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April 12, 2013

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: Connect America Fund, WC Docket No. 10-90**

Dear Ms. Dortch:

On April 8, 2013, Windstream filed a letter taking issue with statements NCTA has made on the record in the Connect America Fund (CAF) Phase I proceeding.<sup>1</sup> Although Windstream states that it “agrees with NCTA that ‘the Commission should take all steps necessary’ to ensure that CAF Phase I funding is used to deploy facilities that will reach currently unserved Americans,”<sup>2</sup> the Windstream letter makes clear that there is a disagreement about the meaning of the term “unserved.”

The Commission created CAF Phase I incremental support expressly for the purpose of “spur[ring] the deployment of broadband in unserved areas.”<sup>3</sup> In doing so, the Commission explained what it meant by “unserved” when it adopted CAF Phase I in 2011:

More than 83 percent of the approximately 18 million Americans who lack access to fixed broadband live in price cap study areas. As a first step to delivering robust, scalable broadband to *these unserved areas*, the first phase of the CAF will provide the opportunity for price cap carriers to begin extending broadband service to hundreds of thousands of unserved locations in their territories.<sup>4</sup>

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<sup>1</sup> Letter from Malena Barzalai, Senior Counsel, Government Affairs, Windstream Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Apr. 8, 2013) (Windstream Letter).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Connect America Fund, WC Docket No. 10-90 et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17712-13, ¶128 (2011) (*CAF Order*).

<sup>4</sup> *Id.* at 17712, ¶127 (citing the National Broadband Map: “Based on data as of December 2010, there were an estimated 18.8 million Americans who lacked access to terrestrial fixed broadband services with a maximum advertised download speed of at least 3 Mbps and a maximum advertised upload speed of at least 768 kbps.”) (emphasis added).

Furthermore, in announcing the kick-off of CAF Phase I in 2012, the Commission said, “Nationally, nearly 19 million residents currently lack access to broadband. . . . The ‘Connect America Fund’ aims to connect 7 million unserved rural Americans to broadband in six years, and puts the nation on a path to connect all 19 million unserved residents by 2020.”<sup>5</sup>

Consequently, the reason that NCTA has “fixated” on the 19 million unserved figure is that it is the number promulgated by the Commission based on data from the National Broadband Map,<sup>6</sup> and specifically used by the Commission to identify unserved Americans for purposes of CAF support.<sup>7</sup> It is to these 19 million people that NCTA, the Commission, and members of Congress<sup>8</sup> refer when they say that CAF Phase I support should be used to bring broadband to “unserved” Americans.

Windstream and its fellow price cap incumbent LECs, however, are seeking almost \$500 million in incremental CAF Phase I support in 2013, but not to serve any of these 19 million Americans. As confirmed by Windstream’s letter, they instead propose to bring broadband to consumers that already have access to broadband at speeds of at least 3 Mbps downstream and 768 kbps upstream.<sup>9</sup> Specifically, Windstream claims that it should receive this money so that it and other incumbent LECs can increase the upload speeds offered to their DSL customers from 768 kbps to 1 Mbps.<sup>10</sup>

NCTA has explained that upgrading DSL service for customers that already have it should be a lower priority than bringing broadband to truly unserved areas for the first time, which was the specific goal identified by the Commission when it created CAF Phase I.<sup>11</sup> One reason we took this position, as Windstream itself has recognized, is that “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*

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<sup>5</sup> *FCC Kicks-Off “Connect America Fund” with Major Announcement: Nearly 400,000 Unserved Americans in Rural Communities in 37 States Will Gain Access to High-Speed Internet Within Three Years*, FCC News Release, at 1 (July 25, 2012).

<sup>6</sup> *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. 11-121, 27 FCC Rcd 10342, 10373, ¶¶57-58 (2012) (as of June 2011 19 million Americans did not have access to broadband at speeds of 3 Mbps download/768 kbps upload).

<sup>7</sup> *See supra* notes 4 and 5.

<sup>8</sup> *See, e.g.*, Letter from Senators Klobuchar and Franken to Chairman Genachowski, FCC (Feb. 6, 2013); Letter from Congressman Butterfield *et al.* to Chairman Genachowski, FCC (Feb. 13, 2013).

<sup>9</sup> Windstream Letter at 2; Comments of the United States Telecom Association, the Independent Telephone and Telecommunications Alliance, and the ABC Coalition, WC Docket No. 10-90, at 11-12 (Jan. 28, 2013) (Price Cap LEC Comments).

<sup>10</sup> Comments of Windstream, WC Docket No. 10-90, at 5 (Jan. 9, 2013).

