

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**OPPOSITION OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION
TO WINDSTREAM'S PETITION FOR WAIVER OF CERTAIN
HIGH-COST UNIVERSAL SERVICE RULES**

The National Cable & Telecommunications Association (NCTA)¹ opposes the petition for waiver filed by Windstream.² Windstream's waiver petition is yet another attempt to expand limited Connect America Fund (CAF) Phase I incremental support beyond its intended purposes. Windstream's petition falls well short of satisfying the stringent standards for obtaining a waiver of the Commission's rules. Moreover, the Commission flatly rejected the same policy arguments when Windstream advanced them in asking the agency to reconsider the rules governing the Phase I program.³ The Commission similarly should deny this petition.

¹ NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation's largest provider of broadband service after investing over \$185 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to more than 23 million customers.

² Windstream Election and Petition for Waiver, WC Docket No. 10-90 *et al.* (filed July 24, 2012) (Windstream Petition); *Wireline Competition Bureau Seeks Comment on Windstream Petition for Waiver of Certain High-Cost Universal Service Rules*, WC Docket Nos. 10-90, 05-337, Public Notice, DA 12-1181 (Wireline Comp. Bur., July 25, 2012).

³ *Connect America Fund, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Second Order on Reconsideration, 27 FCC Rcd 4648 (2012) (*CAF Second Reconsideration Order*).

INTRODUCTION

The Commission established the \$300 million CAF Phase I mechanism in order to create an incentive for price cap incumbent LECs to commit to bringing broadband to unserved areas. As the Commission explained in the *CAF Order*, “CAF Phase I incremental support is designed to provide an immediate boost to broadband deployment in areas that are unserved by any broadband provider.”⁴ The Commission intended to achieve this result by conditioning a carrier’s receipt of support on a requirement “to deploy broadband to a number of locations equal to the amount it accepts divided by \$775.”⁵

In its petition, Windstream seeks a waiver of the “\$775 per location” rule and asks for authority to use 99 percent of its allotted \$60 million in Phase I funding to deploy “second-mile fiber” which would facilitate the provision of broadband in certain unserved portions of Windstream’s territory.⁶ If the waiver were granted, Windstream states that it would be able to extend broadband service to 16,138 locations that currently are unserved – at a cost of roughly \$3700 per new location.⁷

For all the reasons explained in these comments, the Commission should reject Windstream’s requested waiver. Windstream’s petition fails to satisfy the legal standards required to issue the requested relief and, in any event, the Commission unequivocally rejected those same arguments when Windstream and Frontier requested changes in the Commission’s rules that would have permitted carriers to divert Phase I subsidies to finance construction in very high cost areas. Instead of reforming the Phase I mechanism as proposed by Windstream,

⁴ *Connect America Fund, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17717, ¶137 (2011) (*CAF Order*).

⁵ *Id.* at ¶ 138.

⁶ Windstream Petition at 6.

⁷ *Id.*

the Commission should move forward expeditiously in developing the framework for distributing CAF Phase II support.

I. THE COMMISSION ALREADY HAS REJECTED WINDSTREAM'S ARGUMENTS

The arguments raised in Windstream's waiver petition are virtually identical to arguments that it has previously made to the Commission.⁸ The Commission considered and rejected each of these arguments in the *CAF Second Reconsideration Order* and Windstream provides no compelling reason why the Commission should reach a different result in considering its waiver petition.

First, the Commission has rejected the argument that it should develop carrier-specific deployment requirements as part of CAF Phase I, which is essentially what Windstream asked for here and in its petition for reconsideration. The Commission recognized that adopting uniform funding levels could lead to some carriers declining a portion of their funding, but it concluded that the primary goal is "to reach a significant number of relatively low-cost locations, not to ensure that the entire \$300 million offered for Phase I is accepted. . . . To the extent carriers have already deployed to the low-cost areas in their territories, then those carriers' remaining unserved areas may be better candidates for CAF Phase II."⁹

Second, the Commission explicitly rejected Windstream's proposal that it be permitted to use CAF Phase I for second-mile fiber.¹⁰ While the Commission recognized that deploying second-mile fiber in rural areas is a "worthwhile endeavor," it rejected the proposal because "the

⁸ See Frontier/Windstream Petition for Reconsideration and/or Clarification, WC Docket Nos. 10-90 *et al.*, at 12-20 (Dec. 29, 2011) (arguing that the Commission should reconsider its \$775-per-household limit for CAF Phase I support); Letter from Jennie B. Chandra, Senior Counsel, Federal Policy, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 *et al.* (Mar. 21, 2012) (arguing that the Commission should allow CAF Phase I support be used for second mile fiber).

⁹ *CAF Second Reconsideration Order*, 27 FCC Rcd at 4654, ¶ 20.

