

**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

**REPLY COMMENTS OF WINDSTREAM CORPORATION
IN SUPPORT OF ITS PETITION FOR WAIVER**

Windstream Corporation, on behalf of its incumbent local exchange carrier (“ILEC”) affiliates (hereinafter “Windstream”), submits the following reply comments in support of its Petition for Waiver¹ in the above-referenced proceedings. The waiver, if granted, would permit Windstream to use all of its allocated Connect America Fund (“CAF”) Phase I funding to extend 1,688 miles of fiber-optic, second-mile infrastructure² into rural areas of 15 states, and bring robust broadband service to 16,981 locations that today lack any broadband access.

A variety of parties filed comments urging the Commission to grant Windstream’s Petition. For example, the Independent Telephone & Telecommunications Alliance stated, “Windstream’s request goes to the very core of the Commission’s goals in CAF Phase I ‘to provide an *immediate* boost to broadband deployment’ to rural consumers that lack access to such service today.”³ The Telecommunications Industry Association noted that “Windstream

¹ Windstream Election and Petition for Waiver, WC Docket Nos. 10-90 and 05-337 (July 24, 2012) (Windstream Petition).

² Windstream’s proposal contemplates that the funding would be used to cover the costs of fiber and associated equipment, as well as site preparation and installation.

³ Comments of the Independent Telephone & Telecommunications Alliance in Response to Windstream Petition for Waiver, WC Docket Nos. 10-90 and 05-337, at 1-2 (August 24, 2012) (ITTA Comments) (citing *Connect America Fund, et al.*, WC Docket Nos. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 137 (rel. Nov. 18,

has undertaken extensive modeling of its network deployment costs in order to demonstrate the significant benefits that could accrue from grant of its waiver.”⁴ Frontier Communications emphasized that “the Commission should not allow the potential of CAF Phase I funding (and the associated broadband deployment benefits) to go unrealized by requiring strict adherence to the program design that may not work where a carrier has already deployed broadband to a substantial portion of its territory.”⁵ Predictably, some representatives of the wireless and cable industries objected to Windstream’s waiver request. However, as demonstrated below, none of their self-interested arguments should prevent the Commission from promptly granting the pending Petition and thereby permitting Windstream to expeditiously deploy broadband to approximately 44,000 unserved Americans.

I. WINDSTREAM IS READY AND WILLING TO USE ITS ALLOTTED CAF PHASE I SUPPORT TO DEPLOY BROADBAND, AND REALLOCATING FUNDING WOULD FRUSTRATE THE COMMISSION’S STATED GOALS.

As an initial matter, Windstream urges the Commission to dismiss claims that the nearly \$60 million at issue in this Petition, as well as other CAF Phase I funding that remains unaccepted by price cap carriers to date, should be reallocated or reserved for some purpose other than broadband deployment by price cap carriers. Contrary to the self-interested assertions

2011) (*Comprehensive Reform Order*) (emphasis added)). *See also* Comments of the United States Telecom Association, WC Docket Nos. 10-90 and 05-337, at 3 (August 24, 2012) (USTelecom Comments) (noting that “grant of the Windstream waiver petition would further [the Commission’s CAF Phase I] goal—it would accomplish deployment of broadband to the lowest-cost locations within Windstream’s footprint that currently have no broadband service”).

⁴ Comments of the Telecommunications Industry Association, WC Docket Nos. 10-90 and 05-337, at 2-3 (August 24, 2012).

⁵ Comments of Frontier Communications Corporation, WC Docket Nos. 10-90 and 05-337, at 2 (August 24, 2012).

of various parties who have weighed in on this subject,⁶ the fact that CAF Phase I funding remains unclaimed does not demonstrate a lack of need for support to boost broadband deployment in areas served by Windstream and other price cap carriers. In Windstream’s service territory alone, there remain more than 200,000 customer locations, in areas where deployment costs are high and subscriber density is low, that lack broadband access because the Universal Service Fund high-cost program has not provided adequate government support to make the areas economic to serve. The Commission, recognizing that areas served by price cap carriers traditionally have been underfunded relative to similar areas served by rate-of-return carriers,⁷ created CAF Phase I “to spur immediate broadband buildout” in these areas.⁸ As evidenced by the thousands of unserved customers who have contacted their carriers, 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, there is an overwhelming need for expeditious broadband deployment that CAF Phase I is intended to support.

