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

To: Chief, Wireline Competition Bureau

REPLY COMMENTS OF THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION TO WINDSTREAM ELECTION AND PETITION FOR WAIVER

The Wireless Internet Service Providers Association ("WISPA"), pursuant to Sections 1.415 and 1.409 of the Commission's Rules, hereby responds to certain of the Comments and Oppositions filed in the above-captioned proceeding[1] in which Windstream Communications, Inc. ("Windstream") seeks a waiver of Section 54.312(b)(2) of the Commission's Rules to use the vast majority of its $60 million Connect America Fund ("CAF") Phase I allocation to subsidize its construction of "second-mile" fiber instead of unserved locations.[2]

The record confirms that Windstream has not established the "special circumstances" required for it to obtain waiver. To the contrary, those opposing the Petition convincingly explain that waiver would be inconsistent with the public interest. Accordingly, the Wireless Telecommunications Bureau ("Bureau") should dismiss or deny the Petition.

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[1] *See Public Notice*, "Wireline Competition Bureau Seeks Comment on Windstream Petition for Waiver of Certain High-Cost Universal Service Rules," DA 12-1181, rel. July 25, 2012 ("*Public Notice*"). The *Public Notice* established September 10, 2012 as the deadline for filing Reply Comments.
[2] *See* Windstream Election and Petition for Waiver, WC Docket Nos. 10-90 and 05-337, filed July 24, 2012 ("Petition").

Discussion

In its Opposition,[3] WISPA demonstrated that the $775 per-location CAF Phase I subsidy the Commission established is not "insufficient," as Windstream claims, but rather represents an interim support level intended "to provide an immediate boost to broadband deployment in areas that are unserved by any broadband provider."[4] WISPA explained that Windstream's cost projections were based on wireline technologies, not other broadband delivery platforms such as fixed wireless that likely would be more cost-effective for it to deploy. Diverting excessive funds to Windstream's fiber project – to the tune of more than $3,500 per location – would be tantamount to rewarding Windstream for its inefficiency, in sharp contrast to wireless Internet service providers ("WISPs") that are providing *unsubsidized*, cost-efficient broadband service in many rural and underserved areas of the country.

Other commenters agree that the Bureau should reject Windstream's waiver request. The American Cable Association,[5] the National Cable & Telecommunications Association[6] and Mediacom Telephony[7] all pointed out that the Commission has twice rejected Windstream's proposal to apply CAF Phase I funds to second-mile fiber deployments. As Mediacom relates, prior to adoption of the *USF/ICC Transformation Order*, Windstream asked the Commission to use carrier-specific costs to determine Phase I funding amounts and to allow price cap carriers to

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[3] *See* Opposition of WISPA to Windstream Election and Petition for Waiver, WC Docket Nos. 10-90 and 05-337, filed Aug. 24, 2012 ("WISPA Opposition").

[4] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; and Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) ("*USF/ICC Transformation Order*"), at ¶ 137.

[5] *See* Comments of the American Cable Association on the Windstream Election and Petition for Waiver, WC Docket Nos. 10-90 and 05-337, filed Aug. 24, 2012 ("ACA Comments").

[6] *See* Opposition of the National Cable & Telecommunications Association to Windstream's Petition for Waiver of Certain High-Cost Universal Service Rules, WC Docket Nos. 10-90 and 05-337, filed Aug. 24, 2012 ("NCTA Opposition").

[7] *See* Opposition of Mediacom Telephony to Windstream's Election and Petition for Waiver, WC Docket Nos. 10-90 and 05-337, filed Aug. 24, 2012 ("Mediacom Opposition").

use Phase I funds for second-mile facilities.[8] In keeping with its desire to make CAF Phase I a one-time program designed to expedite broadband deployment, the Commission disagreed and adopted the $775 per-location subsidy for Phase I. Windstream and Frontier then sought reconsideration of this decision, and the Commission again rejected their efforts to apply carrier-specific criteria to CAF Phase I.[9] As Mediacom states, "the Commission declined to set up a regulatory framework where carriers would make a showing based on facts and costs characteristics particular to them and their service territories – the very basis for the waiver Windstream seeks."[10] As NCTA correctly observes, the Petition "makes no meaningful attempt to challenge the logic of the *CAF Second Reconsideration Order*, nor does it even make a cursory attempt to demonstrate that it satisfies the legal standards governing waivers."[11] WISPA also concurs with Sprint Nextel that "it would be irresponsible and arbitrary to throw out this [$775 per-location] figure and replace it with such a far higher amount without even the semblance of a financial analysis or even a cursory check for reasonableness."[12]

WISPA agrees with Mediacom that granting the Petition could deter unsubsidized competitors from investing in broadband deployment.[13] WISPs provide unsubsidized broadband services funded through private investment to serve areas that Windstream, CenturyLink, Frontier and others have elected not to serve based on their inefficient wireline cost models. As Mediacom states:

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[8] *See id.* at 4.

[9] *In the Matter of the Connect America Fund, A National Broadband Plan for Our future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Second Order on Reconsideration, 27 FCC Rcd 4648 (2012) ("*Second Order on Reconsideration*"), at ¶¶ 19-23.

[10] Mediacom Opposition at 5. *See also* ACA Comments at 3-4; NCTA Opposition at 3-4.

[11] NCTA Opposition at 4.

[12] Comments of Sprint Nextel Corporation, WC Docket Nos. 10-90 and 05-337, filed Aug. 24, 2012 ("Sprint Nextel Comments"), at 2.

[13] *See* Mediacom Opposition at 7.

