream to avail itself of such funding at a meaningful level, and thereby effectively speed broadband deployment to unserved users within its service area, the Commission (1) should waive the rule requiring price cap carriers to deploy broadband to one unserved location for every $775 in incremental support they elect to receive under CAF Phase I and (2) allow Windstream to use such funds to deploy second-mile fiber to reduce the length of copper loops and enable broadband service for rural consumers in areas unserved by Windstream and unsubsidized competitors.[6] Granting this waiver would in no way frustrate the purpose of CAF Phase I. To the contrary, the requested waiver would serve the public interest by allowing for rapid deployment of broadband service to currently unserved Americans. If Windstream is able to use all of its allocated funding, rather than the $653,325 it can accept under the current rules, it would be able to provide broadband access for an additional 16,138 currently unserved locations. Conversely, denial of the waiver would leave these locations—and the approximately 42,000 Americans who live there—stranded without broadband access while waiting for promised reforms under CAF Phase II to be realized, notwithstanding the availability of remaining CAF Phase I funds. This result would seriously undermine the near-term broadband deployment objectives of the Commission, Congress, and the White House and would forego material private investment and new jobs that would help the Nation's economy.

---

[6] *See* 47 C.F.R. § 54.312(b)(2). The term "unsubsidized competitor," is used in the same manner the Commission uses it, to denote the absence of a competitor offering fixed broadband service.

I. NEAR-TERM DEPLOYMENT OF BROADBAND SERVICE TO ACHIEVING WIDELY SHARED FEDERAL POLICY GOALS.

Americans in hard-to-reach areas continue to suffer the "costs of digital exclusion,"[7] and affording such citizens access to broadband is an urgent national priority. President Obama consistently has recognized the critical need for expansion of broadband in rural and high-cost areas.[8] Likewise, the National Broadband Plan, released in 2010, emphasized the urgency of expanding broadband availability: "Everyone in the United States today should have access to broadband services supporting a basic set of applications that include sending and receiving e-mail, downloading Web pages, photos, and videos, and using simple video conferencing."[9]

Indeed, the Commission has repeatedly recognized the immense importance of broadband connectivity to American life and to our national economic success. Chairman Genachowski has stated that "ensur[ing] that all people in all corners of America—from small towns to highways to big cities—have ubiquitous broadband" is a "core part" of the

---

[7] Federal Communications Commission, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN at 5 (2010), *available at* http://download.broadband.gov/plan/national-broadband-plan.pdf ("National Broadband Plan").

[8] For example, the 2008 Democratic National Platform enunciated an intention to "implement a national broadband strategy (especially in rural areas, and our reservations and territories) that enables every American household, school, library, and hospital to connect to a world-class communications infrastructure." *See The 2008 Democratic National Platform: Renewing America's Promise* at 22 (Aug. 25, 2008). In a speech shortly after his election, then-President Elect Obama stated that "build[ing] an economy that can lead us to this future" would require efforts to "expand[] broadband lines across America so that a small business in a rural town can connect and compete with their counterparts anywhere in the world." U.S. President-Elect Barack Obama, Remarks at George Mason University (Jan. 8, 2009), *available at* https://epiac1216.wordpress.com/2009/01/10/a-complete-transcript-of-barak-obamas-speech-on-economic-recovery/.

[9] National Broadband Plan at 135.

Commission's mission.[10] Similarly, Commissioner Clyburn has declared it "unacceptable" that so many Americans continue to lack access to basic broadband, and has praised the Commission's plan to "provide[] for speedy broadband deployment to many of these consumers, with an injection in capital for both fixed and mobile technologies" *during 2012.*[11] Commissioner McDowell has noted that "spurring broadband to remote areas" will improve and expand rural health care and facilitate new economic growth, job development, and educational opportunities."[12] Likewise, testifying before Congress this month, Commissioner Rosenworcel emphasized that "[n]o matter who you are or where you live, prosperity in the twenty-first century will require access to broadband."[13]

The *Comprehensive Reform Order* confirmed the Commission's view on this score:

> Fixed and mobile broadband have become crucial to our nation's economic growth, global competitiveness, and civic life. Businesses need broadband to attract customers and employees, job-seekers need broadband to find jobs and training, and children need broadband to get a world-class education. Broadband also helps lower the costs and improve the quality of health care, and enables people with disabilities and Americans of all income levels to participate more fully in society. Community anchor institutions, including schools and libraries, cannot achieve their critical purposes without access to robust broadband. Broadband-enabled jobs are critical to our nation's economic recovery and

---

[10] Remarks of Chairman Julius Genachowski, M-Health Summit, Washington, D.C. (Dec. 6, 2011).