⁶ See, e.g., Comments of United States Cellular Corporation, WC Docket Nos. 10-90 and 05-337, at 6 (August 24, 2012) (U.S. Cellular Comments) (recommending that funding be reallocated to the Mobility Fund I auction); Letter from Elizabeth Bowles, President, and Richard D. Harnish, Executive Director, Wireless Internet Service Providers Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.* (August 13, 2012) (WISPA Letter) (asserting that unaccepted funds should be allocated to the Remote Areas Fund); Letter from Steven K. Berry, CEO, and Rebecca Murphy Thompson, General Counsel, RCA – The Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.* (August 3, 2012) (arguing that declined CAF Phase I support should be made available to wireless ETCs).

⁷ *Comprehensive Reform Order* at ¶ 128 n.201 (emphasizing need to begin “closing the rural-rural divide”); ¶ 130 (noting that price cap companies “serve more than 83 percent of the people that lack broadband, many of whom live in areas that are just as low-density and remote as areas served by rural companies”); ¶ 158 (stating that more than 83 percent of unserved locations are in price cap areas, yet such areas receive just 25 percent of high-cost support).

⁸ *Id.* at ¶ 22.

The reason that approximately \$185 million of CAF Phase I support remains unclaimed is not because it is not needed, but because the existing rules of the program make it impossible for many price cap carriers to accept some or all of their allocated support. As its Petition makes clear, Windstream is particularly constrained by the CAF Phase I requirement that carriers deploy broadband to one unserved location per \$775 in support—an amount that is nowhere near sufficient to make deployment economic in a truly high-cost area. Thus, Windstream has proposed to (1) first deploy 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) spend additional, specified levels of funding on the deployment of second-mile facilities, including fiber and electronics, that will enable broadband access at speeds of at least 4 Mbps downstream and 768 Kbps upstream for unserved consumers. Likewise, several other price cap carriers have expressed a willingness to accept and utilize most or all of their allocated CAF Phase I support if the Commission modifies some of the existing restrictions on the program.⁹

Windstream and other price cap carriers stand ready and willing to use the allocated CAF Phase I funding to rapidly deploy broadband to unserved consumers in their service areas. The Commission has a duty under Section 706 of the Communications Act “to take immediate action to accelerate deployment” of broadband,¹⁰ and the Commission has recognized that Windstream

⁹ See CenturyLink Petition for Waiver, WC Docket No. 10-90 et al. (June 26, 2012) (seeking waiver that would permit CenturyLink to accept \$81.5 million of the \$89.9 million allocated to it); Petition of Virgin Islands Telephone Corp. d/b/a Innovative Telephone for Waiver of Rule 54.904(d) of the Commission’s Rules, WC Docket Nos. 10-90 and 08-71 (July 23, 2012). Alaska Communications Systems (“ACS”) accepted its allotted \$4 million but has since explained that it would not be able to use all of its funding under the current rules. See Letter from Richard R. Cameron, ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, WT Docket Nos. 10-208, GN Docket No. 09-51 (August 28, 2012).

¹⁰ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such*

and the other price cap carriers “are in a unique position to deploy broadband networks rapidly and efficiently” in their service areas.¹¹ CAF Phase I was put into place for this express purpose and presents the best avenue for accelerated deployment of broadband in the near term.¹²

Therefore, Windstream urges the Commission to ignore the unproductive squabbling of self-interested parties and to grant Windstream’s Petition and others that would permit already allocated funding to be used to advance the program’s goals.

II. THE PETITION FOR WAIVER PRESENTS “SPECIAL CIRCUMSTANCES,” AND ITS GRANT WOULD SERVE THE PUBLIC INTEREST.

Contrary to the arguments of some commenters,¹³ Windstream’s Petition fully satisfies the Commission’s “good cause” waiver standard. A waiver is appropriate where the “particular facts would make strict compliance inconsistent with the public interest,” and the Commission may grant a waiver where the requested relief would not undermine the policy objective of the

Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 09-137, Eighth Broadband Progress Report, at ¶ 8 (released August 21, 2012).