> Permitting a subsidized competitor like Windstream to utilize public funds to expand its network beyond the limitations established in the Rules, whether in areas where Windstream directly competes with providers such as Mediacom, or in currently unserved areas, would unfairly disadvantage unsubsidized competitors expanding their networks with private investments.
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> Unsubsidized competitors like Mediacom will be less likely to make future facilities investments in unserved areas if forced to compete with subsidized competitors whose decisions regarding broadband facilities deployment are less constrained by financial concerns due to potentially excessive public support.[14]

WISPA and WISPs share these concerns. As small businesses providing self-funded and locally-owned fixed broadband services without relying on federal financial support, WISPs will be more reluctant to invest their private funds in system expansion when the prospect of a subsidized competitor would jeopardize return on those investments.[15]

Not surprisingly, other price cap carriers[16] and their trade associations[17] support Windstream's Petition. These parties simply rehash points already raised and rejected by the full Commission on two occasions and repeat Windstream's arguments. USTelecom's attempt to re-characterize Windstream's Petition as a request to change the funding metric from one based on locations to one based on fiber route miles does not change the fact that Windstream proposes to serve no unserved locations with its "conditionally accepted" subsidies.[18] Claims by ADTRAN and TIA that Windstream's unserved customers will somehow be "punished" by denial of the

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[14] *Id.* at 7, 8.

[15] As Sprint Nextel points out, if Windstream deploys broadband to the undisclosed locations that it proposes to serve via waiver, those locations would presumably be excluded from Phase II support, thereby foreclosing the opportunity for competitive bids by other service providers. *See* Sprint Nextel Comments at 3.

[16] *See* Comments of Frontier Communications Corporation, WC Docket Nos. 10-90 and 05-337, filed Aug. 24, 2012 ("Frontier Comments").

[17] *See* Comments of the Independent Telephone & Telecommunications Association in Response to Windstream Petition for Waiver, WC Docket Nos. 10-90 and 05-337, filed Aug. 24, 2012 ("ITTA Comments"); Comments of the Telecommunications Industry Association, WC Docket Nos. 10-90 and 05-337, filed Aug. 24, 2012 ("TIA Comments"); Comments of the United States Telecom Association, WC Docket Nos. 10-90 and 05-337, filed Aug. 24, 2012 ("USTelecom Comments").

[18] *See* USTelecom Comments at 4.

waiver completely misses the point and ignores the fact that many of those customers may be receiving unsubsidized service from a WISP or could receive service from Windstream if it used more cost-effective technology.[19] To the contrary, WISPs are potentially being punished for providing unsubsidized broadband service in competition with subsidized carriers that seek to unjustifiably expand their footprints (like CenturyLink) or use their allocated funding for purposes unintended by the CAF Phase I rules. Windstream's supporters offer no additional justification for grant of the Petition.[20]

ITTA asks the Bureau to go beyond Windstream's request and waive Section 54.312(b) for other price cap carriers that were allocated CAF Phase I funding.[21] That it proposes such relief for all eligible price cap carriers suggests that the circumstances underlying the Petition are far from "special," but rather are ordinary in their application to price cap carriers. Moreover, none of the other price cap carriers have asked the Bureau for permission to use Phase I funds for second-mile infrastructure, so the Bureau is precluded from granting them the broad waiver ITTA requests.

If the Bureau denies the Petition, it also should reject U.S. Cellular's request to re-allocate those funds to the Mobility Fund.[22] As WISPA explained in an ex parte letter in response to a similar request proffered by RCA – The Competitive Carriers Association ("RCA"), the Commission established different funds for fixed and mobile broadband in

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[19] Comments of ADTRAN, Inc. in Support of Windstream Waiver Request, WC Docket Nos. 10-90 and 05-337, filed Aug. 24, 2012, at 4; TIA Comments at 3.

[20] Sprint Nextel correctly observes that Windstream's failure to disclose any details about the location of its planned second-mile deployment "makes it impossible for interested parties to evaluate the reasonableness of its claim that it will cost, on average, almost five times the prescribed $775 cap to deploy broadband to various unserved areas." Sprint Nextel Comments at 2. WISPA notes that, on August 15, 2012, Windstream provided limited information about the county and number of unserved locations its proposed second-mile facilities would impact. More specific information remains subject to Windstream's confidentiality claim.

[21] *See* ITTA Comments at 4.

[22] *See* Comments of United States Cellular Corporation, WC Docket Nos. 10-90 and 05-337, filed Aug. 24, 2012 ("US Cellular Comments"), at 4-5.

recognition of their different purposes, uses and technological characteristics.[23] Similarly, Sprint Nextel asks the Commission to "carefully consider whether reallocating unclaimed support to other carriers and/or other locations would result in more broadband 'bang for the buck.'"[24] A carrier's decision to decline CAF Phase I funds because the rules are not to its liking does not mean that there is a greater need to subsidize mobile broadband. WISPA has recommended that declined CAF Phase I funds be allocated to the Remote Areas Fund, if the Commission permits non-ETCs to participate in that program, or be used to decrease the overall size of the fund and thereby eliminate the need for the Commission to expand the contribution base to include broadband providers.[25]

Conclusion

The record fails to establish that there are "special circumstances" and sufficient public interest benefits to justify grant of Windstream's Petition. The Petition should be dismissed or denied.

Respectfully submitted,

September 10, 2012

WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

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[23] *See* Letter from Elizabeth Bowles and Richard D. Harnish, WISPA, to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109 and WT Docket No. 10-208, filed Aug. 13, 2012 ("WISPA Ex Parte Letter").
[24] Sprint Nextel Comments at 3.
[25] *See* WISPA Ex Parte Letter at 3.