[11] *Comprehensive Reform Order,* Statement of Commissioner Mignon Clyburn.

[12] Remarks of Commissioner Robert McDowell, First Annual Mid-Atlantic Telehealth Resource Center Summit, Charlottesville, VA (Mar. 15, 2012).

[13] *See* Statement of Commissioner Jessica Rosenworcel, FCC, Before the Subcommittee on Communications and Technology, "Oversight of the Federal Communications Commissioner," 2 (July 10, 2012), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0710/DOC-315077A1.pdf.

> long-term economic health, particularly in small towns, rural and insular areas, and Tribal lands.[14]

Numerous studies also have demonstrated that broadband deployment contributes directly to jobs and economic growth.[15]

The benefits of broadband are not purely economic, though. Other key national priorities are directly served by increased broadband access. For example, the National Broadband Plan observed that "[b]roadband-enabled online learning has the power to provide high-quality educational opportunities" to those who would otherwise be left behind, and noted that "with broadband, people with disabilities can live more independently, wherever they choose."[16] Likewise, "[b]roadband-enabled health information technology (IT) can improve care and lower costs," and "[a] broadband-enabled Smart Grid could increase energy independence and efficiency."[17] Just this month, Chairman Genachowski "applaud[ed]" the use of CAF Phase I

---

[14] *Comprehensive Reform Order*, 26 FCC Rcd at 17667-68 ¶ 3.

[15] *See, e.g.*, National Broadband Plan at 257 (describing broadband deployment projects in rural Virginia towns that led to thousands of new jobs and tens of millions in private investments); Shane Greenstein and Ryan McDevitt, *The Broadband Bonus: Accounting for Broadband Internet's Impact on U.S. GDP*, NBER Working Paper No. 14758 (Feb. 2009), *available at* http://www.nber.org/papers/w14758.pdf; Raul Katz, *The impact of broadband on the economy: Research to date and policy issues*, in TRENDS IN TELECOMMUNICATIONS REFORM 2010-2011: ENABLING TOMORROW'S DIGITAL WORLD (2011)); Robert Crandall, William Lehr, and Robert Litan, *The Effect of Broadband Deployment on Output and Employment: A Cross-section Analysis of U.S. Data, The Brookings Institute: Issues in Economic Policy* (July 2007), *available at* http://www.brookings.edu/~/media/research/files/papers/2007/6/labor%20crandall/06labor_crandall.pdf; Sharon Gillett et al., *Measuring the Economic Impact of Broadband Deployment*, Prepared for the U.S. Department of Commerce, Economic Development Administration (Feb. 2006), *available at* http://cfp.mit.edu/publications/CFP_Papers/Measuring_bb_econ_impact-final.pdf.

[16] National Broadband Plan at 5.

[17] *Id.* at xi.

support to deploy broadband infrastructure that, according to the Chairman, "means access to jobs and economic opportunity, in addition to better education and healthcare."[18]

In light of the well-documented benefits of broadband, and the Commission's conclusion that deployment has not been "reasonable and timely,"[19] the Commission must ensure that such capability is deployed to those who need it as quickly as possible. To that end, the Commission established CAF Phase I to "expand voice and broadband availability as much and as quickly as possible" and to begin "closing the rural-rural divide."[20] The Commission identified a need "to spur *immediate* broadband buildout"[21] in areas served by price cap carriers, which traditionally have been underfunded relative to similar areas served by rate-of return carriers.[22] The program "is designed to provide an *immediate* boost to broadband deployment in areas that are unserved by any broadband provider."[23] A key goal of CAF Phase I is to ensure that funds be used to promote infrastructure buildout *as quickly as possible* to ensure that all Americans can share in