¹¹ See *Comprehensive Reform Order* at ¶ 178.

¹² Windstream is puzzled by WISPA’s assertion that “Windstream offers no timeline for the proposed deployment of its fiber and installation of the connections to the claimed number of locations.” Opposition of the Wireless Internet Service Providers Association to Windstream’s Election and Petition for Waiver, WC Docket Nos. 10-90 and 05-337, at 5 (August 24, 2012) (WISPA Opposition). Section 54.312(b)(4) of the Commission’s rules require that a carrier “must complete deployment of broadband to two-thirds of the required number of locations within two years of providing notification of acceptance of funding, and must complete deployment to all required locations within three years.” Windstream has not sought a waiver of that requirement.

¹³ See, e.g., WISPA Opposition at 3; 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, at 4 (August 24, 2012) (NCTA Opposition); U.S. Cellular Comments at 3.

rule in question, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.¹⁴

As Windstream and other commenters have noted, a waiver is warranted in this situation because, as applied to Windstream, *the rule itself* “undermine[s] the policy, served by the rule, that has been adjudged in the public interest.”¹⁵ CAF Phase I is designed “to spur immediate broadband buildout” in unserved portions of price cap carriers’ service areas,¹⁶ but strict application of the program rules in this case renders Windstream unable to use all but a miniscule fraction of its allocated funding to expand broadband and thus serve the public interest.¹⁷ Though the Commission allocated more than \$60 million in CAF Phase I funding to Windstream based on the high-cost nature of its unserved areas, the CAF Phase I rules incongruously prohibit the use of that funding even in most of Windstream’s *lowest-cost* unserved areas because the company has so aggressively deployed broadband to date. As the Independent Telephone & Telecommunications Alliance commented, “special circumstances arise from the fact that the rule at issue simply does not allow the Commission to attain the purported objective it sought to achieve in establishing CAF Phase I. In fact, rigid observance to the rule threatens the very purpose” of the program.¹⁸ In contrast, grant of the Petition “would serve the public interest

¹⁴ See, e.g., *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

¹⁶ *Id.* at ¶ 22.

¹⁷ See Windstream Petition at 12-14. See also USTelecom Comments at 2-3 (noting that “it is clear that the program’s restrictive rules . . . are preventing the Commission from achieving its goals”).

¹⁸ ITTA Comments at 2 (August 24, 2012). See also USTelecom Comments at 5 (stating that Windstream’s Petition “clearly meets the ‘good cause’ standard by enabling tens of thousands of consumers to gain prompt access to robust broadband service through an efficient and effective expenditure of funds under the Commission’s CAF Phase I mechanism”); Comments of ADTRAN, Inc. in Support of Windstream Waiver Request, WC Docket Nos. 10-

precisely because it furthers the very purpose of CAF Phase I to ‘spur immediate broadband buildout’ to American consumers and close the rural-rural divide by enabling” Windstream to bring robust broadband service to nearly 17,000 unserved locations.¹⁹

Moreover, Windstream’s Petition is meaningfully different from proposals that the Commission has already considered and rejected, and is presented under different circumstances. Thus, commenters’ objections on these grounds should be dismissed.²⁰ Though Windstream has strenuously and repeatedly asserted that the \$775 per-location deployment requirement is unworkable, and the Commission has previously declined to revisit the rule despite these entreaties, Windstream now offers a distinct proposal through which it hopes to deploy second-mile fiber and associated electronics along routes selected to maximize the provision of broadband to unserved locations.²¹ In addition, Windstream’s latest proposal is offered in the context of empirical evidence of the need for rule modifications—namely, the fact that the current rules permit Windstream to accept only *one percent* of its allocated funding to serve the only 843 unserved locations in its service area that can be reached with \$775 in incremental support. This clear demonstration that the CAF Phase I program is not serving the

90 and 05-337, at 3 (August 24, 2012) (opining that Windstream has demonstrated special circumstances).

