

**Before the
Federal Communications Commission
Washington, DC 20554**

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| 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
THE AMERICAN CABLE ASSOCIATION
ON THE WINDSTREAM ELECTION AND PETITION FOR WAIVER**

The American Cable Association (“ACA”) respectfully submits these reply comments in response to the *Petition* of Windstream Communications, Inc. (“Windstream”) for a waiver of certain provisions in 47 C.F.R. § 54.312(b), which were adopted by the Commission in last year’s *Connect America Fund Order*.¹ In its initial comments,² ACA noted that the Commission has twice rejected the proposal in Windstream’s *Petition* – once in adopting the Phase I program in the *Connect America Fund Order* and again in the *Second Reconsideration Order*.³ In both instances, the Commission emphasized that the aim of the Phase I program is narrow and

¹ See Windstream Election and Petition for Waiver, WC Docket No. 10-90 et al. (filed July 24, 2012) (“*Petition*”); see also 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 (July 25, 2012) (“Public Notice”) and *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011); *pets. for review pending sub nom. In Re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011) (“*Connect America Fund Order*”). Also see Public Notice at 1 (“Windstream asks for a waiver (1) “of the requirement to connect to one unserved location for every \$775 in incremental support it receives” and (2) “so that it might use Connect America Fund Phase I incremental support to deploy second-mile fiber.”).

² See Comments of the American Cable Association on the Windstream Election and Petition for Waiver, WC Docket Nos. 10-90 and 05-337 (Aug. 24, 2012) (“ACA Comments”).

³ See e.g. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Second Order on Reconsideration (Apr. 25, 2012), ¶¶18-23 (“*Second Reconsideration Order*”).

transitional: only seeking to provide an immediate, but limited, boost to broadband deployment to unserved locations while it develops a cost model for the Phase II regime, under which it would award increased support to drive more extensive broadband deployments in unserved areas. The proposal in Windstream’s *Petition* is not materially different from its previous “rejected” proposal nor does the *Petition* provide sufficient additional evidence for the Commission to alter its prior decisions. Consequently, Windstream’s request does not meet the standard required for the Commission to grant a good cause waiver.

Parties filing in support of Windstream’s request largely base their arguments on the importance of deploying broadband to unserved locations and the need to spend the entire \$300 million set aside for this purpose. For instance, Frontier Communications argues 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.”⁴ ACA does not dispute the need to accelerate broadband deployments to unserved locations, but the Phase I program is a “transitional distribution mechanism,”⁵ only seeking to jumpstart deployments while the Phase II regime is being established. Further, the Commission specifically contemplated that the entire amount of support (\$300 million in one-

⁴ Comments of Frontier Communications Corporation, WC Docket Nos. 10-90 and 05-337 (Aug. 24, 2012) at 2. Also *see e.g.*, Comments of the United States Telecom Association, WC Docket Nos. 10-90 and 05-337 (Aug. 24, 2012) at 2-3 (“The stated purpose of CAF Phase I is to ‘expand voice and broadband availability as much and as quickly as possible’ and to begin ‘closing the rural-rural divide.’ Nevertheless, it is clear that the program’s restrictive rules – including the \$775 per-household deployment requirement – are preventing the Commission from achieving its goals. At least \$185 million of the \$300 million that the Commission dedicated to CAF Phase I and allocated to price cap carriers based on the high-cost nature of their service areas will lie unused under the existing program rules, while millions of Americans in high-cost areas remain without any broadband service indefinitely.”).

⁵ *Connect America Fund Order*, ¶132.

time capital grants) might not be awarded.⁶

ACA's position to not grant the *Petition* is supported by other commenters, including the National Cable & Telecommunications Association ("NCTA"),⁷ Mediacom Telephony,⁸ Sprint,⁹ and the Wireless Internet Service Providers Association.¹⁰ Perhaps NCTA best sums up the basis for denying Windstream's waiver request:

"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 that Windstream has proposed). 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."¹¹

In sum, Windstream does not provide sufficient grounds for the Commission to grant its waiver request.