---

[18] This statement was in response to the Frontier Communications announcement that the company intends to use all $71.9 million in CAF Phase I support allocated to it in its first year of funding. Statement of FCC Chairman Julius Genachowski on Frontier Communications' Connect America Fund Announcement (July 9, 2012), *available at* *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0709/DOC-315053A1.pdf.* Unlike Windstream, Frontier has a significant number of unserved locations in its service territory where $775 per location in incremental support is useful because Frontier recently acquired operations in areas where the prior incumbent had underinvested in rural service.

[19] *Inquiry Concerning the Deployment of 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,* GN Docket No. 09-137, Seventh Broadband Progress Report and Order on Reconsideration, at ¶ 1 (2011).

[20] *Comprehensive Reform Order*, 26 FCC Rcd at 17720, 1772 ¶¶ 145, 128 n.201.

[21] *Id.* ¶22 (emphasis added).

[22] *Id.* ¶ 128 n.201.

[23] *Id.* ¶ 137 (emphasis added).

the benefits of the broadband era. To give full effect to the major accomplishments of the *Comprehensive Reform Order* and maximize the number of consumers who can benefit from them, the Commission should take whatever action is necessary to ensure that CAF Phase I funds are fully utilized in the near term, including grant of the requested waiver. As discussed in more detail below, there is no basis for asking Americans in hard-to-reach areas to continue to suffer the "individual and societal costs of digital exclusion"[24]—costs the National Broadband Plan recognized would, "absent action," "grow"[25]—while the Commission works to develop and implement CAF Phase II.

II. THE COMMISSION SHOULD WAIVE ITS RULES TO PERMIT WINDSTREAM TO USE CAF PHASE I FUNDING TO DEPLOY BROADBAND TO APPROXIMATELY 44,000 UNSERVED AMERICANS.

Given the important public policy considerations favoring expeditious use of CAF Phase I funds, Windstream hereby seeks a waiver of the CAF Phase I rules. In particular, Windstream asks the Commission to waive Section 54.312(b)(2) of the rules to the extent it requires price cap carriers to deploy broadband to one unserved location for every $775 in incremental support they elect to receive under CAF Phase I, and permit use of this support to deploy "second-mile" fiber, so long as the following requirements are met:

- *Fill "$775 Bucket" First.* To receive any second-mile fiber funding, Windstream first must deploy 4 Mbps service to all unserved locations where $775 in support is sufficient to make an economic case for price cap carriers' deployment. Specifically, Windstream would be eligible for second-mile fiber funding only after an officer certifies that the company has deployed to or already plans to deploy to all eligible carrier serving areas where the $775-per-location incremental funding makes deploying broadband to the unserved locations in a given serving area site economic for price cap carriers.

---

[24] National Broadband Plan at 5.

[25] *Id.*

- *Spillover Funding Available for Second-Mile Fiber*. After addressing all eligible locations that can be served with $775-per-unserved-location support, Windstream, subject to the conditions specified herein, may spend additional funding that is allocated to its service territory on deployment of second-mile fiber facilities, where such deployment has the effect of bringing broadband at speeds of at least 4 Mbps upstream and 768 Kbps downstream to consumers that are unserved by Windstream or any unsubsidized broadband competitor. In connection with this deployment, Windstream would provide a company contribution of $800 per access line served through the deployment.

The waiver requested is supported by "good cause," as required by Section 1.2 of the Commission's rules.[26] Windstream's most significant broadband deployment challenges reside in the second mile. Indeed, 9 out of every 10 unserved Windstream customers are unserved solely due to the cost of deploying second-mile facilities.[27] Use of incremental support to promote immediate second-mile fiber deployment will enable thousands of consumers currently lacking broadband service to enjoy ADSL2+ technology offering at least 4 Mbps downstream speeds.[28]

A waiver is especially appropriate here in light of Windstream's special circumstances. Windstream's service territory encompasses a large number of high-cost areas, as recognized by the level of CAF Phase I funding slated for Windstream's use. The company already has undertaken aggressive efforts to deploy broadband service to many previously unserved

---

[26] 47 C.F.R. § 1.2.