¹⁹ ITTA Comments at 4 (internal citations omitted).

²⁰ See Comments of the American Cable Association on the Windstream Election and Petition for Waiver, WC Docket Nos. 10-90 and 05-337, at 4-5 (August 24, 2012); NCTA Opposition at 3; U.S. Cellular Comments at 3; Opposition of Mediacom Telephony to Windstream’s Election and Petition for Waiver, WC Docket Nos. 10-90 and 05-337, at 3 (August 24, 2012) (Mediacom Opposition).

²¹ As Windstream has previously noted, the proposed methodology 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 Petition at 15 (citing 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)).

Commission's stated policy goals provides a "compelling reason"²² why Windstream's Petition should be granted.

III. WINDSTREAM'S PETITION IS THE RESULT OF RIGOROUS ANALYSIS, INCLUDING CONSIDERATION OF OTHER TECHNOLOGIES FOR DELIVERING BROADBAND SERVICE.

WISPA's assertion that Windstream's economic analysis did not consider the cost of other technologies, such as fixed wireless or satellite, that "likely would be more economical to deploy"²³ is quite simply incorrect. As explained in its Petition and accompanying exhibits, Windstream expended considerable time and resources in developing a detailed engineering design that it would execute with the allotted funding. The design is consistent with Windstream's general protocol in evaluating broadband deployment projects, in which Windstream considers various technologies where appropriate. In Windstream's experience, the deployment of second-mile fiber to reduce the length of last-mile copper loops is the most cost-efficient method of delivering broadband service that reliably would meet the necessary performance requirements, including sufficient speed, and low latency, and reasonably comparable capacity.²⁴

This experience is consistent with the results of modeling done for the National Broadband Plan, which showed that the total cost of building out a fixed wireless network to all

²² See NCTA Opposition at 3 (noting that the Commission needs a "compelling reason" to grant Windstream's waiver petition after rejecting its prior proposals).

²³ WISPA Opposition at 5.

²⁴ See *Comprehensive Reform Order* at ¶¶ 92-99 (specifying that funding recipients must provide broadband service that offers actual download speeds of at least 4 Mbps, sufficiently low latency to enable use of real-time applications, and usage limits that are reasonably comparable to usage limits for comparable broadband offerings in urban areas). For reasons explained in depth in the Petition, most of the locations Windstream intends to serve if its waiver is granted would receive broadband that offers actual upload speeds of 768 Kbps, rather than 1 Mbps the Commission has requested. See Petition at 5, fn.4.

unserved homes in the country is more expensive than the cost of upgrading existing facilities to offer broadband over 12,000-foot-loop DSL.²⁵ It is consistent with the Commission’s finding in the *Comprehensive Reform Order* that the record does not demonstrate that the costs of cellular wireless networks—which require the deployment of fiber to the cell tower—“are likely to be significantly lower than wireline networks for providing broadband service that meets the [] speed, latency, and capacity requirements.”²⁶ And it is consistent with the Commission’s assessment that “satellite providers are generally unable to provide affordable voice and broadband service that meets [its] minimum capacity requirements.”²⁷ The Commission has recognized that Windstream and other price cap carriers “are in a unique position to deploy broadband networks rapidly and efficiently” in their service areas,²⁸ and Windstream’s analysis bears out the validity of this assumption. Grant of its pending Petition will enable Windstream to live up to that promise and advance the Commission’s goals.

IV. CONCERNS THAT WINDSTREAM WILL USE FUNDING TO OVERBUILD EXISTING NETWORKS ARE UNFOUNDED.

Concerns raised by some parties that Windstream intends to use CAF Phase I funding to overbuild existing networks and deploy broadband to consumers that are already served by unsubsidized competitors are baseless and should not prevent the Commission from granting

²⁵ See *Comprehensive Reform Order* at ¶ 191 fn.313 (citing Omnibus Broadband Initiative, *The Broadband Availability Gap: OBI Technical Paper No. 1*, at 62, Ex. 4-C (April 2010)).

²⁶ See *Comprehensive Reform Order* at ¶ 191.