<sup>11</sup> Letter from Steven F. Morris, Vice President and Assoc. General Counsel, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, at 1-2 (Apr. 5, 2013).

*additional deployment costs and added strain on the Universal Service Fund.*<sup>12</sup> Because Windstream had it right the first time, the Commission should reject the price cap incumbent LECs' current inefficient proposal to use scarce universal service dollars that would bring only slightly faster upload speeds to one million currently served consumers.<sup>13</sup>

In addition to arguing that CAF Phase I support should be used to upgrade consumers currently receiving upload speeds of 768 kbps to 1 Mbps, Windstream also states that it is not consistently providing 3 Mbps/768 kbps service to some consumers that are currently buying that service from Windstream in areas which Windstream has reported as being served at those speeds on the National Broadband Map.<sup>14</sup> Windstream's surprisingly candid assertion regarding the shortcomings of the broadband service it sells to its customers may be cause for concern among both consumers and regulators,<sup>15</sup> but it certainly does not warrant rewarding Windstream with additional government funding.

At this point it should be painfully clear to the Commission that the price cap incumbent LECs have no interest in bringing broadband to the 19 million customers identified by the National Broadband Map and the Commission as being without service of at least 3 Mbps/768 kbps. These incumbent LECs have refused to accept CAF Phase I support,<sup>16</sup> sought waivers of the CAF Phase I requirements,<sup>17</sup> reneged on commitments after accepting the support,<sup>18</sup> sought waivers of the requirement that they use one-third of their legacy support in unserved areas,<sup>19</sup> and are now proposing to take \$500 million in additional support without committing to serve a

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<sup>12</sup> Comments of Windstream, WC Docket Nos. 10-90 *et al.*, at 18 (Apr. 18, 2011) (emphasis added).

<sup>13</sup> Windstream Letter at 2-3; Price Cap LEC Comments at 12.

<sup>14</sup> Windstream Letter at 3 ("Moreover, in general rural locations served by copper-fed DSLAMs that previously consistently met 'up to' speeds of 3/768 are now – because of exponential usage growth primarily from the proliferation of online video – often experiencing speeds significantly slower than 3/768 because of the backhaul limitations of copper wire.").

<sup>15</sup> See *Windstream Answers Tough Questions About Internet Speeds*, CBSAtlanta.com, at <http://www.cbsatlanta.com/story/21558002/windstream-responds-to-complaints-of-slow-internet-speeds> (last visited Apr. 11, 2013).

<sup>16</sup> Letter from Robert W. Quinn, Jr., Senior Vice President Federal Regulatory and Chief Privacy Office, AT&T Services, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 05-337 (July 24, 2012); Letter from Kathleen Grillo, Senior Vice President Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90 and 05-337 (July 24, 2012); Letter from Seth Davis, Virgin Islands Telephone Corp. d/b/a Innovative Telephone, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90 and 05-337 (July 24, 2012).

<sup>17</sup> CenturyLink Petition for Waiver, WC Docket No. 10-90 *et al.* (June 26, 2012); Windstream Election and Petition for Waiver, WC Docket No. 10-90 *et al.* (July 24, 2012); FairPoint Communications, Inc. Petition for Waiver, WC Docket No. 10-90 *et al.* (Sept. 10, 2012) .

<sup>18</sup> ACS of Anchorage *et al.* Petition for Waiver, WC Docket Nos. 10-90 and 05-337 (Sept. 26, 2012).

<sup>19</sup> FairPoint Petition for Waiver, WC Docket Nos. 10-90 and 05-337 (Feb. 8, 2013); ACS Petition for Waiver, WC Docket Nos. 10-90 and 05-337 (Apr. 9, 2013); *see also* Letter from David Cohen, Vice President, Policy, USTelecom, WC Docket 10-90 (Jan. 31, 2013).

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single one of the 19 million unserved Americans identified by the Commission.<sup>20</sup> Instead of continuing to negotiate with these companies, the Commission should instead make CAF Phase I support available to any broadband provider that is willing to bring broadband to unserved areas, or else it should reduce the universal service contribution burden on all consumers as it originally discussed in the *CAF Order*.<sup>21</sup> Either of these approaches would be preferable to giving the price cap incumbent LECs \$500 million to decrease the 19 million unserved broadband consumers by zero.

Respectfully submitted,

**/s/ Jennifer K. McKee**

Jennifer K. McKee  
Steven F. Morris

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<sup>20</sup> Price Cap LEC Comments at 11-13, 23-24.

<sup>21</sup> *CAF Order*, 26 FCC Rcd at 17717, n.221.