[27] *See* Declaration of Mike Skudin, Windstream Vice President of Network Planning and Capital Management, attached hereto as Attachment 6, at ¶ 5 (Skudin Declaration).

[28] In the Second Reconsideration Order in the *Connect America Fund* docket, the Commission "agree[d] with Windstream that deploying second-mile fiber facilities is a worthwhile endeavor," but indicated that the CAF Phase I was directed only at "the deployment of broadband to relatively low-cost locations…." *Connect America Fund*, Second Order on Reconsideration, WC Docket No. 10-90 et al., at ¶ 23 (rel. Apr. 25, 2012). There is no reason, however, why monies already allocated for use by Windstream should go unused in the lowest cost unserved locations in its territory, meaning thousands of consumers will continue to bear the costs of digital exclusion, while the Commission works to implement the Phase II CAF.

locations in these areas, leaving very few individual locations that can be served economically for $775 or less in incremental support. For example, as detailed in the attached Declaration from Mike Skudin, Windstream Vice President of Network Planning and Capital Management, Windstream has invested more than $778 million over the past six years to extend broadband to approximately 92 percent of its voice customer base, up from 76 percent in 2006.[29] As a result of its participation in the broadband stimulus program, Windstream expects to spend at least an additional $241.7 million (at least $60.4 million of its own money to complement $181.3 million in funding from the Rural Utilities Service) to deploy additional facilities in high-cost areas in 13 states and boost company-wide broadband availability to more than 93 percent.[30] Naturally, these deployments have focused principally on Windstream's relatively less-expensive unserved areas, which are still high-cost. As a result of these deployments, Windstream now faces costs per new location that in almost all cases substantially exceed those that the company would be facing had it not already invested so aggressively in broadband.[31]

Accordingly, Windstream is unable to serve a substantial number of new locations for $775 or less in incremental support. As Declarant Mike Skudin specifies, the company cannot serve more than 843 new locations if the $775 per-location support amount remains in place.[32] Thus, absent a waiver, Windstream would be able to accept only $653,325 in allocated funding.[33] Put differently, Windstream effectively would be required to *decline* approximately *99%* of the

---

[29] *See* Skudin Declaration at ¶ 3.

[30] *See id.*

[31] *See id.* at ¶ 6.

[32] *See id.* at ¶ 10.

[33] *See id.*

$60,404,310 allocated to it for use in Phase I if subjected to a $775-per-unserved-location cap on support. This problem will be further compounded if CAF Phase I is extended for another year or longer while the Commission finalizes the form of the CAF Phase II program.[34]

The waiver requested by Windstream would serve the public interest in rapid deployment of broadband service to far more unserved Americans than would be addressed under current Commission rules. There is an acute need for broadband deployment in rural areas served by price cap carriers—areas that make up the predominant share of the nation's rural households. The $300 million allocated to CAF Phase I is intended for near-term deployment by such carriers in such areas. Grant of the waiver would allow full use of this funding, bringing broadband service to rural residents now, rather than over the longer-term time frame necessary if consumers in Windstream's service areas must wait for CAF Phase II funding. More specifically, under a waiver that applies a two-step formulation with second-mile fiber funding, Windstream estimates that it would be able to use all of the $60.4 million allocated to its service territory for new broadband deployment in the near term.[35] Combined with $12,240,976 of the company's own capital, these funds would be used to deploy 1,688 miles of fiber and bring service to 16,981 currently unserved locations.[36] Based on the U.S. Census Bureau average

---

[34] Notably, unsubsidized competitors do not even *claim* to have deployed broadband to the truly high-cost areas that Windstream is seeking to serve with CAF Phase I funding. The cost conditions in the areas addressed by Windstream's waiver are challenging for broadband deployment plans of providers of any type of technology. The absence of any claimed presence of unsubsidized competition in these areas makes clear that the consumers Windstream seeks to address are those that, absent support, will continue lack access to broadband service for the foreseeable future.