²⁷ See *id.* at 104. WISPA in its comments implies that Frontier plans to use satellite technology to satisfy at least some of its CAF Phase I obligations. See WISPA Opposition at 5. Windstream does not deny that Frontier, like Windstream, “looked beyond its traditional wireline cost model” when assessing its potential CAF Phase I deployment projects. See *id.* However, it is Windstream’s understanding that Frontier *does not* plan to use satellite technology to satisfy any CAF Phase I deployment obligations.

²⁸ See *Comprehensive Reform Order* at ¶ 178.

Windstream's Petition.²⁹ As noted in the Declaration of Mike Skudin, Windstream's Vice President of Network Planning and Capital Management, accompanying its Petition, Windstream excluded from its analysis of potential deployment projects any carrier serving areas in locations that are shown to have fixed broadband coverage on the National Broadband Map, as well as any areas in which Windstream had other knowledge of broadband competition that was not indicated on the Map.³⁰ Windstream then rank-ordered potential projects by carrier service area from the lowest cost per unserved household to the highest cost per unserved household.³¹ In other words, Windstream's Petition is based entirely on an intention to reach the lowest-cost *unserved* households in its serving area. Each of the locations Windstream proposes to serve is identified to the census-block level in data submitted to the Commission under the standing protective order in these proceedings, and this information is easily accessible by any interested party willing to abide by the terms of the protective order.³²

The projects Windstream intends to undertake if its Petition is granted contemplate extending second-mile fiber closer to unserved customers. It is inevitable that in some cases, this will involve a modest amount of fiber passing through an area that is already served by Windstream and/or another provider. For example, a project may involve the extension of fiber

²⁹ See, e.g., WISPA Letter at 2 (alleging that "Windstream fails to acknowledge that [WISPs] have been serving these truly high-cost areas for over ten years, without any federal subsidies"); Mediacom Opposition at 6-7 (asserting that "[p]ermitting 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").

³⁰ Windstream Petition, Attachment 6 at 3.

³¹ *Id.*

³² NCTA asserts that this information should be publicly available. See NCTA Opposition at 5. Windstream considers such location-specific information to be confidential business information as a matter of general practice, but notes that NCTA and its member companies are free to examine this information under the terms of the protective order.

from Windstream’s central office—such offices are typically located in the most populous areas of towns—to a remote terminal several miles from the center of town. In the case of such a project, the first half-mile or mile of the proposed fiber route may traverse the town, which is likely already served by Windstream and a cable competitor.³³ However, many more of Windstream’s proposed projects involve the extension of fiber from existing interoffice routes or remote terminals, and the new fiber will not traverse any areas that are served by unsubsidized competitors.

On the whole, as a result of Windstream’s methodology discussed above, as well as the truly rural and high-cost nature of Windstream’s unserved areas, the actual amount of fiber that would be built through areas that are served by an unsubsidized competitor is minimal. Of the 1,688 miles of second-mile fiber that Windstream intends to deploy if its waiver is granted, only about 102 miles—or 6 percent of the total—would traverse areas that are served by cable, and only for the purpose of connecting to unserved areas. Eighty-six percent of the 721 individual fiber routes included in Windstream’s Petition do not involve *any* placement of fiber in areas served by competitors. Because Windstream proposes to contribute \$12 million of its own capital investment to complement the \$60 million in CAF Phase I funding—a match of 20 percent—federal support need not fund even this small amount of necessary fiber overlap.

CONCLUSION

Windstream is ready and willing to utilize its allotted \$60.4 million in CAF Phase I funding to ensure that 44,000 Americans in 15 states no longer have to endure the “individual

³³ Such projects are the exception rather than the rule. Of the 721 fiber routes that Windstream proposes to build if its Petition is granted, only 196 (27 percent) begin at a Central Office.

and societal costs of digital exclusion.”³⁴ The Commission should promptly grant the pending Petition so that all of the CAF Phase I funding allotted to Windstream may be dedicated toward advancing the program’s goals.

Respectfully submitted,

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³⁴ Federal Communications Commission, *Connecting America: The National Broadband Plan*, at 5 (2010).

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were sent by first-class mail this 10th day of September 2012 to each of the following:

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