In its comments, ACA also briefly discussed potential changes to the Phase I program should the Commission decide to extend it beyond this year.¹² ACA believes it is especially important for the Commission to ensure that any new incremental support be awarded "only in

⁶ See *e.g. id.*, ¶144. ACA notes that other price cap carriers that did not elect to receive support have not asked for waivers, and so significant amounts of support will go unspent.

⁷ 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 (Aug. 24, 2012) ("NCTA Comments").

⁸ See Opposition of Mediacom Telephony to Windstream's Election and Petition for Waiver, WC Docket Nos. 10-90 and 05-337 (Aug. 24, 2012).

⁹ See Comments of Sprint Nextel Corporation, WC Docket Nos. 10-90 and 05-337 (Aug. 24, 2012).

¹⁰ See Opposition of the Wireless Internet Service Providers Association to Windstream Election and Petition for Waiver, WC Docket Nos. 10-90 and 05-337 (Aug. 24, 2012).

¹¹ NCTA Comments at 4-5.

¹² See ACA Comments at 5-6.

areas where non-incumbent providers are not offering service today – as determined both by the National Broadband Map and supplemental information submitted by providers – or where it is clear they have no incentive or capability to do so.”¹³ ACA notes that the comments of AT&T bear directly on this point. Specifically, AT&T argues that actions by the Commission “should be consistent with its goal of using universal service support to encourage the broadest possible availability of broadband to rural and other high cost areas lacking a business case for private investment in broadband networks and services.”¹⁴ ACA agrees with the essence of AT&T’s position: the Commission should not provide support or impose support-related obligations where unsupported entities are or will soon offer service.

For those areas where there is no private sector business case and support will be provided to deploy broadband service to unserved locations, ACA believes that the Commission should consider the proposals of Windstream and many other commenting parties – both pro and con if it is going to amend the Phase I program and award support in 2013. ACA, of course, reserves its right to comment on and support or oppose any proposal. At the very least, as ACA set forth in its comments, the Commission should not amend the program and adopt any proposal to “increase the amount of support per location without first receiving additional and sufficient data and conducting a more precise analysis” and should institute “additional accountability measures to ensure the support is only used for the intended purpose, including a requirement that the carrier declare at the time it receives support the specific locations it plans to serve.”¹⁵ NCTA shares ACA’s view that a price cap carrier electing to receive support should disclose information about unserved locations it intends to reach (and potentially second-mile fiber it will

¹³ *Id.* at 6.

¹⁴ Comments of AT&T, WC Dockets Nos. 10-90 and 05-337 (Aug. 24, 2012) at 1 (“AT&T Comments”).

¹⁵ ACA Comments, n. 35.

deploy with that support).¹⁶

Finally, ACA agrees with AT&T that “there is an inherent mismatch between the goals and design of all the new CAF mechanisms and the legacy ETC requirements.”¹⁷ As such, it supports AT&T’s request that the Commission reform the ETC rules “prior to offering CAF support to eligible providers.”¹⁸ In prior comments, ACA extensively documented the onerous nature of the current ETC qualification process and how it undermines the objectives of the new CAF regimes.¹⁹ ACA also set forth the legal basis for Commission action to reform its rules.²⁰ Again, ACA submits that the current ETC process is inconsistent with the public interest and should be reformed immediately.

¹⁶ See NCTA Comments at 5-6 (“By definition, those locations [supported by the Phase I program] 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... There also is no reason why the public should not be permitted to know where Windstream intends to build second-mile 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.”).

¹⁷ AT&T Comments at 9.

¹⁸ *Id.*

¹⁹ See e.g. Comments of the American Cable Association, WC Docket Nos. 10-90 et al. (Jan. 18, 2012) at 18-28.

²⁰ *Id.*

Respectfully submitted,

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