[35] *See id.* at ¶ 11.

[36] *See id.* at ¶ 12. As described in further detail in the Skudin Declaration, Windstream has computed these figures by using its CAF Phase I potential data set and rank-ordering individual carrier service areas from lowest cost per unserved household to highest cost per unserved
(continued on next page)

household size of 2.59 people,[37] grant of the waiver thus would lead directly to new broadband service for nearly 44,000 unserved Americans in the hardest-to-reach areas.[38] The waiver requested also would offer additional collateral benefits beyond the provision of broadband to unserved end users. For example, the second-mile fiber facilities installed by Windstream would improve service to currently *under*served customers by bringing fiber closer to their homes.

Conversely, strict adherence to requirements that have the effect of leaving CAF Phase I funds dormant would undercut key national goals and the central objectives of CAF Phase I. The second-mile fiber funding that would become available under grant of the waiver only would be spent on deploying facilities to support broadband service for locations that are unserved by an unsubsidized broadband competitor; absent the waiver, there is no question that such consumers would continue to lack access to robust broadband service for the foreseeable

---

household to determine how many miles of fiber would be funded if the company were to accept the full $60.4 million. *See id.* This approach is different from Windstream's prior second-mile fiber funding proposals, which contemplated broadband deployment to carrier serving areas where locations are underserved (i.e., lack 4 Mbps downstream speeds), but not altogether unserved. *See* Letter from Jennie B. Chandra, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92 and 96-45, and Attachments (April 16, 2012).

[37] *See* U.S. Census Bureau USA Quick Facts, Persons Per Household 2006-2010, available at *http://quickfacts.census.gov/qfd/states/00000.html* (last visited July 11, 2012).

[38] Windstream bases this waiver proposal on an estimated per-mile fiber deployment cost of $43,036—of which Windstream will contribute $7,252 per mile, leaving a CAF 1 funding level of $35,784. This funding level is consistent with substantial evidence in the record demonstrating the costs of fiber and establishing a basis for standardized funding for near-term fiber deployment. *See, e.g.*, Letter from Daniel Mitchell, National Telecommunications Cooperative Association, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket Nos. 05-337 and 04-36, CC Docket Nos. 96-45 and 01-92 (Sep. 2, 2009) (NTCA Letter); Letter from Thomas Cohen, Kelley Drye & Warren LLP, Counsel for Fiber to the Home Council, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51 (Oct. 14, 2009) (FTTH Council Letter); Letter from Jennie B. Chandra, Windstream Communications, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 09-47, 09-51, and 09-137 (Jan. 12, 2010) (Windstream January 12, 2010 letter).

future. Denial of the requested waiver thus would deprive these Americans of the economic, educational, healthy, energy, and other advantages available to those on the other side of the digital divide. It also would sideline what otherwise could be new jobs and further, unlocked private sector investment in rural areas.

III. CONCLUSION

The company hereby elects to receive $653,325 of its allotted $60,404,310. In addition, Windstream's conditionally elects to take an additional $59,750,985 to the extent the waiver described herein is granted. Windstream would use that funding, along with $12.2 million of its own capital investment, to bring the benefits of broadband to 16,981 currently unserved locations—or nearly 44,000 unserved Americans who will continue to lack broadband access for the foreseeable future. For the reasons discussed above, the Commission should grant the waiver requested by Windstream.

Respectfully submitted,

/s/_____

Malena F. Barzilai
Jennie B. Chandra
Eric N. Einhorn
Windstream Communications, Inc.
1101 17th St., N.W., Suite 802
Washington, DC 20036
(202) 223-7664 (phone)
Windstream Communications, Inc.

Russell P. Hanser
WILKINSON BARKER KNAUER, LLP
2300 N Street, N.W., Suite 700
Washington, DC 20037
(202) 383-3408 (phone)

July 24, 2012

Attachment 1

"GEOID10","OCN","SAC","CLLI","Lat","Lon"

CONFIDENTIAL DATA REDACTED

Attachment 2

"GEOID10","OCN","SAC","CLLI","Lat","Lon"

CONFIDENTIAL DATA REDACTED