¹⁰ *Id.* at 4655-56, ¶ 23.

focus of CAF Phase I is a relatively narrow one: to spur deployment of broadband to relatively low-cost locations that nevertheless currently have no service at all, while we implement CAF Phase II. It is not intended to be a long-term program or to serve all broadband deployment needs.”¹¹

For similar reasons, the Commission also rejected the argument that carriers should be able to use CAF Phase I funding to deploy facilities in areas that already have broadband, but at speeds less than the 4 Mbps downstream speed required of new deployments. The Commission recognized that “carriers may need to upgrade network facilities shared by both served and unserved locations” but found that “the \$775 per newly served location appropriately takes account of the cost of these upgrades.”¹²

The waiver petition makes no meaningful attempt to challenge the logic of the *CAF Second Reconsideration Order*, nor does it make even a cursory attempt to demonstrate that it satisfies the legal standards governing waivers.¹³ Rather, the Windstream petition seems to represent a counteroffer to the Commission. While Windstream is not willing to build to new locations at the \$775 per location offered by the Commission, apparently it would be willing to reach additional unserved locations in its territory if it is provided with \$3700 per new location.

There is nothing inherently wrong with a system that provides funding to worthy projects based on proposals submitted by broadband providers. All types of broadband providers, including cable operators, might be capable of extending facilities beyond their existing service areas if they could specify the amount of funding per location as Windstream has done in its waiver petition (and many might be able to do it for less than the \$3700 per location price tag

¹¹ *Id.*

¹² *Id.* at 4655, ¶ 21.

¹³ *See, e.g., Accipiter Communications*, 25 FCC Rcd 12663, 12667, ¶ 12 (WCB 2010) (petitioner failed to meet its burden of demonstrating special circumstances that would warrant waiver of universal service rules).

that Windstream has proposed).¹⁴ But the Commission declined to adopt such a program and Windstream has not identified any special circumstances to warrant a decision allowing it to be the only company to receive funding in this way. Accordingly, the petition falls well short of meeting the stringent standards that govern issuance of a waiver and should be rejected by the Commission.

II. WINDSTREAM SHOULD BE COMPELLED TO DISCLOSE WHERE IT PLANS TO BUILD BEFORE THE COMMISSION CONSIDERS GRANTING THE REQUESTED RELIEF

For all the reasons identified above, the best course is for the Commission to deny the waiver requested by Windstream. If the Commission nevertheless decides to change the ground rules for Phase I funding, the Commission must first require Windstream to publicly disclose the locations where it plans to use that money and to identify both the areas where unserved subscribers are located and where the second-mile facilities will actually be built. Any other approach would be contrary to the principles of accountability and transparency that have guided the Commission in its efforts to reform the universal service regime.¹⁵

There is no basis for treating the location of unserved subscribers as confidential as Windstream has requested. By definition, those locations are required to be in areas not served by any other provider. Consequently, there can be no competitive harm associated with public disclosure of that information. Indeed, a number of carriers did disclose this information in their

¹⁴ In addition, Windstream has provided no cost information that would give the Commission or the public any confidence that \$3700 per location bears any relationship to the cost of constructing and operating the proposed facilities. In contrast, the Commission based its decision to establish a \$775 per location rule on cost information from multiple sources, thereby limiting the potential for an incumbent LEC to receive a significant windfall. *See CAF Order*, 26 FCC Rcd at 17717-21, ¶¶ 138-144.

¹⁵ *CAF Order*, 26 FCC Rcd at 17848, ¶ 568 (“recipients must be held accountable for how they spend [universal service] money”).

submissions to the Commission specifying how much CAF Phase I support they intended to accept.¹⁶ Windstream should be compelled to make the same disclosure.¹⁷

There also is no reason why the public should not be permitted to know where Windstream intends to build second-mile fiber facilities. In particular, competing broadband providers are entitled to know whether the second-mile fiber will be overbuilding facilities they already have installed without a subsidy. As the Commission made clear in the *CAF Order*, it is not in the public interest for limited high-cost support to be used for overbuilding existing broadband facilities.¹⁸

¹⁶ See, e.g., Letter from Melissa E. Newman, Vice President-Federal Regulatory Affairs, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 and 05-337, at Att. B and Att. D (July 24, 2012); Letter from Paul J. Friedman, Counsel for Consolidated Communications, Inc., to Marlene Dortch, Secretary, FCC, WC Docket Nos. 10-90 and 05-337, at Attach. (July 24, 2012); Letter from Karen Brinkmann, Counsel for Fairpoint Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 and 05-337, at Attach. (July 23, 2012). In addition, Alaska Communications Systems Group, Inc., Frontier Communications Corp., and Hawaiian Telcom, Inc. filed partially redacted location information with their CAF Phase I support acceptances. As discussed above, there is no reason for this information to be afforded confidential treatment and these companies should also be required to publicly disclose all location information.

¹⁷ Three weeks after the waiver request was submitted, Windstream submitted a revised version of one of its appendices which provides some county-level information regarding where it plans to reach unserved subscribers. See Letter from Malena Barzilai, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Aug. 15, 2012). While this is a welcome recognition that its initial decision not to provide any public information was unreasonable, the company still offers no reason why the census block data submitted to the Commission should not be released to the public.

¹⁸ *CAF Order*, 26 FCC Rcd at 17701, ¶ 103.

CONCLUSION

The Commission has already addressed all of the issues raised in Windstream's waiver petition and found that granting the relief Windstream seeks would not serve the public interest. Because the waiver petition provides no new information to warrant the special treatment that Windstream has requested, the Commission should deny the petition.

Respectfully submitted,

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